

REVIEWED
LEGAL COUNSEL

85-13999

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

1985 JUL -3 PM 3:50

MARY SUE PENHOLLOW
COUNTY CLERK

An Ordinance Amending the *
 Deschutes County Zoning Ordin- *
 ance of 1979, Ordinance No. *
 PL-15, as Amended, to Add *
 Definitions, Place Additional *
 Restrictions on Lands Adjoin- *
 ing Land Zoned Surface Mining *
 (SM) Zone and Surface Mining *
 Reserve (SMR) Zone, and *
 Declaring an Emergency. *

ORDINANCE NO. 85-016

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. Section 1.030, Definitions, of Deschutes County Zoning Ordinance of 1979, Ordinance No. PL-15, is amended by the addition of the following:

"(23A) Community Service Use: Any public or semi-public uses such as landfills, schools, utility facilities, churches, community buildings, cemeteries, mausoleums, crematories, airports, and private uses which attract significant numbers of people such as airports, livestock sales yards, and other similar uses."

Section 2. Section 5.250, Lands Adjoining SM or SMR Zones, of Deschutes County Zoning Ordinance of 1979, Ordinance PL-15, is amended to read as follows:

"Section 5.250. LANDS ADJOINING SM OR SMR ZONES. Uses permitted outright and conditional uses proposed on land adjoining land zoned Surface Mining (SM) or Surface Mining Reserve (SMR) within 250 feet of an SM or SMR Zone boundary must be evaluated for their economic, social, environmental and energy consequences prior to the establishment of the proposed use. If it can be demonstrated that the proposed use is compatible with utilization of the surface mining resource, then the use shall be approved. If the use is not compatible, but can be made to be compatible by requiring conditions of approval, the use shall be approved with conditions. Mitigating conditions such as setbacks, screens, berms, walls, complaint waivers or other reasonable restrictions on the proposed use may be imposed as necessary to provide for compatibility. If

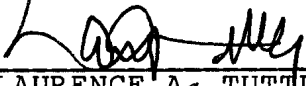
it appears the proposed use cannot be made compatible by imposing mitigating measures, then the use shall be denied for the active life of the mining site. An application for a proposed use under this Section shall be processed in the same manner as a conditional use, except, if the proposed use requires site plan approval, consideration of the application with respect to the standards set forth in this Section shall be made in conjunction with the site plan review. This Section shall not apply to farm use or forest practices on agricultural lands or forest lands adjoining lands zoned Surface Mining (SM) or Surface Mining Reserve (SMR)."

Section 3. That the Findings of Fact in Support of Ordinance No. 85-016, marked Exhibit "A", attached hereto and by this reference incorporated herein, are hereby adopted as the findings of the Board of County Commissioners.

Section 4. This Ordinance being necessary for the immediate preservation of public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 3rd day of July, 1985.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


LAURENCE A. TUTTLE, Chairman


LOIS BRISTOW PRANTE, Commissioner


DICK MAUDLIN, Commissioner

ATTEST:


Kathy Bailor-Wood
Recording Secretary

EXHIBIT "A"

FINDINGS OF FACT

IN SUPPORT OF ORDINANCE NO. 85-016

1. Deschutes County's request for Compliance Acknowledgment was reviewed pursuant to ORS 197.251 by the Land Conservation and Development Commission (Commission) on April 10, 1980, and April 30, 1981. On April 10, 1980, the Commission found that Deschutes County's comprehensive plan and land use regulations did not comply with certain specified Statewide Planning Goals and continued the County's request for acknowledgment. On April 30, 1981, the Commission found that the County's comprehensive plan and land use regulations complied with all applicable Statewide Planning Goals and issued an Acknowledgment Order on May 11, 1981.

2. On March 28, 1984, the Oregon Court of Appeals reversed and remanded the Commission's Acknowledgment Order dated May 11, 1981, with respect to existing and potential surface mining sites. Coats v. LCDC, 67 Or App 504, _____ P2d _____ (1984).

3. On February 1, 1985, the Commission reconsidered the compliance of the plan and implementing measures with the Statewide Planning Goals. Based on its review, the Commission found that Deschutes County's comprehensive plan and land use regulations complied with Statewide Planning Goals for the reasons set forth in the Commission's previous Acknowledgment and Continuance Orders readopted by the Commission on February 1, 1985, except as determined in the Court of Appeals' decision in Coats.

4. Deschutes County's comprehensive plan and land use regulations were found by the Commission to be not in compliance with Statewide Planning Goal 5 as applied to existing and potential surface mining sites for the reasons set forth in the Court of Appeals' decision reviewed by the Commission on February 1, 1985.

5. The Land Conservation and Development Commission determined that the additional work needed for compliance with Statewide Planning Goal 5, as applied to the unacknowledged plan element, can be completed as set forth in the staff memorandum of the Department of Land Conservation and Development (Department) dated January 18, 1985.

6. The Coats decision analyzed the Statewide Planning Goal 5 deficiencies in the County's plan and implementing ordinances as follows:

"First, there is no requirement that the economic, social, environmental and energy consequences (called in land use jargon "ESEE") of potential conflicting uses be considered before they are allowed. Second, the plan and ordinance do not provide a process for determining whether the use should be allowed and, if so, under what, if any, conditions". (Emphasis in original).

The Department interpreted the above language to mean that the issue to be resolved is whether Deschutes County's setback requirement for new development adjacent to existing and potential quarry sites was adequate to resolve conflicts and limit conflicting uses enough to protect the quarry sites.

7. The Department recommended the Commission grant Deschutes County a continuance to bring its comprehensive plan and implementing measures into compliance with Statewide Goal 5 as follows:

"Deschutes County must revise its comprehensive plan and land use regulations as follows:

1. Evaluate the economic, social, environmental and energy consequences of potential conflicting uses authorized adjacent to existing and potential quarry sites now zoned Surface Mining (SM) and Surface Mining Reserve (SMR); and
2. Determine and adopt appropriate methods to adequately limit potential conflicting uses adjacent to lands zoned SM and SMR based on the above evaluation. Such methods may include use of a setback and additional standards for its adjustment based upon the ESEE consequences of the particular conflicting use.

8. Policy 10 of the Deschutes County Year 2000 Comprehensive Plan which reads:

"Although mining should be considered a temporary land use (interim and second uses such as recreation should be designated in the SM Zone), it is important that the resource sites be protected from incompatible development. To reduce this problem, timely utilization of the product should be encouraged. Also, increased setbacks, screening or other requirements for residential, recreational or other conflicting development on adjacent lands shall be required where feasible."

provides sufficient plan authority to require ESEE (economic, social, environmental, and economic) review of uses proposed near

Surface Mining (SM) and Surface Mining Reserve (MR) Zones. Policy 10 also gives the County sufficient direction to require additional restrictions on adjacent lands.

9. Section 7.050, Decision on Site Plan, and Section 8.010, Operation, of PL-15, the Deschutes County Zoning Ordinance of 1979, as amended, provides a process and authority by which to approve, deny and condition proposed uses.

10. Farm uses and forest practices do not conflict with surface mining sites. Surface mining is a permitted use in the Exclusive Farm Use Zone in accordance with ORS 215.213(2)(d).

11. The proposed amendment to the Zoning Ordinance requires that a proposed use on property adjacent to property zoned Surface Mining (SM) or Surface Mining Reserve (SMR) must be evaluated for its economic, social, environmental, and energy consequences, and that the use can be approved, denied or approved with conditions to mitigate possible impacts. This ordinance provision satisfies the Commission's Continuance Order and will serve as an adequate interim measure until completion of the plan update.

12. The distance from SM and SMR Zone boundaries where restrictions apply is 250 feet. This distance is equal to the 250 foot distance counties need provide notice of possible impacts resulting from zone changes as set forth in ORS 215.233(3). Also, 250 feet is the greatest setback distance utilized in a national survey contained in the American Planning Association publication, "Sand and Gravel Resources: Protection, Regulation, and Reclamation".