

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of an Application by)	
Ed Bergman for a Surface Mining)	FINAL ORDER NO. 6-2009
Operating Permit at the Bergman)	(Operating Permit No. 05-0082)
Mining Site)	

WHEREAS, Ed Bergman (hereinafter referred to as the "Applicant") submitted an Application, No. 05-0082, for a Surface Mining Operating Permit for the Bergman Mining Site, an approximately 37.6 acre site located west of the City of Clatskanie identified as Tax Lots 7407-000-00700 and 7407-000-00800; and

WHEREAS, the Applicant previously obtained the necessary conditional use permit for the site (CU 98-26); and

WHEREAS, on December 1, 2008, the County deemed the Application complete after reviewing the application materials submitted by the Applicant; and

WHEREAS, on January 21, 2009, the Board of County Commissioners held a hearing on the Operating Permit Application, heard testimony and received evidence into the record, and deliberated on the matter; and

WHEREAS, after deliberations the Board of County Commissioners voted to tentatively approve Permit Application No. 05-0082, with the recommended Conditions of Approval contained in the Surface Mining Administrator's Staff Report dated December 9, 2008;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A. The Board of County Commissioners adopts the Findings of Fact and Conclusions of Law in the Surface Mining Administrator's Staff Report to the Board of County Commissioners dated December 9, 2008, which is attached hereto as Exhibit 1 and incorporated herein by this reference.
- B. Surface Mining Operating Permit No. 05-0082 and the Proposed Reclamation Plan submitted by Applicant are hereby APPROVED, subject to the following Conditions of Approval:

For purposes of these Conditions of Approval, "Applicant" shall include current and future record owner(s) of the Subject Site.

- 1. Prior to Surface Mining Permit issuance or any future mining related activities on the site, the Applicant shall post a \$15,000.00 bond as financial security for the reclamation of the affected area of the site, in a form acceptable to the County.
- 2. Applicant shall demarcate on the ground, by staking or other means, a 50-foot setback

from the property line except as required in Article VII of the Columbia County Surface Mining Ordinance, Section 8.3-(2), where a 200-foot setback from the property line shall be delineated. A 50-foot setback shall also be staked from the edge of the pavement along Highway 47. Applicant shall maintain the setbacks for the life of mine.

3. The Applicant shall obtain a NPDES 1200A permit prior to surface mining permit issuance.
4. The Applicant shall not mine below the level of Highway 47 without prior written approval from the Surface Mining Administrator.
5. The Applicant shall not conduct pit dewatering without prior written approval from the Surface Mining Administrator.
6. The Applicant shall not construct overburden stockpiles in excess of 10,000 cubic yards without prior written approval from the Surface Mining Administrator.
7. The Applicant shall seed and mulch all exposed soil and overburden stockpiles prior to October 1 of each year.
8. The Applicant shall place a minimum of three (3) feet of soil over the pit floor and other areas not occupied by the building/equipment storage after ripping, and re-vegetate with native timber species.
9. The Applicant shall submit a post-mining drainage plan for approval by the Surface Mining Administrator within one (1) year of completion of mining.
10. The Applicant shall maintain all access/service roads dust-free within 300 feet of Highway 47.

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11. The Applicant shall comply with all conditions of approval for the associated Conditional Use Permit for the Bergman Mining Site, CU 98-26, approved on May 8, 1998.

Dated this 28th day of January, 2009.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Rita M. Bernhard

Rita Bernhard, Chair

By: Anthony Hyde

Anthony Hyde, Commissioner

Approved as to form

By: [Signature]

Office of County Counsel

By: Earl Fisher

Earl Fisher, Commissioner

BOARD COMMUNICATION

FROM THE LAND DEVELOPMENT SERVICES DEPARTMENT
MEETING DATE: January 21, 2009

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Todd Dugdale, Director of Land Development Services *TD*

SUBJECT: PUBLIC HEARING
Ed Bergman - Bergman Mining Site
#05-0082 Surface Mining Operating Permit
Highway 47 Clatskanie
Tax Parcel Nos: 7407-000-00700 & 7407-000-800

COLUMBIA COUNTY

DATE: January 15, 2009

JAN 15 2009

COUNTY COUNSEL

SUMMARY:

Ed Bergman has submitted an application for surface mining operating permit approval for a 37.6 acre site located approximately 1 mile west of Clatskanie on Highway 47.

Mr. Bergman obtained a conditional use permit for surface mining on May 8, 1998(CU-98-26) and had applied for an operating permit but had not completed the application process in 1999. A small portion of the site had previously been mined as a forest practices pit.

Notice of public hearing was given on the application by publication in the newspaper and a mailing to owners of record within 1000 feet of the site and affected agencies. No comments have been received as of the date of this communication.

ATTACHMENTS:

1. Aerial Photo of Mine Site
2. Operating Permit(#05-0082) SM Administrator's Staff Report dated December 9, 2008.

RECOMMENDATION:

Surface Mining Advisory Committee

SMAC recommended approval of the operating permit application with the Surface Mining Administrator's recommended conditions on 12/29/09.

Surface Mining Administrator

Based on the findings in the attached December 9, 2008, Surface Mining Administrator's report, the Surface Mining Administrator recommends approval of Operating Permit #05-0082 with the 11 conditions listed in the report.

EXHIBIT 1

**Columbia County
Surface Mining Administrators Report**

Application for a New Operating Permit, No. 05-0082

Date: December 9, 2008
File Number: 05-0082
Site Name: Bergman Pit
Owner: Ethel Bergman
Applicant: Ed Bergman
16901 Howard Dr.
Clatskanie, OR 97016
Site Location/Zoning: Located approximately one mile west of Clatskanie along the south side of Hwy. 47.

Tax Account No.	Original Zoning	Acres To Be Permitted	Acres in Tax Lot
7407-000-00700	PF-76	10.2	10.2
7407-000-00800	PF-76	<u>27.4</u>	27.4
		37.6 Total	

Operating Permit Area: 37.6 acres

Request:

To obtain a mining operating permit encompassing 37.6 acres as required under Article V Section 5.1 of the Columbia County Surface Mining Ordinance.

Application Complete: December 1, 2008

Basic Facts:

Ed Bergman submitted an application for a new Operating Permit for a site approximately 1-mile west of Clatskanie. The applicant is requesting an Operating Permit for 37.6 acres in two tax lots (7407-000-00700 and 7407-000-00800). The applicant has completed the County's Surface Application for Surface Mining Permit and submitted a Reclamation Plan per Article V of the Surface Mining Ordinance. Mr. Bergman received a conditional use permit (98-26) on May 8, 1998 to allow surface mining on tax lots 7407-000-00700 and 7407-000-00800.

The site is a side hill cut consisting of an approximate 60-foot high face containing a bench in the east side of the highwall. The pit has been used in the past (over 20 yrs) for forest practices but was closed by County Code Enforcement on October 9, '08 for mining without a permit. Since that time the site has been inactive except for leveling and contouring activities to stabilize the disturbed area and prevent potential offsite impacts from erosion. Surrounding vegetation consists of conifers, deciduous trees, grasses, and shrubs.

The proposed permit area is 37.6 acres of which approximately 15 acres will be actively mined as a benched side hill cut with the remaining acreage used for processing, storage and storm water control. The post-mining land use will be forestry with a building/equipment storage and will be completed within three years of completion of mining.

Mine Operating and Reclamation Plan Summary:

The aggregate resource consists of cemented silts, sands and gravels. Soil depth is less than 6-inches and overburden above the resource ranges up to a depth of 20-ft. After stripping, overburden will be stockpiled by placement of lifts to the south of the highwall and will be seeded annually to prevent erosion. Wetlands have not been delineated within the proposed permit area. Fall Creek, a perennial stream, drains along the northern boundary and is on the opposite side of Hwy. 47 from the site.

Mining will proceed by advancing the highwall to the south by developing benches along a side hill cut. A final benched slope of 1H:1V will be achieved with 2H:1V cut slopes in overburden. No blasting is proposed and a 50-foot set back will be maintained from the property line except as required in Article VII, Section 8.3-(2) a 200-foot setback will be maintained from adjacent residences or zoning which allows a residence as a permitted or conditional use without the prior written consent of the affected property owner(s). A 50-foot setback will also be maintained from Hwy. 47 and no mining below the level of the highway will be allowed within the permit boundary.

During an October 29, '08 site inspection by Bob Brinkmann (Columbia County Surface Mining Administrator) minor perched seeps and springs were observed along the highwall as well as an apparent ground water fed pond that had been excavated into the pit floor at the toe of the hillside. Because pit dewatering is not included or allowed under this application development of the highwall is not expected to have the potential to cause impacts to off-site ground water resources.

Discharge from storm water runoff at the site is expected to occur and the applicant will be required to obtain an NPDES 1200A permit prior to issuance of the mine operating permit. Storm water control at the site will consist of rock lined conveyance ditching to retention ponds to allow settling of suspended sediment prior to off-site discharge to the ditch along Hwy. 47. In addition, Mr. Bergman intends to conduct onsite processing which will require retention without discharge of all process water.

The planned secondary beneficial use is forestry with a building/equipment storage. Ripping of compacted areas such as the pit floor, to a minimum depth of 12 inches will be performed to promote drainage. Following ripping, a growth medium of 3-feet will be placed prior to planting fir trees on 12-foot centers in areas not to be used for a building and equipment storage.

To adequately convey storm water offsite and prevent ponding or erosion, a post-mine drainage plan for approval by the SMA will be required within 1 year of completion of mining.

Review Criteria/Findings:

ORS 197.763 Conduct of Quasi Judicial Hearings

The decision on approval of an Operating Permit is made by the Board of Commissioners after a land-use hearing. Notice of the hearing before the Board of Commissioners will be provided to the applicant and to owners of record of property within 500 feet at least twenty days before the hearing date.

The following sections of Articles V, VI, VII, and VIII of the Surface Mining Ordinance are pertinent to this application:

Article V, Section 5.2 - Application Fee

Each application for a new operating permit for surface mining shall be accompanied by an application fee of \$900.

Finding 1 The \$900 application fee was previously submitted.

Finding 5 Because storm water discharges as well as gravel washing will occur at the site the applicant will be required to be in possession of an NPDES 1200A permit prior to issuance of the mine operating permit.

Article VII, Section 8.2 - Compliance with Reclamation Plan Required

All landowners and operators shall comply with the reclamation requirements of Article VI of this ordinance and with any approved reclamation plan.

Finding 6 The planned secondary beneficial use is forestry and a building/equipment storage. The reclamation plan states that a 3-foot layer of growth medium will be placed in reclaimed areas and then planted with coniferous trees. Staff finds that a reclamation plan meeting ordinance requirements has been submitted.

Article VII, Section 8.3 - Operating Setbacks

Each surface mining site shall be in compliance with the following setbacks:

- (1) No extraction or removal of minerals is permitted within fifty (50) feet of the rights-of-way of public roads or easements of private roads.
- (2) No extraction or removal of minerals is permitted within fifty (50) feet of another property, nor within two hundred (200) feet of a residence or zoning district which allows a residence as a permitted or conditional use without the prior written consent of the affected property owner(s).
- (3) Processing equipment, batch plants, and manufacturing and fabricating plants shall not operate within fifty (50) feet of the rights-of-way of public roads or easements of private roads.
- (4) Processing equipment, batch plants, and manufacturing and fabricating plants shall not be operated within fifty (50) feet of another property, nor within one hundred and fifty (150) feet of a residence or zoning district which allows a residence as a permitted or conditional use, without the prior written consent of the affected property owner(s).
- (5) Stockpiling of materials and sedimentation ponds shall not be located closer than twenty-five (25) feet to the boundary line of the surface mining site or the right-of-way of any existing public road.
- (6) Conveying and transporting equipment are exempt from these setback requirements.
- (7) When excavation is completed adjoining a setback, the setback area shall be smoothed, all excavation debris removed, and all trees which are in an unsafe condition removed.
- (8) Wherever an excavation site is within two hundred (200) feet of a public road, or within two hundred (200) feet of a residence or zoning district which allows a residence as a permitted or conditional use, a fence to control access shall be maintained in accordance with the conditions prescribed by the Board upon the recommendation of the Administrator.

Finding 7 The setbacks in the proposed mining area comply with the above section in the County's Surface Mining Ordinance.

Article VIII Section 8.5. -Visual Impacts

Existing trees and other natural vegetation adjacent to any public park, residential development, public road, or residential zoning district shall be preserved for a minimum width of twenty-five (25) feet. Screening shall be provided at the boundary of the surface mining site. If such trees and other vegetation are insufficient to provide a screen, such screening may be accomplished by one or more of the following:

- (1) A sight-obscuring fence or wall;
- (2) A landscaped berm or preservation of a natural slope; or
- (3) Use of native vegetation, or plants and trees with demonstrated ability to thrive under the anticipated conditions.

Article V, Section 5.3 - Application

Each application for a new operating permit for surface mining shall include the information listed in Section 5.3 and whatever additional information the Administrator requires or the applicant deem relevant.

Finding 2 The applicant has supplied the information requested in Section 5.3 including, but not limited to, landowner information; parcel size and legal description; aerial photo and maps; access road location; processing, excavation and stockpile locations; estimated quantity of mineral extraction; mining methods; contaminate and erosion control methods; and site screening.

Article VI, Section 6.1 - Reclamation Plan

Each application for a new operating permit for surface mining shall include a reclamation plan for the operating permit. Each plan must include the items listed in Section 6.1 (1 -19) of the surface mining ordinance.

Finding 3 The applicant has supplied a reclamation plan with the information requested in Section 6.1 including, but not limited to, the present and proposed uses of the property; details of the reclamation activities; setbacks to protect adjacent property and the public from steep slopes, and other mining hazards; protection of natural drainages, water management plan, reclamation time schedule; slope stabilization; revegetation techniques; visual screening; and the removal of all refuse.

Article VII, Section 7.1 - Financial Security Requirement

Before issuing or renewing an operating permit for any surface mining site, the Board shall receive from the landowner or operator a surety bond or security deposit in a sum to be determined by the Board, after considering the initial determination and recommendation of the Administrator and the advise of the Committee, but in an amount not to exceed the total cost for reclamation if the county were to perform the reclamation. The surety bond or security deposit shall be conditioned upon the faithful performance of the reclamation plan and fulfilling the other requirements of this ordinance. A surety bond must be provided by surety companies authorized to do business in Oregon. In lieu of a surety bond, the Board may accept cash, a cashier's check, or certified check equal to the estimated cost of reclamation. The surety bond or other security deposit shall be forfeited to the county if the landowner or operator does not carry out the reclamation plan or fulfill the other requirements of this ordinance. The surety bond or security deposit shall remain on file with the Administrator until the reclamation is complete or the bond or deposit is forfeited. In the event of disagreement regarding the amount of the financial security required, the landowner or operator may request an appeal hearing before the Board pursuant to Section 2.4 of this ordinance.

Finding 4 Currently there are approximately 2-acres disturbed at the site and the applicant estimates that up to 1 additional acre will be disturbed by mining in the first year. Based on this a bond in the amount of \$15,000 is required prior to issuance of the mining permit. The bond amount may be adjusted in the future based on acres reclaimed versus additional acres disturbed by mining.

Article VIII, Section 8.1 - Compliance with Laws and Ordinances Required

Except as otherwise provided in this ordinance all surface mining in this county shall be conducted in compliance with all applicable federal and state statutes, including the Occupational Safety and Health Act of 1970 (19 U.S.C. 651 et seq.) and the Oregon Safe Employment Act (ORS 654.001 to 654.295 and 654.991), all county and local ordinances, including specifically Sections 1040 through 1048 of the Columbia County Zoning Ordinance, regardless of the terms and conditions attached to any permit granted under the zoning ordinance, and all applicable administrative rules including the rules and directives of the Department of Environmental Quality and of other affected agencies. In case of an inconsistency in the requirements of this ordinance, any other law, rule, ordinance, or regulation which also applies, the most restrictive law, rule, ordinance, or regulation shall govern.

Finding 8 The proposed mining area complies with the visual impacts criteria in the County's Surface Mining Ordinance.

Article VIII, Section 8.6. - Access

The surface mining site shall have access to a public road with two-way capacity. The Board may impose weight/load restrictions and/or require the landowner or operator to post an adequate surety bond for road repairs. Any access or service road used for mining shall be dust-free at all points within three hundred (300) feet of a public road or residence off the surface mining site. If surface mining is the primary cause of traffic on an unpaved public road, that road shall be kept dust-free within three hundred (300) feet of any such residences.

Finding 9 The proposed mining site has access onto Hwy 47, a state highway. All access/service roads will remain dust free within 300 feet of Hwy 47.

Article VII, Section 8.7. - Parking

Vehicular parking off public roads shall be available for employees, customers, and visitors at the surface mining site. All parking facilities for employees, customers and visitors shall be located within the boundaries of the surface mining site.

Finding 10 Parking is proposed to be available on site.

Article VII, Section 8.8. - Water Quality

All surface mining sites shall be operated in a manner which meets current D.E.Q. regulations with respect to water quality. In addition, the landowner or operator shall not cause contamination of groundwater or change a stream channel unless the channel change has previously been approved by all applicable state and federal agencies.

Finding 11 The operation of this upland quarry over several decades has not caused impacts to ground water and its continued expansion is not expected to create ground water impacts.

Article VIII, Section 8. - Erosion Control

The erosion of surfaces affected by mining activities shall be controlled during the surface mining by plantings of ground cover and other modes which protect these surfaces as provided by an approved reclamation plan.

Finding 12 The applicant has met the erosion control requirements in the reclamation plan submitted for the proposed mine area.

Results of the public comment period:

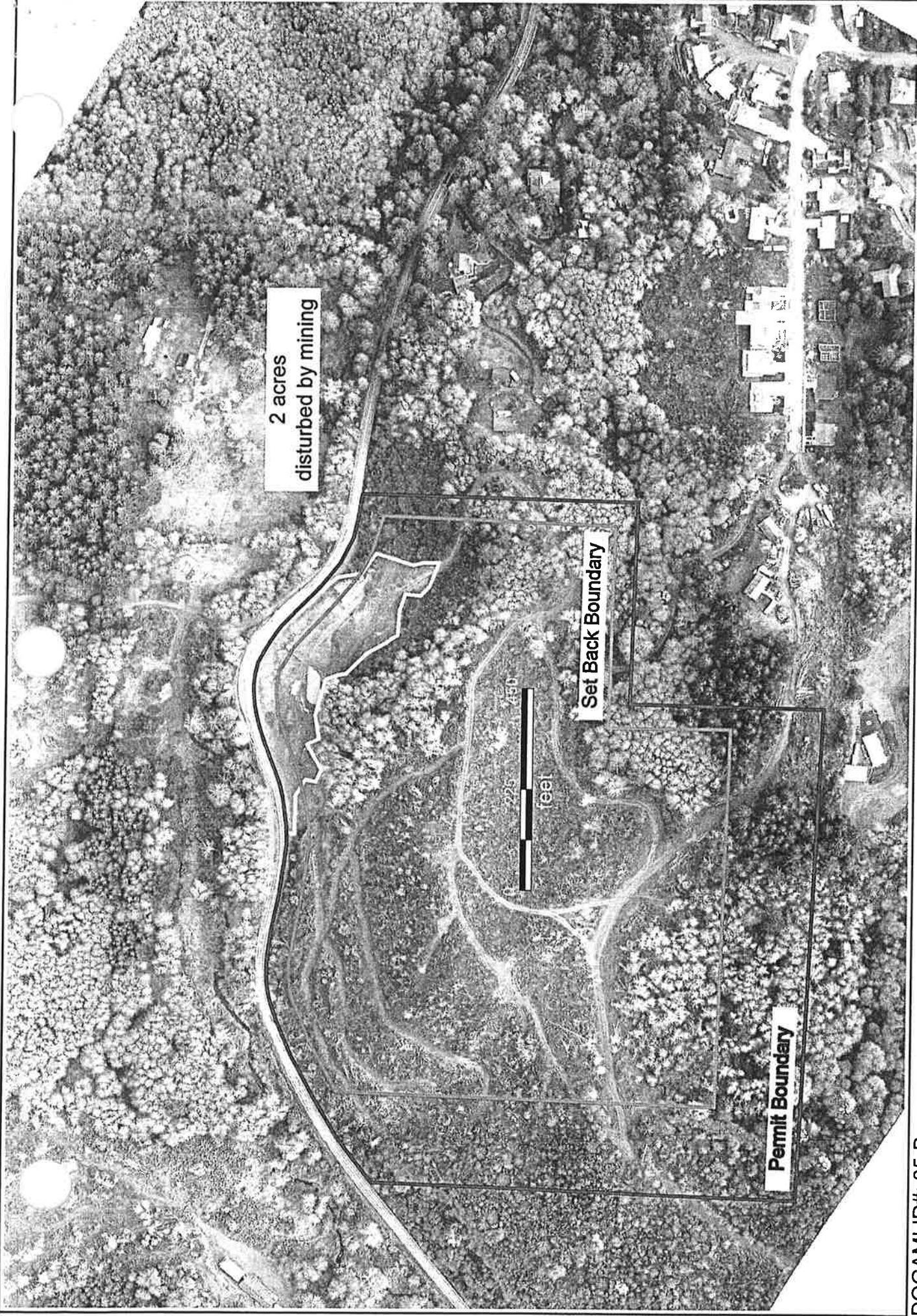
No public comments were recieved.

Recommendations:

Approval of the proposed operating permit is recommended for this mining permit application contingent upon the following conditions being met:

1. Post a reclamation bond in the amount of \$15,000 prior to permit issuance.
2. Demarcate on the ground, by staking or other means, a 50-foot setback from the property line except as required in Article VII, Section 8.3-(2) a 200-foot setback from the property line shall be delineated. A 50-setback shall also be staked from the edge of the pavement along Hwy 47.
3. Obtain an NPDES 1200A permit prior to issuance of the mine operating permit.

4. Not mine below the level of Hwy 47 without prior approval from the Surface Mining Administrator (SMA).
5. Not conduct pit dewatering without prior approval from the SMA.
6. Not construct overburden stockpiles in excess of 10,000 cubic yards without prior approval from the SMA.
7. Seed and mulch all exposed soil and overburden stockpiles prior to October 1 of each year.
8. Place a minimum 3-feet of soil over the pit floor and other areas not occupied by the building/equipment storage after ripping, then revegetate with native timber species.
9. Submit a post-mining drainage plan for approval by the SMA within 1 year of completion of mining
10. All access/service roads will remain dust free within 300 feet of Hwy 47.
11. Comply with all applicable conditions of conditional use approval(CU 98-26).



2 acres
disturbed by mining

Set Back Boundary

Permit Boundary

225 450
feet

DOGAMI ID#: 05-Bergman
Permittee: Ed Bergman
Site Name: Bergman Site
Photo Source / Date: D. Shear / 11-14-08
Prepared By / Date: M. Garrison / 11-25-07

File Name: S:\05Columbia\05-Bergman\05-Bergman GIS Aerial 2008.CVX
Oregon Dept. of Geology and Mineral Industries
Mineral Land Regulation and Reclamation Program
This aerial image and map may contain minor distortions and/or errors and should not be used in place of a detailed site survey or for legal purposes.