

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of a Closure)
Order for the Tide Creek) ORDER NO. 26-01
Rock Surface Mine)
_____)

WHEREAS, in June 1997, John A. Petersen (the "Applicant") submitted an application for renewal of a Limited Exemption Certificate for the Tide Creek Rock surface mine and surface mining site, alleging that 160 acres qualified for limited exempt status; and

WHEREAS, Amended Order No. 44-2000 was adopted by the Board of County Commissioners for Columbia County on October 4, 2000, and authorized the Surface Mining Administrator to issue a Limited Exemption Certificate for approximately ten acres of the surface mine and surface mining site (approximately five acres of existing mine and five acres of expansion area) on that portion of Tax Lot No. 6236-000-00500 ("TL 500") zoned Surface Mining (SM) upon the submission by the Applicant, and approval by the Surface Mining Administrator, of a survey, within 60 days of the issuance of the Amended Order, identifying the limited exempt surface mine and surface mining site with specificity; and

WHEREAS, prior to issuance of the Limited Exemption Certificate, the Applicant was also required by the Amended Order to have the area of approximately five acres entitled to limited exempt status as an existing use mine, and the additional area of approximately five acres entitled to limited exempt status as expansion area, staked by the surveyor in a manner acceptable to the Surface Mining Administrator; and

WHEREAS, within 120 days of the issuance of the order, the Applicant was required to cease and desist from any mining operations on TL 500 outside of the approximately ten acres entitled to limited exempt status until such time that the Applicant had applied for an Operating Permit pursuant to Article V of the Columbia County Surface Mining Ordinance (SMO) for those additional lands; and

WHEREAS, within 120 days of the issuance of the order, the Applicant was also required to either comply with the provisions of paragraph A immediately below (paragraph E, subparagraph 1 of Amended Order No. 44-2000), or comply with the provisions of both paragraphs B and C immediately below (paragraph E, subparagraphs 2 and 3 of Amended Order No. 44-2000):

- A. Cease and desist from conducting surface mining operations on Tax Lot Nos. 6236-040-00100 ("TL 100"), 6236-000-00600 ("TL 600"), 6236-000-00900 ("TL 900"), and 6236-000-01000 ("TL 1000"); or

B. Apply for either:

- a. Zone changes and/or conditional use permits to bring the Applicant's surface mining operations on TL 100, TL 600, TL 900 and TL 1000 into conformance with the Columbia County Zoning Ordinance on each such tax lot; or
- b. Nonconforming use approvals for mining operations on TL 100, TL 600, TL 900 and TL 1000 pursuant to the requirements of the Columbia County Zoning Ordinance; and

C. Apply for a surface mining operating permit to bring the Applicant's surface mining operations on TL 100, TL 600, TL 900 and TL 1000 into conformance with the Columbia County Surface Mining Ordinance on each such tax lot; and

WHEREAS, the Applicant filed a Notice of Intent to Appeal Amended Order No. 44-2000 with the Land Use Board of Appeals ("LUBA"); and

WHEREAS, the Applicant filed a Motion for a Stay of Amended Order No. 44-2000 with LUBA, which Motion was denied; and

WHEREAS, the Applicant did not submit a survey within 60 days of the issuance of the order, for approval by the Surface Mining Administrator, identifying the approximately ten acres of the surface mine and surface mining site entitled to limited exempt status with specificity; and

WHEREAS, the Applicant did not have the area of approximately five acres entitled to limited exempt status as an existing use mine, and the additional area of approximately five acres entitled to limited exempt status as expansion area, staked by the surveyor in a manner acceptable to the Surface Mining Administrator, or at all; and

WHEREAS, the Applicant did not, within 120 days of the issuance of the order, cease and desist from any mining operations on TL 500 outside of the approximately ten acres entitled to limited exempt status, and did not, within 120 days of the issuance of the order, apply for an Operating Permit for those additional lands; and

WHEREAS, the Applicant did not, within 120 days of the issuance of the order, either comply with the provisions of paragraph A above, or comply with the provisions of both paragraphs B and C above; and

WHEREAS, pursuant to Section 9.6 of the Columbia County Surface Mining Ordinance, the Board may issue a closure order when it finds that a landowner or operator is conducting surface mining

for which a permit or certificate is required, but has not been obtained; and

WHEREAS, pursuant to Section 9.6 of the Columbia County Surface Mining Ordinance, the closure period shall begin three days after the mailing date of the order, if mailed, or immediately upon receipt, if served personally on the landowner or operator, or their designated agents for service of process, unless otherwise stated in the closure order; and

WHEREAS, pursuant to Section 9.6 of the Columbia County Surface Mining Ordinance, it is unlawful for any person to engage in surface mining of any surface mining site during a closure period; and

WHEREAS, the Board finds that the Applicant is currently conducting surface mining for which a permit or certificate is required, but has not been obtained;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Applicant is ordered to cease and desist from conducting surface mining operations on the approximately ten acres on that portion of TL 500 which is zoned Surface Mining (SM) and which is entitled to limited exempt status.
2. The Applicant is ordered to cease and desist from conducting surface mining operations on that portion of TL 500 which is zoned Surface Mining (SM) and which is outside of the approximately ten acres which is entitled to limited exempt status.
3. The Applicant is ordered to cease and desist from conducting surface mining operations on TL 100, TL 600, TL 900, and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM).
4. The closure period shall begin on March 16, 2001, except as provided in paragraphs 5, 6, 7, 8 and/or 9 below,
5. If the Applicant:
 - a. dismisses his LUBA appeal of Amended Order No. 44-2000 (Petersen v. Columbia County, LUBA No. 2000-145) by March 16, 2001;then the closure period shall begin on May 8, 2001, notwithstanding paragraph 4 above, and except as provided in paragraphs 6, 7, 8 and/or 9 below.
6. If the Applicant:
 - a. complies with paragraph 5.a above; and

b. (Limited Exempt Lands)

- (1) submits the survey for approval by the Surface Mining Administrator, identifying separately the approximately five acres of existing use mine and approximately five acres of expansion area, of the approximately ten acres on that portion of TL 500 which is zoned Surface Mining (SM) and which is entitled to limited exempt status, with specificity in the form required by Amended Order No. 44-2000, by May 8, 2001;
- (2) has the area of approximately five acres of existing use mine, and the area of approximately five acres of expansion area, on that portion of TL 500 which is zoned Surface Mining (SM) and which is entitled to limited exempt status, staked by the surveyor in a manner acceptable to the Surface Mining Administrator by May 8, 2001;

(Non-exempt Lands Currently Zoned Surface Mining (SM))

- (3) either complies with the provisions of paragraph (3)(A) below, or complies with the provisions of paragraph (3)(B) below, by May 8, 2001:
 - (A) ceases and desists from conducting surface mining operations on that portion of TL 500 which is zoned Surface Mining (SM) and which is outside of the approximately ten acres entitled to limited exempt status; or
 - (B) applies for an Operating Permit for that portion of TL 500 which is zoned Surface Mining (SM) and which is outside of the approximately ten acres entitled to limited exempt status; and

(Non-exempt Lands Not Currently Zoned Surface Mining (SM))

- (4) either complies with the provisions of paragraph (4)(A) below, or complies with the provisions of paragraph (4)(B) below, by May 8, 2001:
 - (A) ceases and desists from conducting surface mining operations on TL 100, TL 600, TL 900, and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM); or
 - (B) applies for either:

- (i) Zone changes and/or conditional use permits to bring the Applicant's surface mining operations on TL 100, TL 600, TL 900 and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM), into conformance with the Columbia County Zoning Ordinance on each such tax lot; or
- (ii) Nonconforming use approvals for surface mining operations on TL 100, TL 600, TL 900 and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM), pursuant to the requirements of the Columbia County Zoning Ordinance;

(Limited Exempt Lands)

then, upon approval of the survey and staking by the Surface Mining Administrator for the approximately ten acres on that portion of TL 500 which is zoned Surface Mining (SM) and which is entitled to limited exempt status, the closure period for the approximately ten acres shall begin on August 6, 2001, notwithstanding paragraphs 4 and 5 above, and except as provided by paragraphs 8 and 9 below;

but, if the survey and staking for the approximately ten acres on that portion of TL 500 which is zoned Surface Mining (SM) and which is entitled to limited exempt status are not approved by the Surface Mining Administrator, then the closure period for the approximately ten acres shall begin on June 7, 2001, notwithstanding paragraphs 4 and 5 above, unless the Applicant can obtain the approval of the Surface Mining Administrator prior to that date; and

(Non-exempt Lands)

and, for Applicant's surface mining operations on that portion of TL 500 which is zoned Surface Mining (SM) and which is outside of the approximately ten acres entitled to limited exempt status, and for Applicant's surface mining operations on TL 100, TL 600, TL 900 and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM), the closure period shall begin on June 7, 2001, notwithstanding paragraphs 4 and 5 above, and except as provided in paragraphs 7, 8 and/or 9 below;

7. If the Applicant:

- (a) complies with paragraph 5.a above;
- (b) complies with paragraphs 6.b above; and

- (c) makes any applications submitted under paragraphs 6.b(3) and 6.b(4) above complete (as that term is understood in Oregon land use law), including the submission of a detailed mining plan, by June 7, 2001;

(Non-exempt Lands)

then, for Applicant's surface mining operations on that portion of TL 500 which is zoned Surface Mining (SM) and which is outside of the approximately ten acres entitled to limited exempt status, and for Applicant's surface mining operations on TL 100, TL 600, TL 900 and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM), the closure period shall begin on August 6, 2001, notwithstanding paragraphs 4, 5 and 6 above, and except as provided in paragraphs 8 and/or 9 below.

8. If the Applicant:

- (a) complies with paragraph 5.a above;
- (b) complies with paragraph 6.b above;
- (c) complies with paragraph 7.c above; and
- (d) pays all outstanding regulatory fees and interest due Columbia County by August 6, 2001;

(Limited Exempt Lands)

then, the closure period for the approximately ten acres on that portion of TL 500 which is zoned Surface Mining (SM) and which is entitled to limited exempt status shall not begin and this closure order shall not take effect for that portion of TL 500, notwithstanding paragraphs 4, 5, and 6 above;

(Non-exempt Lands Currently Zoned Surface Mining (SM))

and, if the application, if any, submitted under subparagraph 6.b(3) above for an operating permit for surface mining operations on that portion of TL 500 which is zoned Surface Mining and which is outside of the approximately ten acres entitled to limited exempt status, is approved by the Board of County Commissioners and, in the case of an appeal of the Board of County Commissioners' approval decision, the approval is subsequently affirmed by the Land Use Board of Appeals ("LUBA"), Court of Appeals or Supreme Court, the closure period for that portion of TL 500 shall not begin and this closure order shall not take effect for that portion of TL 500, notwithstanding paragraphs 4, 5, 6 and 7 above;

but, if the application, if any, submitted under subparagraph 6.b(3) above for an operating permit for surface mining

operations on that portion of TL 500 which is zoned Surface Mining and which is outside of the approximately ten acres entitled to limited exempt status, is denied by the Board of County Commissioners and, in the case of an appeal of the Board of County Commissioners' denial decision, the denial is subsequently affirmed by LUBA, the Court of Appeals or Supreme Court, the closure period for that portion of TL 500 shall begin 60 days after the date of denial by the Board of County Commissioners, notwithstanding paragraphs 4, 5, 6 and 7 above, unless the closure period is stayed by LUBA, the Court of Appeals or Supreme Court, in which case the closure period shall take effect on the date the stay is lifted or on the date of the final appellate judgment affirming the Board's denial decision;

however, if the Board of County Commissioners' denial decision is ultimately reversed by LUBA, the Court of Appeals or Supreme Court, the closure order shall be lifted on the date of the final appellate judgment reversing the Board's decision;

(Non-exempt Lands Not Currently Zoned Surface Mining (SM))

and, if the applications, if any, submitted under subparagraph 6.b(4) above for approval under the Columbia County Zoning Ordinance of the Applicant's surface mining operations on TL 100, TL 600, TL 900 and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM), are approved by the Columbia County Planning Commission and, in the case of an appeal of a Planning Commission decision or in the case of a zone change application, are approved by the Board of County Commissioners and, in the case of an appeal of a Board of County Commissioners' approval decision, the approval decision or decisions are subsequently affirmed by LUBA, the Court of Appeals or Supreme Court, the closure period for TL 100, TL 600, TL 900 and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM) shall begin 30 days after the date of the final decision of an unappealed Planning Commission decision, or 30 days after the date of the final decision of an unappealed Board of County Commissioners' decision, or 30 days after the date of the Appellate Judgment in case of a LUBA, Court of Appeals or Supreme Court decision, notwithstanding paragraphs 4, 5, 6 and 7 above, and except as provided in paragraph 9 below;

but, if the applications, if any, submitted under subparagraph 6.b(4) above for approval under the Columbia County Zoning Ordinance of the Applicant's surface mining operations on TL 100, TL 600, TL 900 and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM), are denied by the Columbia County Planning Commission and, in the case of an appeal of a Planning Commission decision or in the case of a zone change application, are denied by the Board of County

Commissioners and, in the case of an appeal of the Board of County Commissioners' denial decision, the denial decision or decisions are subsequently affirmed by LUBA, the Court of Appeals or Supreme Court, the closure period for TL 100, TL 600, TL 900 and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM), shall begin 60 days after the date of denial by the Board of County Commissioners, notwithstanding paragraphs 4, 5, 6 and 7 above, unless the closure period is stayed by LUBA, the Court of Appeals or Supreme Court, in which case the closure period shall take effect on the date the stay is lifted or the date of the final appellate judgment affirming the Board's denial decision;

however, if the Board of County Commissioners' denial decision is ultimately reversed by LUBA, the Court of Appeals or Supreme Court, the closure order shall be lifted on the date of the final appellate judgment reversing the Board's decision.

9. If the Applicant:

- (a) complies with paragraph 5.a above;
- (b) complies with paragraph 6.b above;
- (c) complies with paragraph 7.c above;
- (d) complies with paragraph 8.d above; and
- (e) applies for a surface mining Operating Permit to bring the Applicant's surface mining operations on TL 100, TL 600, TL 900 and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM), into conformance with the Columbia County Surface Mining Ordinance on each such tax lot within 30 days after the date of the final decision of an unappealed Planning Commission decision, or 30 days after the date of the final decision of an unappealed Board of County Commissioners' decision, or 30 days after the date of the Appellate Judgment in case of a LUBA, Court of Appeals or Supreme Court decision, granting or affirming approval of the Applicant's applications, if any, submitted under paragraph 6.b(4) above;

(Non-exempt Lands Not Currently Zoned Surface Mining (SM))

then, if the application, if any, submitted under subparagraph 9.e above for an operating permit for surface mining operations on TL 100, TL 600, TL 900 and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM), is approved by the Board of County Commissioners and, in the case of an appeal of the Board of County Commissioners'

approval decision, the approval is subsequently affirmed by the Land Use Board of Appeals ("LUBA"), Court of Appeals or Supreme Court, the closure period for TL 100, TL 600, TL 900 and TL 1000, and that portion of TL 500 which is not currently zoned Surface Mining (SM), shall not begin and this closure order shall not take effect for TL 100, TL 600, TL 900 and TL 1000, and that portion of TL 500 which is not currently zoned Surface Mining (SM), notwithstanding paragraphs 4, 5, 6, 7 and above;

but, if the application, if any, submitted under subparagraph 9.e above for an operating permit for surface mining operations on TL 100, TL 600, TL 900 and TL 1000, and on that portion of TL 500 which is not currently zoned Surface Mining (SM), is denied by the Board of County Commissioners and, in the case of an appeal of the Board of County Commissioners' denial decision, the denial is subsequently affirmed by LUBA, the Court of Appeals or Supreme Court, the closure period for TL 100, TL 600, TL 900 and TL 1000, and that portion of TL 500 which is not currently zoned Surface Mining (SM), shall begin 60 days after the date of denial by the Board of County Commissioners, notwithstanding paragraphs 4, 5, 6, 7 and 8 above, unless the closure period is stayed by LUBA, the Court of Appeals or Supreme Court, in which case the closure period shall take effect on the date the stay is lifted or on the date of the final appellate judgment affirming the Board's denial decision;

however, if the Board of County Commissioners' denial decision is ultimately reversed by LUBA, the Court of Appeals or Supreme Court, the closure order shall be lifted on the date of the final appellate judgment reversing the Board's decision.

[THE REST OF THIS PAGE IS INTENTIONALLY BLANK]

10. Notwithstanding any other provision in this order, Applicant is still obligated to conduct any surface mining operations on Tax Lot No. 6236-000-00500 ("TL 500") and on Tax Lot Nos. 6236-040-00100 ("TL 100"), 6236-000-00600 ("TL 600"), 6236-000-00900 ("TL 900"), and 6236-000-01000 ("TL 1000") in compliance with the terms and provisions of the Columbia County Surface Mining Ordinance and Zoning Ordinance that pertain to surface mining operations with operating permits, and will be subject to enforcement action, including the possibility of the issuance of a separate closure order, for any violation of those ordinances.

DATED this 7th day of March, 2001.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Chair

By: [Signature]
Commissioner

By: [Signature]
Commissioner

Approved as to form

By: [Signature]
Office of County Counsel
H:\LDS\SM\Tide Creek\tide creek7.ord.wpd