ZONING- CONDITIONAL USE PERMIT REQUEST

The determination as to whether a conditional use permit will be granted is subjective to a degree. The Zoning Board of Adjustments may act on issues discussed in the zoning ordinance and criteria checklist when making decisions in these matters.

REQUEST: Conditional Use Permit approval for Heritage Farms NWA to use parcel # 001-11943-000 for open cut red dirt mining operations, and to use parcel # 001-11940-001 for the dirt pit haul road.

CURRENT ZONING: Project lies within the County's Zoned area (Agriculture/Single-Family Residential 1 unit per acre).

PLANNING AREA: This property is not located within a planning area, it is located solely within Washington County's jurisdiction.

FUTURE LAND USE: No Future Land Use has been designated at this location.

QUORUM COURT DISTRICT: District 7, JP Sam Duncan

FIRE SERVICE AREA: Wedington Rural VFD

SCHOOL DISTRICT: Farmington

INFRASTRUCTURE:
- Water: Washington Water Authority
- Electric: Ozarks Electric
- Natural Gas: N/A
- Telephone: AT&T
- Cable: N/A

BACKGROUND/ PROJECT SYNOPSIS:
The applicant is requesting Conditional Use Permit approval for Heritage Farms to transition existing agricultural/residential zoned property to open cut red dirt/clay/gravel extraction operations. The property is owned by Heritage Farms NWA. Construction of the haul road has already begun.

This operation proposes the construction of a haul road and red dirt pit operations - extraction of red dirt, clay, and creek gravel. The proposed haul road from Greenburrow Road will connect to the proposed open cut mining area. The proposed mining area is split up into four phases, with progression from one phase to the next based on market demand. The phases are as follows:

- Phase 1- 6.16 acres
- Phase 2- 6.06 acres
- Phase 3- 3.8 acres
- Phase 4- 3.1 acres

Total area to be mined- 19.12 acres

The proposed hours of operation are 7:30am – 5:00pm, Monday – Friday, with 3 to 5 employees, and approximately 75 trucks/day in the spring & summer months. (Please see applicant's Letter of Explanation)
TECHNICAL CONCERNS:
The Conditional Use Permit is subjective in nature. Its intent is to assess the proposed development’s compatibility with the existing uses in the surrounding area. The Conditional Use Permit criteria for approval are as follows (with Planning Staff comments in bold text):

Sec. 11-200. –Criteria for allowance of conditional uses.
   a) The Board shall hear and decide requests for a conditional use and may authorize such if it finds:
      1. That a written application has been filed with the Planning Office and the appropriate fee has been paid. Application is on file and fee has been paid.
      2. That the applicant has provided proof that each property owner as set out in section 11-204 has been notified by return receipt mail. Planning Staff notified neighbors within ½ mile of the subject property, by certified mail, within 30 days of the hearing date.
      3. That adequate utilities, roads, drainage and other public services are available and adequate or will be made available and adequate if the use is granted. The exiting conditions, coupled with the proposed conditions of approval regarding utilities, roads, and drainage, will ensure adequate infrastructure is in place for this development.
      4. That the proposed use is compatible with the surrounding area. There are other red dirt pits and a quarry in the area within a few miles. However Planning Staff has received a substantial number of public comments in opposition to this proposal based on several criteria including (but not limited to) safety, noise, dust, traffic, property values, wildlife, water quality, and stormwater runoff. Many residents of this neighborhood feel this proposed use is not compatible with the surrounding area. However, the applicant feels this proposed use is compatible with the area based on Fayetteville’s growth toward the west, and the demand for red dirt as a building material.
      5. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare. The neighbors have made the argument that this proposed use will be detrimental to their public health, safety, comfort, and general welfare.
      6. That the conditional use will not be injurious to the use and enjoyment of other property in the surrounding area for the purposes already permitted, nor substantially diminish and impair property values within the surrounding area. With the applicant’s estimated 75 trucks/day (in & out), many neighbors have commented in opposition to this proposed use, believing it will substantially diminish their ability to enjoy their property, as well as impair property values in the area. At the time of this Staff Report, 39 public comment forms have been submitted citing diminished property values as a concern. Neither the applicant nor the neighbors have submitted any quantitative data on property value fluctuations related to open cut red dirt mines.
      7. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding area for uses permitted in the zone. Public comments have been submitted citing fear of decreased property values, which may deter future development in the surrounding area.
   b) If it is determined that there exist conditions that could be imposed by the Board that would significantly lessen the impact of the aforesaid, then the Board has the power to impose said conditions which shall be specifically set forth.

Fire Issues:
   1. Turning radii at the entry point is 38’.
   2. Knox Box or Knox lock is needed to open the gate and the office.
   3. Approved fire apparatus turnaround area – needs to be shown on the plan.
   4. 75,000 lb (H-20) compaction on the road up to the office.
   5. Must have address at the road and on the building where it is easy for emergency responders to identify.
   6. Maximum grade of the fire lane shall not exceed 10%, as per Arkansas state fire code.
**Septic:**
1. No comment unless they are doing a building (with a restroom).

The applicant is not proposing a restroom at this time, so the Health Department’s comments have been addressed.

**Utilities**

**Electric/Gas/Cable/Phone:**
No water, gas, or cable utilities are proposed.
There will be electricity and phone service in the scale office. No comments/requirements were submitted by Ozarks Electric or AT&T.

**Washington Water Authority**
Although no water service is proposed with this application, Washington Water Authority provided the following comments/requirements for the November 13th Technical Review meeting:

1. Property is served from a 4” water main located running along Greenburrow Rd., WC-662. The current application states that water service is not being requested as part of the LSD; if this changes in the future, please submit a Request for Water Service Form (www.washingtonwater.org).
2. The nearest Fire Hydrant to the project site is located at the intersection of Greenburrow Rd., WC-662 and HWY 16, or approximately 0.7 miles to the NW of the project site. Flow rate at this hydrant is 325 gpm @ 20 psi.
3. Due to the heavy equipment traffic generated by this LSD, the existing water main running under the proposed access drive should be encased with a steel encasement.

The plans show 60 feet of 8-inch steel encasement running beneath the haul road where it connects to Greenburrow Road. Washington Water Authority’s requirement is addressed.

**Roads/Sight Distance/Ingress-Egress/Parking:**
The Washington County Road Department submitted the following comments/requirements for the November 13th Technical Review meeting:

1. Pave the county road (Greenburrow Rd., WC-662) from the haul road entrance south to Elkhorn springs Rd.

Paving the road is a condition of approval. However, laying asphalt is not practical during the cold time of the year. So, if this proposed development is approved, paving of the road may have to wait until a warmer time of the year.

Sight distance was provided by the Road Department and was determined with GPS points.
Sight distance to the north (left hand turn out of the haul road) is 431.54 ft.
Sight distance to the south (right hand turn out of the haul road) is 421.71 ft.

Sight distance is adequate.

The on-site employees will park their vehicles in the area near the scale office, which is at a lower elevation than Greenburrow Rd. The parking area will not be visible from the public road.

**Drainage:**
The Washington County Contracted Engineer has reviewed each set of plans and each Stormwater Drainage Report. Based on the review of the latest submittal the County Contracted Engineer still has the following questions:

1. What is happening that the length of flow is increasing 270 ft from Pre- to Post?
2. Is it possible to add a table with flows leaving the pond after "detained" with associated water surface elevations? Ultimately, need to verify that 1 vertical foot of freeboard is provided between the 100 year maximum water surface elevation and the top of berm.

3. Is 1167.0 the maximum water surface elevation that occurs in the pond at the 100 year event?

These questions, and any additional questions that arise, must be adequately addressed/answered by the applicant’s engineer. This is a condition of approval.

**Environmental Concerns:**
At this time, no stormwater permit is required by Washington County; however, the applicant must comply with all rules and regulations of the Arkansas Department of Environmental Quality (ADEQ).

**Signage/Lighting/Screening Concerns:**
Any outdoor lighting must be shielded from neighboring properties. Any lighting must be indirect and not cause disturbance to drivers or neighbors. All security lighting must be shielded appropriately.

**Arkansas Department of Environmental Quality (ADEQ):**
ADEQ comments/requirements were received on November 26th, nearly 2 weeks after the Technical Review meeting. The comments/requirements are as follows:

1. As this site is greater than 5 acres, they will need to obtain a Construction Stormwater Permit prior to beginning construction. The forms are found at the links below:

2. Once the construction is complete, the mine will require a discharge permit for the stormwater. The mine may be eligible for coverage under the Stormwater Industrial General Permit. However, this facility is near an ecologically sensitive spring (Elkhorn Springs) and a section of the Illinois River that is designated as an Ecologically Sensitive Water and impaired by chlorides and sulfates. Please note that additional BMPs may be required to be protective of these waters, or the Department may require coverage under an individual permit. The application forms for the Industrial General Permit are found at the links below:

Full compliance with ADEQ’s permitting requirements is a condition of approval.

**Access Easement crossing the subject property**
Concerns were raised by the neighbors to the south regarding the access easement used to access their property. The applicant has constructed the haul road across the private road (access easement), creating a condition that to travel north-to-south along the easement a vehicle will have to cross over the haul road, which is built up to a higher elevation.

Planning Staff has mapped the easement and found that the location of the access road was properly described in the legal description. The easement document appears to have been properly recorded with the Circuit Clerk’s office.

Although it is not in the Washington County Land Development Code, Planning Staff urges the property owners to come to an amicable, mutually favorable agreement. Otherwise, the issue will be a civil matter between property owners and should be settled in court.
COMPATIBILITY CONCERNS:

**Surrounding Uses:**
The surrounding uses are single family residential and agricultural, with very little Light Commercial, as well as at least 3 other quarries/red dirt pits (the closest is under reclamation in accordance with ADEQ’s requirements, meaning it’s lifespan as an active quarry is over). The subject property doesn’t have any permanent structures at this time.

Staff feels that the applicant’s request is compatible with the surrounding property densities, since this application doesn’t propose to split the property any smaller.

**County’s Land Use Plan (written document):**

According to the County’s Land Use Plan,

**SECTION III. PHYSICAL DEVELOPMENT**

**A. LAND USE CONSIDERATIONS**

4. **INDUSTRIAL**

   The chief goals for industrial development are:

   a. Provision of sites which are located adjacent to major thoroughfares or other adequate transportation facilities; **This proposed site, although not adjacent to a major thoroughfare, is 1.8 miles from a major thoroughfare. If approved, that entire distance will be paved.**

   b. Allocate land in sufficient quantity, where infrastructure exists, or will exist, so that industrial growth can be accommodated to benefit both industry, and the county. This will ensure that industrial land is protected from encroachment by non-industrial uses; **Heritage Farms NWA, the owner of this property, owns in excess of 200 acres at this location. The tax revenue generated by this proposed development will benefit the county and its residents. However, any future development other than Agricultural or Single Family Residential at a density of 1 residential unit/acre must receive Conditional Use Permit approval and ratification by the Washington County Quorum Court, so no expansion of this development (if approved) will be allowed without amending the CUP & HI-LSD permits. Single-family residential and/or Agricultural uses are allowed by right in the county zoning code.**

   c. Provide for ample utilities and services to support industrial development. **The current proposal doesn’t require provision of additional utilities. Each proposed industrial development must go through Washington County’s planning process, must be approved by the Planning Board, and ratified by the Washington County Quorum Court.**

**Future Land Use Plan**

Washington County’s Future Land Use Plan shows no designation for this area.

**SITE VISIT:**

A site visit has been conducted by planning staff. Sight distance from the haul road location appears to be adequate.
NEIGHBOR COMMENTS/CONCERNS:
In accordance with High-Impact Large Scale Development regulations all neighbors within one-half mile of the boundary of this property were notified by certified mail of this proposed project. The notification letters were mailed out 30-days before the Planning Board meeting. The address list Staff uses to mail public notices is generated by our in-house database system, which sources information from the Assessor’s parcel data. The initial list was 96 addresses. Then, any additional comments received from addresses outside the 0.5 mile notification buffer, or from additional people living at the same address, are added to the list. Planning Staff has received 137 public comments, all in opposition to this proposed dirt pit.

Opposed comments cite safety, noise, dust, traffic, property values, wildlife, water quality, and stormwater runoff as the main concerns, but many other concerns are included as well.

The attached Neighbor Comment Map shows 1/4, 1/2, and 1 mile radius around the subject property. All of the properties that touch or are inside the 1/2 mile radius are automatically added to the notification list. Opposed public comments were received from all of the properties shaded in red. Planning Staff didn’t receive any public comment forms from the properties shaded in blue. Additionally, the properties shown with orange stripes are the other quarry/mining operations in the vicinity; some are active, some are inactive.

Public comment forms, as well as the applicant’s letters to the neighbors, were all emailed to the Planning Board members on February 6, 2019. Staff will update the Planning Board at the meeting if any additional comments are received.

(See attached neighbor comment map)

STAFF RECOMMENDATION:
Due to the High-Impact nature of this proposed use, in addition to the lack of quantifiable data to inform the process of assessing compatibility, Staff withholds a recommendation for the proposed Heritage Farms Conditional Use Permit. Staff urges the Planning Board to listen to the opposition from the members of the community claiming the proposed use is not compatible based on the perceived impact this dirt pit may force upon them. And listen to the applicant’s claim that the proposed use is compatible based on the need for red dirt as a building material due to Fayetteville’s growth.

Once both sides of the issue have addressed the board, weigh the two sides to determine for yourselves if the proposal has met the compatibility requirements.

Fire Conditions:
1. All entrance drives and fire lanes (including turnaround area) must be paved, or constructed of base material compacted to support 75,000 lbs in all weather conditions.
2. Maximum turning radii is 38’ at the entry point and all areas within the fire lane.
3. A Knox Box or Knox lock is needed to open the gate and the office.
4. Approved fire apparatus turnaround area – needs to be shown on the plan.
5. 75,000 lb (H-20) compaction is required on any fire lane areas if they are not paved.
6. Must have address at the road and on the building where it is easy for emergency responders to identify.
7. Maximum grade of the fire lane shall not exceed 10%.

Sewer/Septic/Decentralized Sewer Conditions:
1. If a septic system is desired in the future the applicant must comply with the regulations set forth by the Arkansas Department of Health.
2. No parking is allowed on any portion of the septic system including the alternate area. (No overflow parking either).
**Road Conditions:**
1. Any work to be completed in the County Road Right-of-Way requires a permit from the Road Department prior to beginning work. Any tile that may be needed must be sized by the Road Department. The Road Department may be reached at (479) 444-1610.
2. Greenburrow Road must be paved, from the haul road south to Elkhorn Springs Road.

**Drainage Conditions:**
1. All comments/questions/requirements by the County Contracted Engineer must be addressed.
2. The County Contracted Engineer had comments/questions/requirements after reviewing each set of plans. Additional questions/comments/requirements may be forthcoming as the Engineer reviews subsequent submittals.

**Environmental Conditions:**
1. At this time, no stormwater permit is required by Washington County; however, the applicant must comply with all rules and regulations of the Arkansas Department of Environmental Quality (ADEQ).

**Arkansas Department of Environmental Quality (ADEQ)**
1. As this site is greater than 5 acres, they will need to obtain a Construction Stormwater Permit prior to beginning construction. The forms are found at the links below:
2. Once the construction is complete, the mine will require a discharge permit for the stormwater. The mine may be eligible for coverage under the Stormwater Industrial General Permit. However, this facility is near an ecologically sensitive spring (Elkhorn Springs) and a section of the Illinois River that is designated as an Ecologically Sensitive Water and impaired by chlorides and sulfates. Please note that additional BMPs may be required to be protective of these waters, or the Department may require coverage under an individual permit. The application forms for the Industrial General Permit are found at the links below:
3. Full compliance with ADEQ is required.

**General Utility Conditions:**
1. Any damage or relocation of utilities will be at the expense of the owner/applicant.

**Washington Water Authority:**
1. Water main crossing under the haul road must be sleeved in steel encasement.
2. The applicant has designed a field welded encasement for the water main/access road crossing. Add note “All field welds must be conducted under the supervision of a WWA representative” to sheet C-6. Once the main is exposed, if the existing water main alignment is not conducive for a field welded encasement based on horizontal or vertical deflection, the main will need to be rerouted in a similar fashion at the owner’s expense.

**Signage/Lighting/Screening Conditions:**
1. Signage cannot be placed in the County Right-of-Way.
2. Any outdoor lighting must be shielded from neighboring properties. Any lighting must be indirect and not cause disturbance to drivers or neighbors. All security lighting must be shielded appropriately. Please refer to the diagram in the staff report attachments.
Arkansas Department of Environmental Quality Conditions:
1. As this site is greater than 5 acres, they will need to obtain a Construction Stormwater Permit prior to beginning construction. The forms are found at the links below:
2. Once the construction is complete, the mine will require a discharge permit for the stormwater. The mine may be eligible for coverage under the Stormwater Industrial General Permit. The application forms for the Industrial General Permit are found at the links below:

Planning Conditions:
1. A water truck shall be onsite whenever the pit is in operation. Water will be applied to the pit area and the haul road as needed for dust abatement. (as per note in the plans)
2. No blasting is allowed.
3. Hours of operation will be limited to 7:30am to 5:00pm, Monday through Friday, with Saturdays by appointment only.
4. Fire extinguishers must be located in the scale office and on all pieces of heavy equipment located onsite.
5. Final slope of the fire lane shall be determined by the project engineer, in situ, at Final LSD. The maximum grade shall not exceed 10.0%.
6. Commercial mining operations may not begin before the haul road and Greenburrow road are paved.
7. Greenburrow road shall be paved from the haul road south to Elkhorn Springs road.
8. The paving of Greenburrow road will be done to the county road standard.
9. Full compliance with all applicable federal, state, and local laws is required.
10. All stormwater drainage concerns raised by the County Contracted Engineer must be adequately addressed, then reviewed and approved by the County Contracted Engineer.
11. The on-site employees will park their vehicles in the area near the scale office, which is at a lower elevation than Greenburrow Rd. The parking area will not be visible from the public road.

Standard Conditions:
1. Pay engineering fees (not calculated yet) within 30 days of project hearing. Any extension must be approved by the Planning Office.
2. Any further splitting or land development not considered with this approval must be reviewed by the Washington County Planning Board/Zoning Board of Adjustments.
3. This CUP must be ratified by the Quorum Court before commercial operations may begin.
4. It is the applicant’s responsibility to contact the Planning Office when inspections are needed.
5. All conditions shall be adhered to and completed in the appropriate time period set out by ordinance.
   - This project requires additional review (High Impact Large Scale Development), and therefore, the applicant must receive High Impact Preliminary Large Scale Development approval within 12 months of this CUP project’s ratification, otherwise the Conditional Use approval is null and void.

PRIOR PLANNING BOARD/ZONING BOARD OF ADJUSTMENTS ACTION:

CUP Approved
CUP Ratified
Denied
Tabled
Heritage Farms
Conditional Use Permit - CUP

Project 2018-341

Street Centerlines
- Paved Road
- Unpaved Road

Flood Hazard Area
- A or AE Flood Zone
- Shaded Zone X

Site data is drawn over Assessor GIS aerial imagery (2018), parcel, and street data. This map is not to be misconstrued as survey information. Parcel locations are based off the best material at hand.
Heritage Farms - Conditional USE Permit (CUP)
Project 2018-341

Street Centerlines
- Paved Road
- Unpaved Road

Flood Hazard Area
- A or AE Flood Zone
- Shaded Zone X

Site data is drawn over Assessor GIS aerial imagery (2018), parcel, and street data. This map is not to be misconstrued as survey information. Parcel locations are based off the best material at hand.
Heritage Farms - Neighbor Comment Map

Heritage Farms - Conditional Use Permit

Projects 2018-341 & 2018-342

Site data is drawn over Assessor GIS aerial imagery (2018), parcel, and street data. This map is not to be misconstrued as survey information. Parcel locations are based off the best material at hand.
Heritage Farms Neighbors’ Comments and Concerns

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Opposing Neighbors (Parcels)

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No Future Land Use is designated at this location.
November 2, 2018
LETTER OF EXPLANATION;

To whom it may concern,

Currently Heritage Farms owns agricultural zoned land located off GreenBurrow Road WC-662. Currently
the land is used for logging. We would appreciate the opportunity to convert some of the current logged
acreage to a red dirt mining operation.

1. We are proposing to operate a red dirt mining operation. The operation will employ 3 to 5
employees at any given time. The hours of operation will be 7:30 to 5:00 Monday through Friday
with the possibility of some Saturdays by appointment only. The area of operation will be
approximately 20 acres.
2. There will be no plumbing or water service on site.
3. Fire prevention will consist fire extinguishers located on the only building on the site and on all
pieces of mobile heavy equipment located on site.
4. Sewer facilities will consist of a portable sewer building contracted with a vendor.
5. The electric will be serviced through Ozark’s Electric. Service will be supplied to the installed
truck scales and 10 x 10 office building.
6. There will be no gas service on the property for the operation.
7. The operation will have access to GreenBurrow Road WC-662. The access road will be a 40’
wide, 500’ long dirt drive.
8. The sight distance accessing WC-662 is sufficient to allow the traffic to negotiate safely onto
WC-662. The posted speed on WC-662 is 30MPH. WC-662 is also a gravel road.
9. There will be no designated parking on site, no parking lots.
10. The surrounding properties consist of single family homes, rental properties and businesses.
11. The hours of operation will be 0730 to 1700 Monday through Friday.
12. Noise dampening structures have been designed to eliminate noise pollution from the mining
operation.
13. Trash service will be contracted with a local vendor. Normal household waste will be very
limited.
14. Total number of employees should range from 3 to 5.
15. Compatibility with neighbors should be maintained. The view of the mining area will not be seen
from the neighbors. The sound pollution should be dampened.

The mining area is approx. 20 acres. The pre-construction drainage calculation will increase in the post-
construction due to the increase coefficient used in calculating the runoff and time of concentration for
the storm events. The storm water runoff will be controlled with BMPs and retention ponds designed to
the calculated stage storage values in the drainage report.

The traffic impact to the surrounding roads are believed to be approximately 75 additional vehicles per
day in the high impact season, spring and summer months. The flow of traffic to the site would be from
the east off of Elkhorne Road, which is already established as a truck road from an existing mining
operation, to GreenBurrow Road and arrive at the mine operation. We do not anticipate the increase in
traffic to impact the flow of traffic on either of these roads.

Thank You,
Heritage Farms