



Jennifer Orozco

From: Lisa Andrach <lisa@fitchandneary.com>
Sent: Wednesday, July 31, 2024 3:32 PM
To: Plan
Subject: Greenbar Excavation Open Record - Rnd 1 from applicant
Attachments: Open Record Applicant Submittal Round 1.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Please find attached the applicant's first round submittal for the Open Record period.

Thank you.

Lisa Andrach, Attorney



Fitch and Neary, PC
210 SW 5th St, Suite 2
Redmond, OR 97756
Ph: 541-316-1588
Fax: 541-316-1943
www.fitchandneary.com

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**OPEN RECORD PERIOD
APPLICANT SUBMITTAL: Round 1**

BEFORE THE CROOK COUNTY PLANNING DEPARTMENT

FILE NO.: 217-24-000070-PLNG

**APPLICANT/
OWNER:** GREENBAR EXCAVATION, LLC
Tanner Brown
P.O. Box 7
Prineville, Oregon 97754

ATTORNEY: Lisa Andrach
Fitch & Neary P.C.
210 SE 5th St., Suite 2
Redmond, Oregon 97756

**GEOTECHNICAL
ENGINEER:** Watkins Testing & Inspection
19061 Choctaw Road
Bend, Oregon 97702

REQUEST: An Application to modify the Crook County Basalt Resource Inventory to add basalt aggregate volume located on tax map 161612, Lot 500 to the Mineral and Aggregate Inventory of the County Comprehensive Plan, Appendix 5.3, and to make the ESEE findings to allow mining of the additional resource. The Bartels Site was added by Ordinance 172 of the Crook County Court (2006-162);

In support of the application, the applicant submits the following:

1. Title Report for Lot 15

The Statutory Warranty Deed for the conveyance from Richard Bartels to Greenbar Excavation LLC is in the record at **Exhibit 5**. Attached hereto marked **Exhibit A** is an excerpt from the Policy of Title Insurance for the transaction. The "Schedule B Exceptions" does not include an exception for any encumbrance for the Cimmaron Hills CCRs because they are not an encumbrance against Lot 15. If they were an encumbrance, they would be listed on the Schedule B as an exception.

2. Easement – Release of Claims and Waiver of Remonstrances.

Attached hereto is the “Easement – Release of Claims and Waiver of Remonstrances” recorded against all properties that Richard Bartels owns, barring any of his “heirs, successors, and assigns” from objecting “in any manner to requests to Crook County or the Crook County Planning Department for permission to conduct...

- A. Any commercial activity conducted on Lot 3 of said Cimarron Hills Subdivision; and
- B. Any rock quarrying activity located on real property located adjacent to and north of Lots 1 and 10 of said Cimarron Hills Subdivision.”

(Exhibit B hereto)

Mr. Bartels added this additional waiver language to ensure that successors in interest to him do not turn around and complain about the quarry, or any commercial activity on Lot 3. He added it as a broad waiver applying to his properties “in addition” to the more specific property he owned and identified in the first paragraph (Lots 1-10). This additional Waiver of Remonstrance is written as a broadly applicable provision.

Following legally established interpretation principles, the language of the last paragraph clearly says that it is “in addition” to the waiver set forth for the lots 1-10 owned by Bartels in the first paragraph. To give this paragraph effect, it can only be understood to mean that he was adding an additional waiver which would be broadly applicable to all of the property that he owned, so that anyone acquiring an interest by or through Mr. Bartels would be prohibited from complaining about the activities set forth in A and B above. This is consistent with the intent of Mr. Bartels to conduct business and quarrying activities on those properties, without being subjected to complaints from those who acquire property from him.

3. Goal 4 prohibits denial on the basis that there is an abundance of aggregate resource

Statewide Planning Goal 4 provides that *“[a]n abundance of a Goal 5 mineral or aggregate resource shall not be used as the basis to deny placement on the County plan inventory list.”* Therefore, while there is still aggregate resource available from the existing site on Lot 400 and other quarries in Crook County, those factors are not relevant to determining whether the site should be added to the County’s Aggregate Inventory.

4. Updated purchase list shows the benefit of the resource to the surrounding area.

The attached updated purchase list shows the volume of rock sold from the existing pit to those who have submitted opposition testimony herein. **(Exhibit C)** The evidence supports that the need and benefit of the resource in the area outweighed the negative impacts experienced by

the neighbors when making a consumer choice to purchase basalt rock. The neighbors obviously prioritized the site over any other site in the county when making a consumer choice as to where to make their purchase. This supports the significance of the resource analysis applicable to the application.

DATED this 31st day of July, 2024.

FITCH & NEARY PC



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Of Attorneys for Applicant
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Redmond, OR 97756
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150 NE Court St., Prineville, OR 97754
Phone: (541)447-5181 Fax: (541)447-3371

September 1, 2023

Greenbar Excavation LLC
PO Box 7
Prineville, OR 97754

File No.: 596681AM

We enclose herewith the following:

Policy of Title Insurance

Thank you for doing business with us. We hope to be of service to you again.

Sincerely,
AmeriTitle, LLC

Erin Harrison

Title Officer

Enclosures



Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.d.:

Issuing Agent: AmeriTitle, LLC

Issuing Office: 150 NE Court St. Prineville, OR 97754

Customer Reference No.:

Issuing Office File Number: 596681AM

Property Address: Lot 15, Cimarron Hills Phase 2, Prineville, OR 97754

SCHEDULE A

Amount of Insurance: \$ [REDACTED]

Premium: \$ [REDACTED]

Date of Policy: **July 6, 2023 1:37PM**

1. The Insured is:

Greenbar Excavation LLC

2. The estate or interest in the Land insured by this policy is:

FEE SIMPLE

3. The Title is vested in:

Greenbar Excavation LLC

4. The Land is described as follows:

Lot 15 of Cimarron Hills Subdivision - Phase 2, according to the official plat thereof, recorded March 13, 2007 as Instrument No. 2007-219604 records of Crook County, Oregon.

Order No.: 596681AM
Policy No.: O-7550-000006468

SCHEDULE B
EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

GENERAL EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the Public Records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject Land onto adjoining Land or of existing improvements located on adjoining Land onto the subject Land) encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the subject Land.
5. Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
6. The 2023-2024 Taxes: A lien not yet due or payable.
7. Public Utility Easement as shown on the official plat of said land.
8. Effect, if any, of a Road Maintenance Agreement,
Recorded: August 15, 2005
Instrument No.: 2005-202875

Amended by instrument,
Recorded: March 20, 2007
Instrument No.: 2007-219781

NOTE: This policy is of no force and effect unless Schedule A and Schedule B are attached together with any added pages incorporated by reference.

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Order No.: **596681AM**
Policy No.: O-7550-00006468

9. Effect, if any, of a Easement and Maintenance Agreement,
Recorded: March 30, 2007
Instrument No.: 2007-219777
10. Effect, if any, of a Easement and Maintenance Agreement,
Recorded: March 30, 2007
Instrument No.: 2007-219778
11. Effect, if any, of a Easement and Agreement,
Recorded: March 30, 2007
Instrument No.: 2007-219780
12. A Deed of Trust, including the terms and provisions thereof, to secure the amount noted below and other amounts secured thereunder, if any:
Amount: [REDACTED]
Dated: [REDACTED]
Trustor/Grantor: Greenbar Excavation LLC
Trustee: AmeriTitle, LLC
Beneficiary: [REDACTED]
Recorded: [REDACTED]
Instrument [REDACTED]

END OF EXCEPTIONS

NOTE: This policy is of no force and effect unless Schedule A and Schedule B are attached together with any added pages incorporated by reference.

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OTIRO No. PO-05 ALTA 07-01-2021 Owner's Policy of Title Ins. (ALTA 07-01-2021) (OTIRO 6-24-22)-SCHEDULES



After Recording Return to:
AmeriTitle
150 NE Court Street
Prineville, OR 97754

BY PUNCHER
SEP 08 4:36

Crook County Official Records **2005-203625**
DEED-ESMT
Cnt=3 Str=6 CCOUNTER **09/08/05 10:57 AM**
\$5.00 \$10.00 \$11.00 \$5.00 \$10.00 **\$41.00**



I, Deanna Beriman, County Clerk for Crook County, Oregon, certify that the instrument identified herein was recorded in the Clerk's records.

Deanna Beriman



EASEMENT

Release of Claims and Waiver of Remonstrances

COMES NOW **Richard L. Bartels**, owner of Lots 1 through 10 of Cimarron Hills Subdivision according to the official plat thereof on file and of record in the office of the County Clerk for Crook County, Oregon, for himself and his heirs, successors, and assigns hereby waives any claim for relief or cause of action alleging injury from the following:

- A. Any commercial activity conducted on Lot 3 of said Cimarron Hills Subdivision; and
- B. Any rock quarrying activity located on real property located adjacent to and north of Lots 1 and 10 of said Cimarron Hills Subdivision.

In addition, Richard L. Bartels and his heirs, successors, and assigns agree to not object in any manner to requests to Crook County or the Crook County Planning Department for permission to conduct the above uses on the above-described properties.

Richard L. Bartels

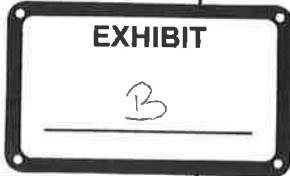
Richard L. Bartels

STATE OF OREGON)
) ss.
County of Crook)

Personally appeared the above named **Richard L. Bartels** and acknowledged the foregoing instrument to be his voluntary act and deed, before me this 6 day of September, 2005.



April F Hensley
Notary Public for Oregon
My Commission Expires: 9-5-06



***Updated list**

6404 SE Riverdance

04/29/22 – 36 yards

09/01/23 – 24 yards

07/02/24 – 60 yards

Adam and Shauna Schmidlin

11075 SE Snowflake Ct

04/13/22 – 24 yards

Stan Johns

6322 SE Cedar Hills Ct

11/01/23 – 12 yards

Scott and Mary Myers

6475 SE Riverdance Rd

09/18/23 – 16 yards

Stephanie and Troy Doty

15145 SE Remington Rd

1/19/23 – 12 yards

2/14/23 – 24 yards

4/07/23 – 12 yards

Stephanie and Troy Doty

11670 SE View Top Lane

7/03/24 – 36 yards

