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BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

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3 In the Matter of Request for) Klamath County Planning
4 Conditional Use Permit 24-86 for) Findings of Fact and Order
5 WC Ranch, Inc.)

6 A hearing was held on this matter on July 3, 1986, pursuant
7 to notice given in conformity with Ordinance No. 45.2, Klamath
8 County, before the Klamath County Hearings Officer, Bradford J.
9 Aspell. The applicant was represented by John Dey. The Klamath
10 County Planning Department was represented by Kim Lundahl. The
11 Hearings Reporter was Janet Libercajt.

12 Evidence was presented on behalf of the Department and on
13 behalf of the applicant. There were adjacent property owners
14 present.

15 The following exhibits were offered, received, and made a
16 part of the record:

- 17 Klamath County Exhibit A, Staff Report
- 18 Klamath County Exhibit B, Information Letter
- 19 Klamath County Exhibit C, Plot Plan I
- 20 Klamath County Exhibit D, Assessor's Map
- 21 Klamath County Exhibit E, Plot Plan II
- 22 Klamath County Exhibit F, Letter from F.A.A.
- 23 Klamath County Exhibit G, Newspaper Article
- 24 Klamath County Exhibit H, Letter submitted by applicant.
- 25 Klamath County Exhibit I, Information pertaining to
C.U.P. 36-84/960 Radio
- 26 Klamath County Exhibit J, Letter from County Legal Counsel
- 27 Klamath County Exhibit K, 5-15-86 Report from F.C.C.
- 28 Klamath County Exhibit L, 11-19-86 Report from F.C.C.

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1 The hearing was then closed, based upon the evidence
2 submitted at the hearing, the hearings officer made the following
3 Findings of Fact:
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5 FINDINGS OF FACT
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7 1. The application of WC Ranch Inc., is for issuance of a
8 conditional use permit to authorize applicant to construct a 20
9 foot by 20 foot building and a transmitter tower approximately 175
10 feet tall, near the top of Stukel Mountain, as shown on Klamath
11 County Exhibit "C", the plot plan. Previously this application
12 was before the hearings officer under conditional use permit
13 application 3-86, at which time the hearings officer denied the
14 application without prejudice to refiling based upon a find that
15 the hearings officer was unable to conclude that the variance
16 criteria, Section 44.003(c) could not be met: the hearings
17 officer was unable to conclude that the proposed development would
18 not have significant adverse affects upon appropriate development
19 in the area. Subsequently on May 1, 1986, a new application was
20 filed. The hearings officer incorporates the testimony taken in
21 CUP application 3-86 in this application.

22 2. The comprehensive land use plan designation for the
23 subject property is Forestry (F) and the zone designation is
24 Forestry-Range (F-R). The specific legal description is the East
25 1/2, Southwest 1/4 of Section 10, Township 40 South Range 10 East
26 Willamette Meridian with a tax account number of
4010-00000-01100-000-00. The total parcel is approximately 20
acres in size, and is a rectangular parcel of 1,320 feet by 660

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2 feet. Topography is steeply sloped, drainage is from surface
3 runoff, vegetation from brush and grass and access is gained by a
4 private road through BLM ownership. The soils classification
5 shows an SCS Class VII soil with no timber productivity rating.
6 It is important to note that this property is on the top of Stukel
7 Mountain a barren knoll with an elevation of 6,525 feet or
8 approximately 2,500 above the basin floor. Exhibit "C" shows a
9 plot plan, Exhibit "E" an area map and Exhibit "B", details
10 applicant's request.

11 3. At the time of the prior hearing, the hearings officer
12 expressed the following three concerns:

13 A. Could the hearings officer take in consideration
14 questions of radio frequency interference to adjoining users with
15 preexisting telecommunications receiving and transmitting stations
16 in the application of Section 44.003(c), or did the FCC preemption
17 doctrine as to regulation of radio frequencies put such question
18 beyond the purview of this hearings officer?

19 B. What was the status of the right of access across BLM
20 property?

21 C. Had prospective users been identified to the subject
22 site?

23 4. The hearings officer specifically finds that access to
24 the subject property is across land owned and maintained by the
25 Bureau of Land Management. Applicant presented at time of hearing
26 a letter from the Bureau of Land Management acknowledging right of

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2 access by special permit, subject to the user paying a
3 proportional fee of the cost to road maintenance and improvement.
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5 5. Based upon the foregoing the hearings officer concludes
6 that legal right of access has been provided to the subject site
7 and although it may well be as between the applicant and Bureau of
8 Land Management that questions may arise as to cost of road
9 maintenance and improvement. The hearings officer makes no
10 finding relative thereto.

11 6. The hearings officer specifically finds from the
12 testimony at hearing that the mountain is presently used by five
13 distinct entities with telecommunications transmission receiving
14 systems in close proximity to the applicant: Federal Aviation
15 Administration, Motorola Company, Frank Plass, KOTI Television,
16 and 960 Radio Inc.. In addition the property is also used by
17 Medford Area Broadcasters using the mountain site for purposes of
18 operating translators. The hearings officer further finds from
19 the testimony of Frank Plass that Stukel Mountain is but one of
20 two suitable sites for receiving and transmitting stations within
21 Klamath Falls service area.

22 7. The hearings officer further finds from the testimony
23 adduced by applicant that broadcasters have expressed an intention
24 to locate their facilities within applicant's building and on
25 applicant's transmission tower.

26 8. This application is governed by governed by Klamath
County Land Development Code Article 44, Conditional Use Permit
and Section 51.021 Forestry Range Designation. In this regard the

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2 hearings officer applies the applicable review criteria and finds
3 as follows:
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5 A. That the use conditionally permitted in the zone in which
6 it is proposed to be located. This criteria has been met.

7 B. The location, site, design and operating characteristics
8 of the proposed use are in conformance with the Klamath County
9 Comprehensive Plan. The hearings officer's findings as to this
10 criteria are based upon the following discussion.

11 (i) Goal 1 (Citizen Involvement) has been met, notice was
12 given to adjacent property owners, affected public agencies, and
13 notice of hearing published in the Herald & News. The hearings
14 officer specifically finds that substantial public input,
15 comments, questions and concerns were addressed primarily by
16 adjacent property owners questioning the adverse affects granting
17 of this application would have on their existing current permitted
18 uses. The citizen involvement goal has been met.

19 (ii) Goal 2 (Land Use Planning) has been met in that the
20 conditional use qualifies under LDC Section 51.021(b)(c)(1), as
21 communications structures, as a permitted conditional use.

22 9. The hearings officer specifically finds that the
23 following goals do not apply:

24 The hearings officer finds that the following goals are not
25 applicable to this application: Goal 6 (Air, Water and Land
26 Resource Quality); Goal 8 (Recreation Needs); Goal 9 (Economy of
the State), Goal 10 (Housing); Goal 12 (Transportation); Goal 13
(Energy Conservation); and Goal 14 (Urbanization).

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2 10. As to Goal 3 (Agricultural Lands) and Goal 4 (Forest
3 Lands) the hearings officer finds that the property consists of
4 Class 7 soils, soils very poorly suited for agricultural crops or
5 productions. In addition the topography of mountain, its
6 elevation, its steepness, rocky soils and lack of available water
7 make the subject property unsuitable for agricultural production.
8 Likewise, the hearings officer takes cognizance of the fact that
9 there is no timbersite productivity for the subject property
10 rendering such property unsuitable as to forest lands under Goal
11 4.
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13 11. Goal 5 (Open Spaces, Scenic, Historic and Natural
14 Resource Areas) applies. The hearings officer specifically finds
15 however that with the existence of numerous telecommunications
16 facilities on the mountain, the respective size, height, and
17 location does not substantially alter or vary the use or the
18 appearance of the mountain top. Additionally this type of use
19 requires high mountain peak and good line of sight and visibility
20 for which few if any, other mountains are suitable. The hearings
21 officer concludes that for purposes of land use planning it is
22 better to cluster radio communication facilities in one location
23 rather than to spread them on the top of each mountain peak.
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25 12. Goal 7 (Natural Disaster and Hazard Area) is applicable.
26 The area has a high fire hazard rating due primarily to brush or
wildfires. The hearings officer finds that operation of the
transmitter site would not involve a continued human presence or
traffic and, save for the electricity to the subject site, the

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2 possibility of transmitter fires or shorts in the transmission
3 towers, little would be added to the fire hazard. Additionally
4 present towers which have been on the subject site for a
5 substantial period time have not been added to the fire hazard.
6 Goal 7 has been met.

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8 13. Goal 11 (Public Facilities and Services) would be met.
9 Public facilities and services necessary on the mountain involve
10 electricity which is already present. This goal has been met.

11 14. Based upon the foregoing the hearings officer concludes
12 that the application is in conformity with the Klamath County
13 Comprehensive plan. Section 44.003(c) provides that the location
14 size, design and operating characteristics must be compatible with
15 and not have a significant adverse affect upon the appropriate
16 development and use of abutting properties in the surrounding
17 neighborhood. In this regard the hearings officer finds
18 substantial justifiable concerns from existing telecommunications
19 users on Stukel Mountain, that depending upon the radio
20 frequencies used, the applicable bands selected, the relative
21 power, design of the receiving and sending antennae and whether
22 the site would be used for translator purposes, or as a primary
23 transmission site; adjacent users may be substantially adversely
24 affected at rather substantial cost and expense. The hearings
25 officer further finds however, that questions of radio frequency
26 interference, harmonic distortion and similar problems affecting
the quality of the received or transmitted signal cannot be
adequately predicted without extensive studies by skilled

1 specialists. Based upon the evidence in the record to date, the
2 hearings officer has no assurance that any adverse effects would
3 be not significant, however, based upon the need for technical
4 expertise to evaluate the question, and based upon the advice of
5 county counsel that the Federal Communications Commission has
6 preempted this field. (Ex J) and based upon the testimony Mr.
7 Frank Plass and a letter from Johnson Radio (Ex. unnumbered) the
8 hearings officer specifically finds that Klamath County is
9 preempted from considering this question and that there is a
10 viable alternative and remedy elsewhere in the law. Upon this
11 fact, the hearings officer concludes that the only basis upon
12 which the hearings officer might deny the application for
13 significant adverse affects would be related to the site, access
14 thereto or other uses of adjoining properties. Based upon the
15 fact that legal access is provided to the top of the mountain and
16 has been developed as a major transmitter site, the hearings
17 officer concludes that there would be no substantial adverse
18 affect on the appropriate use of adjoining property and hence
19 Section 44.003(c) has been met.

20 Based upon the foregoing findings of fact the hearings
21 officer makes the foregoing conclusions of law.

22 CONCLUSIONS OF LAW

23 1. That the use is conditionally permitted in the zone in
24 which it is proposed to be located.

25 2. That the location, size, design and operating
26 characteristics of the proposes use are in conformance with the

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2 Klamath County Comprehensive Plan. That the hearings officer
3 specifically incorporates the exhibits and testimony at the prior
4 conditional use permit no. 3-86 into this record.
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6 3. That the location, size, design, and operating
7 characteristics of the proposed use will be compatible with and
8 will not have significant adverse effects on the appropriate
9 development and use of abutting properties and the surrounding
10 neighborhood.

11 4. The granting of this conditional use permit is
12 consistent with the goals of the land conservation and development
13 condition.

14 Therefore the hearings officer based upon the foregoing
15 findings of fact and conclusions of law accordingly orders as
16 follows:

17 That the real property described as:

18 "being the East 1/2, S¹/₄ of Section 10, Township 40 South,
19 Range 10 E.W.M., Klamath County, Oregon."

20 is hereby granted a conditional use permit in accordance with the
21 terms of the Klamath County Zoning Ordinance No. 45.2, and
22 henceforth will be allowed to construct radio transmission
23 building and antennae tower in the Forestry-Range(F-R) zone.
24 Entered Klamath Falls, Oregon this 14th day of
August, 1986.

25 KLAMATH COUNTY HEARINGS OFFICER
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Bradford J. Aspell
BRADFORD J. ASPELL

C.U.P. 24-86/WC RANCH
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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____
of _____ August _____ A.D., 19 86 at 4:26 o'clock P M., and duly recorded in Vol. M86 day
of _____ Deeds _____ on Page 14384
FEE NONE
Return: Commissioners' Journal
Evelyn Biehn, County Clerk
By [Signature]