

In the Matter of the Request for)
 a Conditional Use Permit for)
 WILLIAM STOVALL, JR.)

C.U.P. NO. 4-88
 FINDINGS OF FACT, CONCLUSIONS
 OF LAW AND DECISION

This matter came before William M. Ganong, the Hearings Officer of Klamath County, Oregon, on March 3, 1988 in the Klamath County Commissioner's Hearing Room. The Hearing was held pursuant to Notice given in conformity with the Klamath County Land Development Code and related ordinances. William Stovall was present and represented himself. The Klamath County Planning Department was represented by J. Kim Lundahl and the Recording Secretary was Karen Burg. The Klamath County Planning Department file and all contents thereof were incorporated in the record as evidence. The County Hearings Officer, after reviewing the evidence presented, makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT:

1. This application is for a Conditional Use Permit to construct a non-forest dwelling on 29.6 acres zoned Forestry Range. The subject parcel is located on Old Fort Road in Plum Valley and is Klamath County Assessor's tax lot No. 3709-2000-600-02. This application is made in conjunction with a request for a Minor Partition. The Applicant intends to partition a 29.6 acre parcel of property from a parcel containing 60 acres.
2. The Applicant testified the 10% of the subject property, located along Old Fort Road, is forested with Ponderosa Pine Trees. He testified that in 1982-83 an Oregon State Forester

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inspected the property and found the land to have marginal timber production value. The forester recommended spacing pine trees at 29 foot intervals. The property has an SCS soil class site rating of VII and a timber class of V.

3. The Hearings Officer inspected the subject property on March 3, 1988. The Applicant grossly over stated the percentage of his land which is forested. There are very few trees on the property. The property is mostly covered with volcanic rock. The Easterly two-thirds of the property consists of a very steep slope which is entirely covered with volcanic rock slides. The property has no value for the production of timber.

4. The Applicant has resided on the property for 11 years. The Westerly 20% of the property is usable for home sites and very little else.

5. The property is located in a low density deer winter range. Arguably that portion of Plum Valley located south and west of the subject property does provide some winter range habitat. The subject property, apart from the Applicant's lawn and garden, provides no habitat or winter feed.

6. The Plum Valley area contains approximately 1700 acres. The acreage has been divided into approximately 42 lots which range in size from three acres to 500 acres in size. There are many lots of 15 to 35 acres in size. There may be some commercially forested land in the Valley, several miles south of the subject property. However, the area adjacent to the subject property is developed for home sites with some pasture located west of Old Fort Road.

7. As the subject property is in a low density deer range, the Applicant met with a representative of the Oregon Department of Fish and Wildlife prior to the hearing. The parties were not able to agree on a management plan for this resource. As there is little or no habitat on the subject property, the greatest wildlife concern appears to be the increased possibility of domestic dogs from the property roaming free and harassing deer on other land in the Valley.

8. There are no forestry practices or uses on adjacent lands.

9. The findings contained in the Staff report are incorporated herein by this reference.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA

Code Section 51.021 sets forth the permitted and conditional uses allowed in the Forestry Range Zone. Paragraph D of that section allows a single family residence not used in conjunction with forest uses and sets forth the conditional use permit criteria which must be addressed in reviewing an application for a Conditional Use Permit in the Forestry Zone. In addition, Section 83.004(c) contains criteria which protect the goal 5 resources.

KLAMATH COUNTY LAND USE GOALS AND POLICIES COMPLIANCE

The Goals and Policy Findings set forth in the Klamath County Planning Department Staff Report are adopted and incorporated herein by this reference.

KLAMATH COUNTY CODE FINDINGS OF FACT AND CONCLUSIONS

Klamath County Land Development Code Section 51.021 (D) requires the following Findings and Conclusions.

1. The subject request is compatible with currently employed forest uses, as there are no forest uses on the subject parcel or adjoining land.

2. The subject use will not interfere with any forestry or other forest uses on adjoining land.

3. The subject use will not materially alter the stability of the overall land use pattern in the area.

4. Considering the size of the subject parcel, its terrain and ground cover (rock) and its SCS Classification, the subject parcel is generally unsuitable for the production of forest crops or livestock.

5. The forest site rating for this property is V and it has very few trees. The subject use of this land minimizes the loss of productive forest land.

6. The subject property is located in Fire District No. 1 and meets the requirements of Code Article 69.

Code Section 83.004(c) requires the following findings:

1. Although the subject property is located within the boundaries of a deer winter range, the subject property has no resource value, other than as a buffer area. However, as long as dogs are not permitted to roam free and disturb deer on other property in the range, the proposed use will not effect in any manner the resource value of the winter range. The only other potential use of the property would be the development of a rock quarry. Said alternative use would substantially interfere with the deer range resource. The approval of this application will allow a reasonable use of the property.

2. Low density residential use of this property will not interfere with the preservation of the resource. According to ODFW, the trend in the Plum Valley area is basically set; rural subdivision; and the carrying capacities of the area have already been severely reduced.

3. As stated above, the winter range resource has already been substantially altered. The addition of one more homesites will have negligible impact on the resource.

4. The County Board of Commissioners approved a similar application for Fir E Nuff Farms, Inc. in Plum Valley on land that has substantially greater resource values. To deny the subject application would result in unequal application of the Land Use Standards without proper justification. As the County has decided to allow the further parcelization and development of Plum Valley, development of the area will provide justification for the preservation of areas, such as the Pearson Butte Deer Range, which have greater resource values.

5. The subject site has no potential for energy development.

6. The subject area, according to ODFW, has low preservation value and the cumulative effect of granting the subject request will not materially impact the winter range resource.

ORDER

The subject application for a Conditional Use Permit to construct a single family residence, not in conjunction with forest use is granted, subject to the following conditions:

1. Approval of a Minor Partition legally establishing the subject parcel.

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2. The Applicant and his successors in interest will not allow dogs to roam free so as to harass in any manner, deer or other wildlife.

3. The Applicant and his successors in interest shall strictly obey all Klamath County Ordinances, rules and regulations.

DATED this 23 day of March, 1988.

William M. Ganong
William M. Ganong
Hearings Officer

Klamath County Land Development Code Section 24.007 provides:

"An Order of the Hearings Officer shall be final unless appealed within ten (10) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of the Code."

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Department the 24th day
of March A.D. 19 88 at 12:54 o'clock P M., and duly recorded in Vol. M88
of Deeds on Page 4105
FEE NONE
Return: Commissioners' Journal
By Evelyn Biehn County Clerk
Pam Smith