

## BEFORE THE KLAMATH COUNTY PLANNING COMMISSION

In the matter of applications )  
 for 22 dwellings not in )  
 conjunction with forestry use )  
 submitted by Robert A. Smejkal )  
 Files CUP 41-89 through 62-89 )

ORDER

## I. Nature of the Action

This matter comes before the Klamath County Planning Commission on the applications by Robert A. Smejkal for conditional use permits for dwellings not in conjunction with forest use on each of 22 lots in the 120 acre Tall Pines Estates in the Forestry (F) zone located in Section 17, Township 25 South, Range 8 East, Willamette Meridian.

## II. Relevant Criteria

The standards and criteria relevant to this application are found in the Klamath County Comprehensive Plan and the Klamath County Land Development Code, particularly Section 44.003, Section 51.020, Section 52.005, Section 62.007, Article 69, and Article 83.

## III. Public Hearing

A properly noticed public hearing was held on these applications on October 24, 1989. Consideration of all applications was consolidated into one hearing. At the hearing, the Planning Department file was incorporated into the record. The Planning Department was represented by Steve Oulman, Associate Planner. The following persons appeared and provided testimony on the applications:

- |                       |                               |
|-----------------------|-------------------------------|
| 1. James A. Smejkal   | Property Owner                |
| 2. Bill Hunt          | Oregon Department of Forestry |
| 3. Benjamin Gilchrist | Gilchrist Timber Company      |

One item, a map of the Tall Pines Estates was submitted to the record by James Smejkal, and identified as Exhibit "W".

No objection was raised as to notice, jurisdiction, or conflict of interest.

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## IV. Facts

1. The subject property is designated forestry in the Klamath County Comprehensive Plan with a corresponding Forestry zoning designation. The intended purpose of this zone is to preserve and protect lands for continued timber production, harvesting and related uses; conserve and protect watersheds, wildlife habitats and other such uses associated with forests and to provide for the orderly development of both public and private recreational uses as appropriate and not in conflict with the primary intent of the zone, which is sustained production of forest products.
2. The subject lots in Tall Pines Estates are located approximately seven miles southwest of Crescent, and approximately one mile north of Oregon highway 58. The property includes Lots 1 through 16, Block 1 and Lots 1-6, Block 2. Lots range in size from 4.10 acres to 9.07 acres.
3. Surrounding land uses consist of forestry on all sides. The subdivision is bounded on two sides by public land administered by the U.S. Forest Service and on a third side by land owned and managed by Gilchrist Timber Company. The majority of land uses in the surrounding area are commercial forestry, wildlife habitat, recreation, watershed protection. The nearest residence to the subdivision is located approximately 1/4 mile north on a 40 acre parcel. Rural residential zoning (R-5) lies approximately 1/4 mile northeast of the subject properties; five of twenty-two parcels have improvements on them.
4. The subject properties and surrounding lands possess Site Class ratings 5 or 6 for timber productivity. Predominate species are lodgepole pine and ponderosa pine. Approximately one-half of the Tall Pine Estates is non-forested meadow along the Little Deschutes River, a Class I stream and identified significant Goal 5 resource.
5. The county attempted to have the subject property classified as rural residential during development of the Comprehensive Plan. Requests for such zoning were rejected by the Land Conservation and Development Commission during acknowledgment requests. Tract 1227-Tall Pines Estates obtained final plat approval from the County on July 25, 1984 at which time the property was zoned residential and subject to an LCDC continuance order. In its final acknowledgment order the LCDC stated that the residential exception was not adequately justified under Goal 2. In response to the order, the county zoned the property for forest use.

## V. Findings and Conclusions of Law

The Planning Commission, after consideration of the evidence in the record and testimony presented, issues the following findings of fact based on criteria of the Land Development Code and Comprehensive Plan:

### 1. Section 44.003 - Conditional Use Permit Review Criteria

"A Conditional Use Permit shall be granted only if the reviewing authority shall find that it satisfies the following criteria, as well as all other criteria and standards of this Code and other applicable codes and ordinances.

"A. That the use is conditionally permitted in the zone in which it is proposed to be located.

FINDING: Section 51.020(D)(4) identifies residential - single-family or mobile home as a non-forest conditional use. This criteria is satisfied.

"B. That the location, size, design, and operating characteristics of the proposed use are in conformance with the Klamath County Comprehensive Plan.

Goal 4, Policy #1 states: "The following lands shall be designated forestry and subject to the regulations of the Forestry and Forestry/Range zones contained in the Land Development Code:

- "(1) Public or private industry forest lands located contiguously in large blocks, i.e. National Forest Service, BLM, Weyerhaeuser, Gilchrist timber lands;
- "(2) Significant wildlife and fishery habitat areas;
- "(3) Land having a predominant timber site productivity rating of I-VI;
- "(4) Isolated pockets of land within forest areas which do not meet the above criteria;
- "(5) Lands needed for watershed protection or recreation;
- "(6) Other lands needed to protect farm or forest uses on surrounding designated agricultural or forest lands.

"Rationale: To preserve the maximum area of productive forest land."

FINDING: The area surrounding the subject properties consists of large contiguous blocks of public and private industrial forest land, thereby meeting the definition of forest land.

FINDING: The Little Deschutes river is identified as a significant wildlife and fishery habitat area in the Comprehensive Plan, thereby meeting the definition of forest land.

FINDING: The subject properties and surrounding lands have a predominant timber Site Class rating of 5, thereby meeting the definition of forest land.

FINDING: The subject properties lie within the drainage of the Little Deschutes river and include important lands necessary to maintaining water quality in the Deschutes basin.

FINDING: Small land holdings within industrial forest lands are important to protect continued forest uses on adjacent lands. For example, the placement of a dwelling near a commercially-managed forest parcel may necessitate modifying management techniques. Maintaining a setback from dwellings in the aerial application of chemicals results in elimination of land base from commercial forest management.

Goal 4, Policy #2 states: "Forest lands as identified in Policy 1 above shall be designated Forest and Forest/Range and shall be subject to the regulations of these zones.

- A. Forestry: Lands included in this zone are primarily those commercial forest lands owned by the Federal Government and timber companies, generally in very large holdings. Also, in this zone are smaller ownerships which meet the criteria in Policy 1(4) above."

FINDING: The subject properties meet the definition of forest lands and are subject to the regulation of the Forestry (F) zone for the maintenance of forest uses.

FINDING: The purpose of the Forestry (F) zone is to "preserve and protect lands for continued timber production, harvesting and related uses; conserve and protect watersheds, wildlife habitats, and other such uses associated with forests and to provide for the orderly development of both public and private recreational uses as appropriate and not in conflict with the primary intent of the zone, which is sustained production of forest products."

FINDING: The applicant has not provided evidence or demonstrated that the land affected by this proposal does not meet the criteria for forest land and should not be regulated to protect and promote recognized forest uses.

Goal 4, Policy #4 states: "The County shall regulate development of non-forest uses in forested areas.

Rationale: To protect the health, safety, and welfare of county citizens.

To reduce the fire danger to man-made structures and forest resources."

FINDING: "When fire occurs and structures are threatened, the cost of the fire suppression effort is often higher than a similar fire where structures are not threatened. Fires where structures are threatened are high priority. Critically need resources are assigned first to fires threatening structures, second to fires on or threatening private land, and third to fires on federally managed timberlands." (p. 3, An Action Plan for Protecting Rural/Forest Lands from Wildfire; submitted to Governor Neil Goldschmidt November 1988 by the Oregon Wildfire Protection Planning Task Force and included in this report by reference.)

FINDING: "Because approximately 20% of Oregon Department of Forestry's wildfire suppression costs are paid from the general fund of the State of Oregon, virtually everyone pays to some degree for suppressing forest fires. When poor practices of a small group increases the need for resources, everyone has to pay more to compensate." (p. 5, Wildfire Protection Planning Task Force, 1988.)

FINDING: The applicant has not provided information identifying how the proposed non-forest development does not represent a threat from wildfire to both man-made structures or forest resources, or what provisions are made to protect public health, safety and welfare in an area where forest fires present a legitimate concern.

FINDING: The applicant indicates that the property is bounded on three sides by 32 foot gravel roads. No site plan was provided showing the location of proposed dwellings and proposed fuelbreaks around individual dwellings needed to reduce the potential of a structural fire spreading to the surrounding forest.

Goal 5, Policy #22 states: "The County shall protect riparian areas.

"Riparian areas along all Class II streams and rivers shall be subject to a 50-foot setback, and areas along Class I streams and rivers, around significant wetland areas and surface water areas within the county shall be subject to a 100-foot setback for all development, and a 100-foot setback for septic tank drainfields \* \* \* \*

"Riparian area conflicting uses:

\* \* \*

"7. Residential, commercial, or industrial uses.

FINDING: The applicant proposes a conflicting use (residential use) adjacent to and near the Little Deschutes river, an identified Class I stream.

FINDING: Septic system evaluations and approvals have met the requirement for 100-foot setback from the river.

FINDING: The applicant has not indicated the location of potential dwellings on a site plan, and therefore compliance with this Comprehensive Plan policy can not be determined.

Goal 7, Policy #1 states: "The County shall consider site constraints in evaluating land use in fire hazard areas. Within designated areas where population or building densities may be inappropriate to the hazards present, measures will be developed to mitigate risk to life and property loss."

FINDING: The subject properties are identified with a medium to high fire hazard rating on the Klamath County Comprehensive Plan Fire Hazards Rating Map.

FINDING: "Probably the most potentially dangerous hazard to development in Klamath County is that of wildfire, which poses a special threat to subdivisions in forested areas \* \* \* \* The mix of homes and forest has created new problems for fire fighters. Present wildfire-fighting techniques are designed to control wildland fires where the optimum time and place of control can be chosen. If homes are endangered, however, efforts are concentrated on protecting homes rather than controlling the fire. The result is longer and more costly fires. Agencies charged with the task of fighting forest fires are neither responsible for nor trained and equipped to deal with structure fires. (Comprehensive Plan Atlas, p. III-117, footnote omitted)

FINDING: The subject properties are within the Chemult Rural Fire Protection District, however access is via Forest Service road 5825 that does not receive maintenance for residential purposes, particularly during the winter months.

FINDING: Only one physical ingress/egress is provided to the subject properties. Potential dwellings located at the north end of the tract will be more than 1/2 mile from the subdivision entrance. Fire suppression equipment may not be able to maneuver effectively along a narrow lane with marginally

developed cul-de-sacs or along a dead-end forest land with no turn-around at all, resulting in significant endangerment to fire fighting personnel.

FINDING: The applicant has not addressed measures to mitigate life and property loss resulting from potential wildfire hazards.

Goal 7, Policy #2 states: "The County will continue to participate in the Federal Emergency Management Agency's National Flood Insurance Program."

FINDING: Portions of the subject property lie within an identified flood hazard area.

FINDING: County implementation of the National Flood Insurance Program is accomplished through the application of Section 52.005-Flood Hazard Area of the Land Development Code.

Goal 7, Policy #5 states: "The County shall restrict filling or construction in floodways. Uses such as sand extraction, recreational activities, industrial and agricultural pursuits may be exceptions to this policy."

FINDING: Filling or construction in the floodway, wetlands, or bed of the Little Deschutes river is regulated by the Oregon Division of State Lands.

FINDING: The applicant has not submitted plans or other information indicating how fill and removal regulations might apply to this development.

"C. That the location, size, design and operating characteristics of the proposed development will be compatible with and will not have significant adverse effects on the appropriate development and use of abutting properties and the surrounding neighborhood. Consideration shall be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effects, if any, upon desirable neighborhood characteristics and livability; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

FINDING: Access to the subdivision is provided via Forest Service road 5825, a road not engineered or maintained for rural residential development. The applicant has not provided documentation showing maintenance responsibility for this road or how conflicts with commercial timber operators using this road will be mitigated.



FINDING: The applicant has not submitted information showing that the siting of dwellings will not increase the risk of fire to surrounding commercial forest land. The wildfire rating for the area is medium to high. The applicant has not demonstrated how adequate fire protection will be provided to lots within the tract. There are no fire hydrants located in the subdivision, and not every lot has the Little Deschutes river as a source of water within its boundaries.

FINDING: The subdivision is over 4 miles from the nearest fire station, and may not be accessible during the winter months. In addition, access within the subdivision is poor (for example, lot 16, block one is in excess of 4,000 feet from the subdivision's entrance at the end of a marginally improved cul-de-sac) and may significantly increase the risk of wildfire impacts to adjacent forest land or increase the danger to firefighters.

FINDING: The applicant has not addressed the availability of civic services to the subdivision. The property is within the Gilchrist school district, but no information is provided by the applicant showing how or where students would meet a school bus, or whether or not existing school services such as transportation would be over-taxed by the additional dwelling units.

2. Section 51.020(E) - Non-forest Conditional Use Permit Criteria

"The uses conditionally permitted above shall be subject to review in accordance with the following criteria. The review authority must find that each such use:

"A. is compatible with forest uses;

FINDING: Recognized forest uses on the subject properties and on adjacent and surrounding properties include commercial timber production, management for the Mountain Pine beetle infestation, fish and wildlife habitat, and management for wildfire protection.

FINDING: The applicant states that uses in conjunction with rural residential use will not commit adjacent lands to non-resource use. The applicant does not address how residential use (a non-forest use per the Klamath County Comprehensive Plan and Land Development Code) is compatible with forest uses on surrounding property. Residences within the forest create problems in terms of road use conflicts, increased wildfire threat, and limitations on timber management practices.



FINDING: Management of the Little Deschutes river corridor for watershed values and riparian habitat values is addressed by the Deschutes National Forest land and resources management plan standards and guidelines, and by the Oregon Forest Practices Act and Administrative Rules.

FINDING: The applicant states that maintenance of trees and riparian vegetation along the Little Deschutes river will enhance some forest uses such as watershed protection that would not occur under forest management, but does not explain how enhancement will occur or why watershed protection would not occur under forest management.

"B. does not interfere seriously with the accepted forestry practices on adjacent lands devoted to forest use; and does not significantly increase the cost of forestry operations on such lands;

FINDING: The Deschutes National Forest is scheduled to let timber sales in the area surrounding the subject properties beginning in 1991.

FINDING: The applicant has not addressed how the siting of 22 residences in the forest will not interfere seriously with forestry practices on adjacent lands managed by the U.S. Forest service or owned and managed by Gilchrist Timber Company, and has not addressed how residences may affect the cost of forestry operations in the area.

"C. does not materially alter the stability of the overall land use pattern of the area;

FINDING: The ownership pattern of the area immediately surrounding the subject property is extensively related to industrial forest uses. A nine square mile area immediately surrounding the subject properties encompasses approximately 5,760 acres. Excluding the subject properties (120 acres), the distribution of land is as follows:

2712 acres (48.1%)	Gilchrist Timber Company
2040 acres (36.2%)	Deschutes National Forest
808 acres (14.3%)	multiple private ownerships of 2.5 to 40 acre parcels zoned Forestry.
80 acres (1.4%)	multiple private ownerships zoned R-5.
1.5 acres	single ownership zoned commercial

FINDING: Limited rural residential development is present in the immediate area of the subject properties. Twenty-three residences are located on parcels of 5 to 10 acres zoned forestry in the vicinity.

Rural-residential (R-5) zoning encompasses 80 acres of land within the 9 square mile area immediately surrounding the subject property. Five residences are located on lands committed to non-resource uses and zoned R-5.

The nearest residence is approximately 1/4 mile north of the subdivision on a 40 acre parcel zoned forestry.

FINDING: The siting of 22 additional residences would approximately double the number of existing dwellings located on land planned and zoned for forestry use within the immediate vicinity of this proposal.

FINDING: The proposal would materially alter the overall land use pattern by siting of 22 additional residences along the Little Deschutes river corridor in an area where intensive residential development does not presently exist.

FINDING: The applicant states that extensive parcelization suitable for homesites exists to the north and east of the site, but does not explain how such parcelization results in a commitment to non-forest uses or how such parcelization is compatible with existing forest uses in the area.

"D. is situated on generally unsuitable land for the production of forest crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of tract;

FINDING: Tract 1227 is situated in a slight depression along the river, bounded by low ridges west and east of the property. Most of the subdivision is flat with an elevation between 4600 feet along the river to 4660 along the eastern boundary. Localized slopes at the eastern boundary of the subdivision are in excess of 10 percent. Terrain is generally suitable for forest crops or livestock.

FINDING: Two soils mapping units are found on the subject property. Approximately 50 percent of the tract consists of wet meadow soils not suited for timber production. The other half of the property

consists of upland, well-drained volcanic soils. Timber productivity on upland portions of the site is estimated at cubic foot Site Class 5.

FINDING: Meadow portions of the property are suited to limited livestock grazing, however limitations due to impact on the riparian zone are a substantial concern. Suitability for timber management on the site is rated as moderate; the potential for regeneration is moderate with lodgepole pine the suggested tree species.

FINDING: The annual potential yield for lodgepole pine in a cubic foot site class 5 forest is 50 to 84 cubic feet per acre per year. On approximately 60 acres of suitable forestland on the site the annual potential yield is for 3000 to 5040 cubic feet of wood fiber. Considering the size of the tract, the potential for timber production is minimal unless combined with surrounding private industrial timber holdings.

"E. considers forest site productivity, minimizes the loss of productive forest lands; and is limited in size to the area suitable and appropriate to the needs of the proposed use;

FINDING: The proposal would remove 120 acres from the area's timber base.

FINDING: The applicant has not submitted information documenting need of the proposed use.

"F. meets the standards relating to the availability of fire protection as set forth in Article 69 of this Code and other rural services and will not overtax those services, and;

FINDING: There is no documentation submitted by the applicant showing that the siting of 22 residences will not overtax public rural services such as fire protection or schools.

"G. complies with such other conditions as the review authority considers necessary to protect forest uses.

3. Section 52.005 - Flood Hazard Area

FINDING: Section 52.005 of the Land Development Code is applicable to this action because portions of the subdivision are located within an area of special flood hazard for the Little Deschutes river as identified on Federal Emergency Management Agency (FEMA) Flood Insurance Rating Maps (FIRM).

FINDING: The County's continued participation in the National Flood Insurance Program is dependent upon properly implementing the provisions of the Program through local ordinance.

FINDING: Implementation of Section 52.005 of the Land Development Code requires documentation of base flood elevations where such elevations are not provided on the FIRM, and the application of construction standards for residential development.

FINDING: The applicant has not provided a site plan showing the location of proposed dwellings in relation to the identified flood plain, nor is information provided showing base flood elevations.

4. Section 62.007 - Riparian Setback Standards

FINDING: Section 62.007 of the Land Development Code is applicable to this action because the properties border a Class I stream.

FINDING: Septic system site approvals for properties within the subdivision meet the 100-foot setback standard.

FINDING: The applicant has not identified the location of proposed dwellings on a site plan for review against this standard.

5. Article 69 - Fire Safety

FINDING: Article 69 of the Land Development Code is applicable to this action because the property is located in an area of medium and high fire danger as shown on the Wildfire Hazard Rating Map.

FINDING: Notice of this action was sent to the Oregon Department of Forestry, the Deschutes National Forest, the Walker Range Patrol Association, and the Chemult Rural Fire Protection District per Section 69.003 of the Code.

FINDING: At the time of this report's preparation, no agencies have responded regarding to the proposal's impact on public services.

6. Article 83 - Significant Resource Area

FINDING: The Little Deschutes river, an identified Goal 5 resource, traverses the subject property.

FINDING: Notice of this proposal was sent to the Oregon Department of Fish and Wildlife for their review of potential impacts to fish and wildlife.

FINDING: Residential development represents a conflicting use to an identified Goal 5 resource per Section 83.007(B)(5)--Human disturbance. As such, the criteria of Section 83.004(C) to limit conflicting uses must be addressed.

FINDING: The applicant has not submitted documentation showing how the criteria of Section 83.004(C) have been addressed.

Furthermore, the Planning Commission, after consideration of comments submitted to the record prior to the public hearing issues the following findings in response:

1. The Oregon Department of Forestry expressed concerns regarding the proposal in a letter dated October 11, 1989 (Exhibit "O").

a. The development of 22 homesites would be incompatible with overall forest uses. Examples of would be impacts to adjacent harvesting, chemical application, slash burning, etc.

FINDING: The Department of Forestry's position is acknowledged. The criteria of LDC 51.021(E)(1)(a) and (b) have not been met in this proposal.

b. The property is in the midst of large tracts of forest land and would significantly alter the overall land use pattern of the area.

FINDING: This issue has been addressed in findings relating to criteria of LDC 51.021(E)(1)(c).

- c. The property involves forest land, and the loss of productive forest land is a concern.

FINDING: This issue has been addressed in findings relating to criteria of LDC 51.021(E)(1)(d) and (e). The property meets the definition of forest land in the Comprehensive Plan, however there is no basis for a finding that the proposal minimizes the loss of productive forest land.

2. Gilchrist Timber Company objects to issuance of the permits in a letter dated October 11, 1989 (Exhibit "p"). They express concerns over fire hazards and use of private roads resulting in increased maintenance costs to the company.

FINDING: The area of concern is identified as a medium to high fire hazard. Impacts of residential development to wildfire suppression are well documented. This development would create potentially severe impacts to fire suppression.

FINDING: Access to the subject properties does not traverse Gilchrist roads, traffic in the area would involve roads whose primary use is for commercial forest use on adjacent public lands and private industrial timber lands.

FINDING: No information has been provided by the proponent identifying road maintenance responsibilities.

3. The U.S. Forest Service, Crescent Ranger District provide additional information and comments in a letter dated October 17, 1989 (Exhibit "q").

- a. A planned timber sale is expected to be sold in 1992; management emphasis is to provide optimum and sustainable timber levels. No change in management direction is anticipated.

FINDING: The staff report noted a 1991 timber sale, the information is corrected.

FINDING: Forest Service comments confirm that the existing land use pattern in the area is commercial forestry operations. The siting of 22 additional dwellings greatly increases the potential for adverse impacts with this established land use pattern.

- b. The Forest Service does not allow for firebreaks with adjacent private lands during timber sale planning. They encourage a development setback where private land abuts public land.

FINDING: The applicant supplied information that roads surrounding the property would provide a firebreak. These roads and right-of-ways have become somewhat overgrown since installation. The applicant has not provided a site plan showing the relationship of homesites to adjacent public land, nor indicated road maintenance responsibilities to ensure that firebreaks continue to be viable. Criteria of LDC 44.003(C) relating to compatibility with surrounding land use and no significant adverse impact on abutting development have not been met.

- c. The Forest Service allows access to the property, but will not maintain the road for purposes other than forest management. The Forest Service will issue easements and road use permits to private landowners for access and road maintenance.

FINDING: Physical access to the subject properties is via Forest Service road 5825. The Forest Service does not indicate that an easement has been granted through the agency. An easement granted to the property by Gilchrist Timber Company expired July 16, 1989.

FINDING: Forest Service roads, while open to the public, may be closed at any time in response to timber management or fire suppression demands. Without an easement obtained through the agency, the subdivision does not have permanent legal access.

- d. The Forest Service may issue an easement only if a road improvement district is formed.

FINDING: No information is available indicating that a road improvement district exists.

4. The Department of Land Conservation and Development submitted comments in a letter dated October 18, 1989 (Exhibit "R"). They concur with the staff findings and conclusions, and maintain that the proposal cannot be justified consistent with the county land development code or with statewide planning goal 4. They offer suggestions on factual information contained in the staff report and findings.

- a. They recommend revising the description of rural residential zoning and land use in the area surrounding the proposal.

FINDING: The nearest area zoned R-5 is approximately 1/4 mile northeast of the subject properties. The Two Rivers North development is approximately 4 miles south of the subject properties. Other lands in the area are planned and zoned Forestry.



- b. They recommend adding language describing past planning activities on the subject property.

FINDING: Tract 1227 obtain final plat approval from the County in 1984, at which time the property was zoned residential and subject to an LCDC continuance order and independent application of the statewide planning goals. In 1985 the LCDC determined that the rural residential exception was not adequately justified under Goal 2. As a result, the county zoned the property Forestry.

- c. They recommend clarifying the staff report and findings to identify resource values associated with the Little Deschutes River, a Class I stream and an inventoried "1-C" significant resource.

FINDING: Resource values associated with the Class I stream include fish habitat, riparian vegetation, wetland habitat, and watershed.

5. The Walker Range Patrol Association addressed concerns for wildfire protection in a letter dated October 18, 1989 (Exhibit "S"). They do not feel that issues relating to fire protection have been adequately addressed and recommend denial of the applications.

FINDING: General concerns about additional dwellings pointed out by Walker Range are relevant to this proposal. The added threat of additional dwellings in the forest has the real potential to overtax the ability of fire protection agencies to fight wildland fires.

FINDING: Concerns about fighting a structural fire in this subdivision, and the potential hazard to residents are a significant concern. The design of the subdivision could result in fire fighters not being able to reach a fire or residents not being able to evacuate. Access to water has not been adequately addressed by the applicant to support a finding that fire protection is adequate.

FINDING: Road maintenance for fire suppression within the subdivision has not been addressed in a manner to make a finding that adequate protection exists to protect residents or surrounding forest land from fire danger.

6. The Oregon Department of Fish and Wildlife submitted comments through a letter dated October 19, 1989 (Exhibit "T"). Their comments reflect information on impacts to wildlife and recommendations for mitigation.

**FINDING:** The Little Deschutes River has been designated by the Oregon Fish and Wildlife Commission as a wild trout stream and is not stocked. Additional development along the river will create conflicts to this resource, and could result in overfishing of this wild stream.

**FINDING:** Additional development in the river corridor will decrease water quality in the Little Deschutes River and adversely affect fish and wildlife.

**FINDING:** Removal of tree snags in order to accomodate dwellings and to reduce fire hazards to dwellings will adversely impact non-game wildlife species such as woodpeckers and other cavity nesters that depend on snags for critical habitat.

7. The Chemult Rural Fire Protection District submitted comments through a letter dated October 19, 1989 (Exhibit "U"). They indicate that they can serve development in the subdivision dependent upon road and weather conditions.

**FINDING:** Access to the subject properties is not via an improved road, and no provision for road maintenance beyond that associated with forest management practices has been indicated. Access to dwellings in the winter could be extremely difficult, resulting in endangerment to life, property, and surround forest land.

## VI. OVERALL CONCLUSION AND ORDER

Section 31.008 of the Land Development Code states in part:

"Except for hearings by the Board of Commissioners concerning either a change of zone or Comprehensive Plan designation review which involves a substantial area and number of property owners, the burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal in the area, the greater is the burden upon the proponent. The proposal must be supported by proof that it conforms to the applicable elements of the Comprehensive Plan and to applicable provisions of this ordinance, especially the specific criteria set forth for the particular type of decision under consideration \* \* \* \*"  
(emphasis added)

The proponent of this action has not demonstrated:

- A. That the proposal for 22 dwelling not in conjunction with forest use will not significantly affect accepted forestry uses on adjacent and surrounding lands;

- B. That fire protection is adequate to protect nearby forest lands, and not endanger the property and lives of potential residents;
- C. That the proposal for 22 dwellings not in conjunction with forest use would not materially alter the stability of the overall land use pattern of the area;
- D. That adequate public service are provided for the proposed 22 dwellings not in conjunction with forest use;
- E. That the proposal for 22 dwellings not in conjunction with forest use employs adequate and appropriate safeguards to minimize flood hazards; and
- F. That the proposal for 22 dwellings not in conjunction with forest use will not degrade an identified Goal 5 resource.

It is hereby found that the applicant has not met the burden of proving that the relevant standards and criteria have been met, and therefore, it is ordered that the applications for conditional use permits for dwellings not in conjunction with forestry use are DENIED.

Dated this 27th day of Oct, 1989

John Monfore  
John Monfore, Presiding Officer of the Planning Commission

Carl Shuck  
Carl Shuck, Planning Director, Secretary to the Planning Commission

Approved as to form and content:

Michael L. Spenser  
Michael L. Spenser, County Counsel

#### VII. APPEAL RIGHTS

This order may be appealed to the Klamath County Board of Commissioners pursuant to Article 33 of the Klamath County Land Development Code. An appeal must be filed with the Klamath County Planning Department, together with the required fee, by 5:00 p.m. on November 9th, 1989.

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 1st day of Nov. A.D., 19 89 at 10:14 o'clock A.M., and duly recorded in Vol. M89, of Deeds on Page 20964.

FEE none

Evelyn Biehn, County Clerk  
By Pauline Muriandore

REturn: Commissioners Journal