

BEFORE THE HEARINGS OFFICER  
KLAMATH COUNTY, OREGONIN THE MATTER OF CUP 7-90 FOR PEDERSEN &  
PEDERSEN/SPIRES TO ESTABLISH A RESIDENCE  
NOT IN CONJUNCTION WITH FARM USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish a residence not in conjunction with farm use on 51.24 acres east of the Swan Lake Rd., 1/2 mile north of Hwy 140. This request was heard by the Hearings Officer April 6, 1990 pursuant to Ordinances 44 and 45. The request was reviewed for conformity with Land Development Code Sections 51.018 D and O.R.S. 215.243.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Richard C. Whitlock. The applicants representative, Oliver Spires, appeared and offered testimony in support of the application. The Planning Department was represented by Kim Lundahl, Senior Planner. The recording secretary was Karen Burg, Administrative Secretary.

3. LEGAL DESCRIPTION:

The property under consideration is located in Section 25, Township 38 south, Range 10 east, W.M.. T.A. 3810-2500-300.

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-CG. The property has frontage on the Swan Lake Rd., is 51.24 acres in size and is not under farm tax deferral.

Access to the property is provided by a private drive extending east from the County maintained road.

The property has been evaluated for subsurface sewage feasibility.

The Land Use Capability Classification of the property is Class IV & VII.

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The property is not rated for timber productivity.

The properties to the north and south are in commercial agricultural use, being devoted to alfalfa and grazing. The zoning is the same as the subject property, EFU-CG. The land use to the east is mixed crops and cattle grazing. To the west is also cattle grazing.

Surrounding residential use includes four homes within a two-mile radius.

The property is within a structural fire protection district, and the proposed dwelling will be within a response time of 7-8 minutes. The permittee has also agreed to comply with the fuelbreak and siting restrictions of L.D.C. sec 51.020 G..

#### 5. FINDINGS:

All evidence submitted as the staff report, exhibits b-d, and offered testimony show that the approval criteria as set out in Code section 51.017 D 1 and O.R.S. 215.243 have been satisfied. Applicants exhibit B and D are attached in clarification of these findings. The Hearings Officer finds this application;

1. Is compatible with farm use because:

The proposed homesite is topographically screened from contiguous properties and does not have vehicle access from the adjacent agricultural activities.

The Hearings Officer finds the use of the remnant property as a homesite compatible with the neighboring agricultural use because the applicant has demonstrated conflict will not result from the conversion of the 51.24 acre property from vacant to residential use. Historically, there has been very limited logging or agricultural use of the property.

2. Does not interfere seriously with accepted farming practices on adjacent lands devoted to farm use because:

The properties to the north, south and east are found to be engaged in com-

mercial agriculture. The property in question is found to be of little resource value due to its location, topography, soils limitations and size. The proposal would not conflict with the farm use to the west as the Swan Lake Rd. provides a discrete geographic boundary. The existing farm use to the north is devoted to summer pasture for cattle. It is partially irrigated for this use. The proposed non-farm residence will not conflict with this use as vehicular access is precluded and the homesite is topographically screened from all the agricultural uses.

The permit holder has volunteered as a condition of this approval to file a restrictive covenant which will prohibit the permit holder and successors in interest from filing complaint concerning valid farming practices on adjacent lands.

3. Does not alter the stability of the overall land use pattern of the area because:

The overall land use of the area is already long established and will not be compromised by the conversion of a remnant parcel to a non-farm use. The land use pattern of the area will not be modified and will be perpetuated by this permit.

4. Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location, and size of the tract because:

The existing parcel is rocky and steeply sloped over a portion of the 51.24 acres. The Hearings Officer finds this parcel size unsuitable for commercial agricultural use due to its size, poor soils and topography. The

impact of removing this marginal value land from the County farmland base is found minimal.

5. Complies with other conditions felt necessary, because;

The property is within a structural fire protection district. The potential exists that a new residential use may cause an impact to adjacent agricultural and forest uses if a structural fire spreads to adjacent resource lands. Accordingly, the Hearings Officer finds the requirements set out in L.D.C. section 51.020 G., in concert with the structural fire protection provided by the Klamath County Fire District, will mitigate the potential impact to the resource land base that may result from the additional fire hazard posed by the non-farm residence.

6. ORDER:

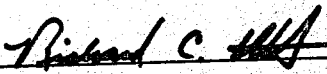
Therefore, it is ordered the request of Pedersen & Pedersen in behalf of Oliver Spires, for C.U.P. 7-90 is approved subject to the following conditions:

1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permit holder and their successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands.

2. The Conditional Use Permit shall not be final nor shall a building permit for a non-farm dwelling be issued under this order until the applicant provides the Planning Department with evidence that the lot or parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use and that any additional tax penalty imposed by the County Assessor has been paid.

3. The permit holder shall comply with L.D.C. section 51.020 G. RESIDENTIAL SITING STANDARDS to mitigate the possibility of fire damaging nearby resource lands.

DATED this 12<sup>th</sup> day of April, 1990

  
Richard C. Whitlock, Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified that this application may be appealed to the Klamath County Board of Commissioners by filing with the Klamath County Planning Department a Notice of Appeal as set out in Section 33.004 of the Klamath County Land Development Code, together with the fee required within ten days following the mailing date of this order.

CONDITIONAL USE PERMIT APPLICATION  
QUESTIONS 4, 5, 6, AND 7.

4. CHARACTERISTICS OF THE SUBJECT PROPERTY

- A. Describe the present use, and past uses of the property over the last 15 years, including land division, farm operations, grazing, or forest uses; document income obtained from the resource management activities on the property, if any.

Answer: Several years ago, probably in excess of 15 years there was selective logging done on a very minimal basis. No particular area was made clear by the logging and the size of the remaining stumps, relative to the size of remaining trees, suggests that not all of the largest trees were cut at the time of the logging. Currently the parcel includes a mix of juniper and ponderosa with a preponderance of the first. The trees give sparse coverage to the property in question and are of considerable value for their scenic and erosion control characteristics and of very limited value for purposes of commercial forestry.

The grass that grows on the parcel is of limited quality due to soil characteristics that are discussed later. The Owner has an arrangement that allows a neighbor to run cattle on the parcel so as reduce fire danger. This arrangement, in the past, has not involved payment for range rights and has been a simple matter of mutual convenience.

Approximately eleven years ago this 51.24 acre parcel was divided and separated from the adjoining and considerably larger Nivens property. The parcel, steeply sloped and rocky, was not considered useful for farm nor ranch purposes and was therefore set aside as a home site. This same 51.24 acre parcel was later sold to the current Owner who wishes to use the property in the same manner as the previous Owners once intended, as a home site.

- B. Provide a detailed description of the development proposal; include a site plan of the property showing the location of natural and man-made features, the proposed use, the proposed location of the septic system and drinking water well; identify setback requirements of the land development code.

Answer: The proposed development includes a residence of approximately 2,500 square feet with attached garage, a drinking water well with small pump house, a gravel driveway, and landscaping limited to the immediate area surrounding the residence. The great majority of the property will be left in its natural state, with limited

Ex B

grazing for fire control purposes. See the attached drawings.

- C. Identify the location of the property in relation to other similar developments or uses in the surrounding area.

Answer: The property in question is located in the area of the approach to Swan Lade from Highway 140. It is located on the west and south facing slope of the hills that define the east border of the valley. Similar to the elevated portions to the surrounding farm/ranch properties, it is lightly wooded and somewhat rocky.

- D. Is the property under special farmland tax deferral--contact the Klamath County Assessor's Office.

Answer: The property currently has special farm use assessment but is in danger of losing it as it is not large enough nor configured so as to produce the required, \$2,000.00 minimum annual income to qualify. It should be noted that, when this parcel was still included in the larger property, it qualified for the farm use assessment regardless of its actual use or income derived there from and was an acceptable and logical site for a home. The Owner intends to request that the special assessment be continued in consideration of its grazing and open space uses.

- E. Describe the property's topography and vegetation --provide photos, if necessary.

Answer: The property slopes up from Swan Lake Road, in an north easterly direction, gaining slightly more than 200 vertical feet in 1920 horizontal feet, with an overall average slope of 10.42%. The proposed homesite has an approximate slope of 8 percent. The vegetation includes a sparse coverage of trees, mostly juniper and some ponderosa, natural grass, and sage brush. The type and quantity of existing vegetation is largely due to the slope and soil types that occur. The property straddles a division of two main soil types, 19C and 50E (see sheet 72 with aerial photo and soil divisions, and green soil interpretation sheets.

The Soil Survey of Klamath County, Oregon, Southern Part describes 19C soil as Fordney loamy fin sand, occurring in slopes of 2 to 20%. "The average slope is about 5 percent. Elevations ranges from 4,100 to 4,500. The average annual precipitation is 10 to 14 inches, the annual air temperature is 46 to 49 degrees F, and the frost-free season is 90 to 120 days." The survey goes on to say "This soil is used for irrigated crops, for example, alfalfa hay, wheat, oats, barley, cereal hay, and pasture. Irish

potatoes are grown where slope is less than 5 percent....If this soil is not irrigated, the main use is for range. Because many of the areas of this soil are at a higher elevation than the water supplies, pumping water upslope from canals or ditches is needed to irrigate. A few areas are irrigated from wells.

"The soil is better suited to sprinkler irrigation than to other irrigation methods because of the high water intake rate.

"This soil is well suited to many community uses if the slopes are not excessive. Few problems arise in the construction of homesites, small buildings, and roads if the slopes are less than 8 percent....Many areas of this soil are used for homesites and small buildings."

The survey describes soil type 50E as "Lorella very stony loam, 2 to 35 percent south slopes. This well drained soil is on escarpments at the edge of warmer basins that mostly face south. Is formed in very cobbly and gravelly material weathered from tuff and basalt. Slopes are convex. The average slope is about 20 percent. Elevation ranges from 4,140 to 5,500 feet. The average annual precipitation is 12 to 16 inches, the average annual air temperature is 46 to 49 degrees F, and the frost-free season is 90 to 120 days.

"Permeability is slow. Roots commonly penetrate to a depth of 10 to 20 inches. Runoff is rapid, and the hazard of erosion is high during spring runoff and following fire or excessive grazing."

"Nearly all areas of this soil are used for range and wildlife habitat...The soil generally is too stony and steep for cultivating or for use of farm machinery."

The combination of 19C and 50E soil types severely limits possible vegetation types that can be supported, particularly in view of the slope and difficult access to adequate irrigation water.

F. Can the property be used for commercial farm uses? If not, why not.

Answer: The property can not be effectively used for commercial farm uses because the only reasonable farm use of this parcel is grazing. The limitations of parcel size and the low quality of range preclude reasonable expectations of the required income to qualify this property as a commercial farm. The Owner estimates that the maximum annual value of the range is one thousand dollars, a fraction of the required minimum.



This parcel does, however, have value as open space for wildlife. Although this parcel is not included in areas with sensitive nests nor intensive winter range, it does abut properties that do include this items. It is therefore best that the existing trees, for the most part, be allowed to remain. The proposed home site is located between the trees and would require the removal of very few if any trees. The wide spacing of the trees allows road access without tree removal. The placement of the house will have nearly no visual impact from Swan Lake Road as existing trees will screen direct views.

The 19C soil, according to the soil survey, would be suitable for certain crops if the slope were less. The fact that sprinkler irrigation is recommended over other types and that this soil requires a high rate of irrigation precludes feasible use of this steep, elevated parcel for commercial farming.

The 50E soil, according to the survey, is useful only for range. Such a limitation, along with the slope make the property a poor candidate for commercial farming.

- G. Is the property located within a rural fire protection district equipped to fight structural fires? If yes, identify.

Answer: The property is in Klamath County Fire District #1, with an estimated response time of 7 to 8 minutes. The district is equipped to fight the type structural fire encountered with a residence.

- H. Utilities and public services. Has the site been evaluated for a septic system? If yes, is the site suitable for a septic system? Identify the test area and/or proposed system on you site plan.

Answer: This property is served by the Bonanza Schools (elementary and high school). Pacific Power and Light and US West Communication are the serving utilities.

A permit for on-site sewage disposal system has been obtained from the Klamath County Health Department. The design sewage flow is 450 gallons per day, the tank volume is to be 1000 gallons and 560 square feet of seepage bed or 280 linear feet of trenches will be required. The home site is ample and will easily accommodate the septic system along with the required separation from both the house structure and the drinking water well.

- J. What roads or highways provide access to the property?

Answer: The property has a 1289.40 foot long frontage along Swan Lake Road. The southern most corner of the parcel is

approximately nine tenths of a mile from the junction of Swan Lake Road and Highway 140.

5. CHARACTERISTICS OF SURROUNDING PROPERTY AND LAND USES

- A. Describe the location and distance to other land uses and developments in the surrounding area. For example, how far to other homesites?

Answer: The upper portion of the property abuts land that are also unsuitable for uses other than minor grazing. The lowest portion of the property abuts, along the north side, a dog legged alfalfa field. It was observed that, due to the slope of that field, sprinklers were laid out in the long direction (approx. 1100 feet) with a short path (approx. 600 feet). This sprinkler layout is not particularly efficient but is required due to the topography.

The property on the opposite side of Swan Lake Road is used, on the flat and lowest portions, for cattle. The upper portions of that property remains wooded, with some portions with slopes considerably steeper than the property in question.

It is likely, due to the generally steep topography of the neighboring properties that surround the valley of Swan Lake, that little will change in terms of land uses and visual characteristics of the area.

The closest home site, as the crow flies, is approx. 3/4 of a mile, due east and beyond the hill on which the property is located.

- B. Describe the topography and vegetation of the surrounding area.

Answer: The area due north of the property is classified as 50E, steeply sloped with sparse coverage of trees. The mix of trees is the same as that of the property in question, mostly juniper and few ponderosas.

The area northwest of the property is classified as 19A. This soil type, largely due to the flatter terrain in which it occurs, is considerably more useful for farming purposes. It had been in alfalfa when viewed last.

- C. Are there existing farm operations in the area? If yes, describe. Is there a history of commercial farm uses in the area. If yes, describe.

Answer: Commercial farm uses have existed in the Swan Lake area and with significant success. The farm uses have,

however, been limited to the low lying areas with suitable soils. Areas with 19C and 50E soils remain largely unused. The wooded hills that surround and divide the various farming areas have value as means of erosion control, open space for wildlife, and visual aesthetics.

- D. Are there other resource management activities in the area such as forestry or mining activities? If yes, describe.

Answer: There are no forestry nor mining activities in the area of the property in question.

6. Explain how the proposed dwelling and use of the property will not create conflicts for the use of abutting and nearby property zoned for agricultural use.

Answer: The proposed residence will occupy a small portion of the property and will leave the majority of the parcel in its natural state. It is the natural state of the property that makes it desirable as a home site. A parcel of more than 50 acres provides ample opportunity to live with privacy and in contact with nature, without impacting neighboring activities.

7. Are you willing to execute a restrictive covenant to run with the land prohibiting the owner of the non-farm dwelling from complaining about accepted farming or forestry practices on nearby lands devoted to farm or forest use?

Answer: The Owner is willing to execute such a covenant. The Owner fully expects the neighboring properties to continue to be used for farm uses.

See attached sheets for answers of following questions  
**SUPPLEMENTAL INFORMATION**

This is in response to your recent application concerning resource zoned property in Klamath County.

To enable the Planning Department Staff to develop the required order concerning your proposal, please fill in the blanks below and return this questionnaire by March 26, 1990.

We regret the additional requirement, however, the staff must be able to prepare an order that will withstand close scrutiny by the Department of Land Conservation and Development in Salem.

Thanks for your help. Please contact the Department if you have questions.

**1. FIRE PROTECTION:**

The property is within the \_\_\_\_\_ Fire District, which maintains a fire station \_\_\_\_\_ miles from the project site. The response time to the project site is \_\_\_\_\_ minutes.

**2. LAND USE:**

The predominant land use to the north is \_\_\_\_\_.  
The closest residence to the north is \_\_\_\_\_ miles away.

The predominant land use to the south is \_\_\_\_\_.  
The closest residence to the south is \_\_\_\_\_ miles away.

The predominant land use to the east is \_\_\_\_\_.  
The closest residence to the east is \_\_\_\_\_ miles away.

The predominant land use to the west is \_\_\_\_\_.  
The closest residence to the west is \_\_\_\_\_ miles away.

The parcel sizes within 1/2 mile range in size from \_\_\_\_\_ acres to \_\_\_\_\_ acres in size.

**3. SEPTIC FEASIBILITY:**

A subsurface sewage disposal feasibility study has/has not been accomplished. (circle one).

**4. SOILS:**

The Soil Conservation Service delineates the soil on the project site as the \_\_\_\_\_ soil series with a Land Capability Classification of Class \_\_\_\_\_. Contact the S.C.S at 883-6932.

**5. TIMBER SITE RATING:**

The State Division of Forestry classifies the project site as Timber Site Rating Class \_\_\_\_\_, with a production capability of \_\_\_\_\_. Contact the Division of Forestry at 883-5681.

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**PEDERSEN AND PEDERSEN  
ARCHITECTS AND PLANNERS**

409 PINE ST., SUITE 300, KLAMATH FALLS, OR 97601 (503) 884-9831

**SPIRES CONDITIONAL USE PERMIT**

**SUPPLEMENTAL INFORMATION**

**(SECOND SHEETS)**

**1. FIRE PROTECTION:**

The property is served by the Klamath County Fire District Number 1, with mutual response from the Bonanza Volunteer Fire Department. The fire station is located approximately 17 miles away from the project site. The response time to the project site is 15 minutes, which is what was first quoted by the district and included in the original application. (See 4G of the original application).

**2. LAND USE:**

The predominant land uses to the north are alfalfa crops and cattle grazing in the flat areas at the floor of the valley, with forested areas (currently inactive) at the surrounding sloped portions.

The closest residence to the north, slightly northwest, is 1 mile away.

The predominant land uses to the south are alfalfa crops and cattle grazing in the flat areas at the floor of the valley, with forested areas (currently inactive) at the surrounding sloped portions. The highway and railroad right of ways are also located to the south of this project.

The closest residences to the south are: one is 2 miles nearly due south and another is 3/4 mile in the southeast direction.

The predominant land uses to the east are mixed crops and cattle grazing at the flat areas at the base of the slopes with forested areas (currently inactive) at the surrounding sloped portions.

The closest residence to the east is a trailer which is located approximately .3 miles away, on the east facing slope of the same ridge as this project and is set in the trees similarly to the proposed location of this project.

The predominant land uses to the west are cattle grazing on the flat land laying at the floor of the valley and forest (which clearly predominates the land for miles, and is currently inactive).

The closest residences due west and nearly due west are located in the Pine Grove and Skyline areas, respectively and approximately 4 and 5 miles away (as the crow flies).

The parcel sizes within, or touching within, a 1/2 mile range in size from 13.76 acres (owned by Peggy Biaggi and Patricia Venable, located to the south) to over 3477 acres (owned by the Nevin Family/Nevin Trust, wrapping around the north and east sides). The latter, which is generally the case in that area, is made up of several different tax lots, with an federally owned land interspersed.

3. SEPTIC FEASIBILITY:

A subsurface sewage disposal feasibility study has been accomplished. See 4H of the original application.

4. SOILS:

The Soil Conservation Service delineates the soil on the project site as the 19C and 50E soil series with a Land Capability Classification of Class IVE and VIIs. See maps and discussion in original application.

5. TIMBER SITE RATING:

The State Division of Forestry, according to Service Forester Steve Jones, classifies the project site as having no Timber Site Rating Class and no production capability. According to Mr. Jones, this is due to the fact that the class of soils found on the project site, namely 19C (Fordney Loamy Fine Sand, 2 to 20 percent slopes) and 50E (Lorella Very Stoney Loam, 2 to 35 percent slopes) are not deemed appropriate for forest production uses.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 13th day  
of April A.D., 19 90 at 9:59 o'clock A.M., and duly recorded in Vol. M90,  
of Deeds on Page 6914.

FEE \$none

Evelyn Biehn, County Clerk

By Pauline Muehlender

Return: Commissioners Journal