

BEFORE THE BOARD OF COMMISSIONERS OF
KLAMATH COUNTY, OREGON

In the Matter of CLUP/ZC 6-89)
for H. W. and ELIZABETH)
TURNQUIST,)

ORDER No. 90-182

1.

NATURE OF THE APPLICATION

The Applicant is requesting a comprehensive land use plan and zone change from Agriculture/EFU-CG to Rural/R-1 on 37 acres located approximately 1/3 mile from the easterly shore of Agency Lake.

This matter initially came before the Board of Commissioners and the Planning Commission of Klamath County, Oregon on July 25, 1989. Following a public hearing on the request, the Planning Commission in an advisory role, recommend to the Board of Commissioners that they approve the request. Thereafter, the Board of County Commissioners approved the requested CLUP/ZC and said approval was made final by Order dated August 1, 1989.

Following the approval of the Applicant's said request, the Department of Land Conservation and Development appealed the County's said Order to the Land Use Board of Appeals. Said appeal is LUBA 89-113. The Attorney General's office, on behalf of DLCD, filed a Petition For Review which objected to the Order entered by the County on the basis that it failed to make the Findings of Fact and Conclusions required by the County's land development code and comprehensive plan. Following the filing of said Petition For Review, the County and the applicant jointly requested

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that LUBA remand this matter to the County so that the County could reconsider this request in light of the objections raised in said Petition For Review. Following the remand of the said Order, DLCD Staff informed the County that the LCDC would withdraw its objections to the subject request if the land was zoned R-5 rather than R-1. The R-5 zoning would reduce the number of potential lots that could be developed on the property by requiring a minimum lot size of five (5) acres. However, DLCD advised the County that DLCD would appeal any Order granting R-1 zoning.

By letters dated February 9, March 6 and April 18, 1990, DLCD advised the County that R-1 zoning (one acre minimum lot size) will violate statewide planning goals 11 and 14 and the Oregon Supreme Court decision in 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447, 724 P2d 268 (1986).

On April 2~~8~~, 1990, a further public hearing concerning this request was held by the Board of County Commissioners and Planning Commission of Klamath County, Oregon.

The Applicant presented additional evidence substantiating the County's prior findings that the property can be served with septic systems and wells and that the public service required by the property are available.

2.

NAMES OF THOSE INVOLVED

The Applicants, H. W. Turnquist and Elizabeth Turnquist, have been represented at all times by James

Legget. During the pendency of this request Mr. Legget and a partner doing business as Turnstone, Inc. purchased the subject property and renewed the subject request. The Planning Department was represented by J. Kim Lundahl, Senior Planner, and the Recording Secretary was Karen Burg. Apart from the comments submitted by the DLCD, there has been no opposition to this land use request.

3.

LEGAL DESCRIPTION

A portion of the SE 1/4, Section 7, Township 35 S, Range 7 East, W.M., located generally one mile north of the intersection of Modoc Point Highway and Highway 422 South. The property is located in the Agency Lake residential area.

4.

INCORPORATION OF PRIOR RECORD

The record established at the prior hearings before the Planning Commission and Board of Commissioners on July 25, 1989, is incorporated by reference in the record of the hearing held on April 25, 1989.

5.

FINDINGS OF FACT

The Applicant requests a CLUP/ZC from Agriculture EFU-CG to Rural R-1 on thirty seven (37) acres located East of Agency Lake. The property lies in the heart of a triangular shaped area known as the Agency Lake residential area, which is defined by Agency Lake to the West, Highway 62 to the Northeast and Highway 422 to the Southeast. In

addition, Modoc Point Road, a County maintained road, serves the triangle and lies in a generally north-south direction, parallel to and near the edge of Agency Lake.

Prior to 1939, some of the area within the triangle was forested with Ponderosa Pine trees. However, in 1939, the Pine Ridge Mill fire destroyed most of the trees located in the triangle. Following the fire, regrowth came in the form of manzanita and sagebrush which prevent seedlings from reestablishing the area as forested. The property was planned and zoned agriculture because it contains SCS Soil Type IV soils. However, as documented by the economic analysis submitted by the applicant, the written opinion of the Klamath County Extension Agent and by the topographical maps submitted by the Applicant, the subject property and surrounding property are not suitable for use in an agricultural operation. The high elevation of the area and its location east of the Cascade Mountains combine to severely limit the growing season in that area. In addition, the rolling, hilly topography of the property with an elevation change of eighty (80) feet from the high to the low points, prevents the leveling of the land or any kind of economical irrigation system. The lack of a viable agricultural use for the property and the other property located within the triangle has resulted in no commercial agricultural activity in the triangle. There are several hobby farms located in the triangle where the owners have a

limited number of animals and attempt to graze their property. However, those uses are of a hobby nature.

Beginning in the early 1970's, large tracts of land within the triangle have been zoned and divided as rural residential subdivisions. The first such subdivision was Oregon Shores No. 1, which is primarily built out as a mobile home subdivision. All lots in that subdivision have been sold. In the late 1970's, Oregon Shores No. 2 was developed. That subdivision contains 1,196 lots with mobile homes and conventional home areas. The Oregon Shores Subdivisions have community water systems, recreational facilities and a homeowners association which maintains the roads and common areas within those subdivisions. The Oregon Shores subdivisions contain lots which range in size from 10,000 square feet to one acre and have been fully sold out.

In 1986, Bellavista, which adjoins the southern boundary of the subject property and consists of seventy (70) one-acre lots, was developed. Bellavista was placed on the market in 1988 and as of the first hearing on this matter, all but five of the lots, which were originally held by the developer and included in the public report, had been sold.

Scattered within the triangle are numerous parcels of property which range in size from 1/2 acre to approximately 400 acres. However, the 400 acre parcel is an exception. It is owned by the developer of the Oregon Shores

subdivisions and it adjoins one of the Oregon Shores subdivisions. Eliminating that particular parcel from the inventory provides an average lot size in the triangle of less than 5 acres. The zoning map shows several parcels that are zoned for agricultural use. However, out of all of the parcels located within the triangle zoned for agricultural use, only one parcel qualifies for farm use tax deferral. That parcel's farm use consists of limited grazing by approximately a dozen cattle.

The parcels of land surrounding the subject parcel are zoned R-1 to the south and west, EFU-CG and R-1 to the north and east. However, as you progress northerly within the triangle, you once again come to land zoned R-1 and fully developed as a residential subdivision.

With the exception of the Oregon Shores subdivisions which have a community water system, the other parcels and subdivisions within the triangular area are generally served by individual domestic water wells and septic systems. The developer submitted the Klamath County Department of Environmental Health approvals of the septic tank systems in the adjoining Bella Vista subdivision and domestic well logs demonstrating that the use of individual septic systems and domestic water wells is a practical and appropriate manner of providing those services to much of the area within the triangle.

The subject property and other land within the triangle are served with many utility and public services, including

electrical service from Pacific Power & Light, telephone service from US West, fire protection provided by the Chilquin Agency Lake Fire Department, which has a station and equipment located approximately 1/2 mile from the subject property, fully paved and maintained county and state roads with ample capacity to accomodate any increased traffic generated from the development of the subject property, several county owned and maintained parks upon Agency Lake, several churches, grocery stores and other similar small community businesses.

The triangle is located in area serviced by the Chiloquin Elementary and High Schools. However, there is little demand for educational services because of the demographics of the people who relocate to the Agency Lake area. As explained by the Applicant and documented from the sales of the other lots located in this area, the population of the Agency Lake area is predominantly middle age to elderly people who have retired from the high tech-aircraft industries in California and want to locate in an area which provides the recreational and rural residential ammenities found in this area of Klamath County.

The subject property, although hilly in nature, contains soils with good permability. The Applicant's engineer has submitted an opinion letter stating that any surface drainage can and will be dealt with on the subject property.

The only potential resource use of the subject property and other land within the triangle, would be reforestation. However, as pointed out by County Commissioner Roger Hamilton and Planning Commissioner John Monfore (Weyerhaeuser Company's land use officer) and as documented by the supporting information for the State Land Use Planning Goals, forest practices necessary to reforest this area, including herbicidal spraying, heavy equipment clearing of brush, periodic forest operations, including thinning and other logging activities, are not harmonious with the existing substantial residential development of much of the triangular area.

Outside of the triangular area, to the north and to the southwest, are large cultivated agricultural areas. To the north is the Fort Klamath area which land is primarily devoted to agriculture consisting of hay, grain and grass crops and to pasturing of cattle. To the southwest, the Agency Lake area is used in a similar fashion in large commercial agricultural operations. To the west of the subject property is Agency Lake, which is a shallow lake used for recreational purposes such as fishing and duck hunting. To the east and generally east of the town of Chiloquin, which lies approximately eight (8) miles from the subject property, are Winema National Forest and private forest lands which are devoted to forest uses. The triangular area is physically separated from those resource uses by the highway and county road systems described above.

In addition, it is separated from Winema forest land by U.S. Highway 97. The subject property is topographically different from the said resource lands in that it is composed primarily of rolling hills with some steep grades and varying changes in elevation. The Fort Klamath-Agency Lake agricultural areas are large, generally flat areas, partially reclaimed from Upper Klamath Lake. The Winema National Forest area is generally a mountainous area with intermittent valleys along the streams and rivers that flow through the forest.

6.

EXCEPTIONS STATEMENT

Pursuant to ORS 197.732, in order to approve this application, the County must take an exception to the requirements of statewide goal 3, Agriculture. The County therefore makes the following Findings of Facts and Conclusions of Law:

A. Existing adjacent uses: The Land lying south of the subject property has been platted as the Bellavista Rural residential subdivision. This subdivision contains seventy (70) one acre lots most of which have been sold. The subdivision contains roads improved to County standards, DEQ approval of septic systems, electrical and telephone services available to each lot. This parcel was subdivided in 1986 pursuant to Klamath County's acknowledged land use plan and was first placed on the market in 1988. The developer anticipates the construction of homes on this

property in the next several years as the purchasers retire from jobs in California and move to Oregon. The Bellavista property had not been used for any resource use during the prior fifty (50) years.

The adjoining property located to the west of the subject property is a large rural residential development. It is planned and zoned R-1. Those lots are predominantly developed with residential homes and on-site sewage and water systems. They are serviced by public and private roads. The lots range in size from less than one acre to ten acres.

The land lying east of the subject property is vacant and dormant. One half of this land is zoned R-1 and one half is currently zoned EFU/CG. It is owned by Perla Development Company which is the developer of two nearby residential subdivisions known as Oregon Shores No. 1 and 2. The Perla property is approximately 400 acres in size. A portion containing 119 acres has been developed as a residential subdivision and contains one acre lots, paved roads, full service telephone and electrical systems, and has been approved for individual septic systems and wells by the DEQ. This subdivision is fully sold out and approximately 30% of the lots have residences located on them. Said subdivision is located approximately 400 feet from the northeast corner of the subject property.

The property generally lying north of the subject property is composed of larger lots ranging from 5 to 45

acres in size. It is not used, although it is zoned EFU/CG. There are no resource uses on any land adjacent to or adjoining the subject property. The land that is in use is being used for residential purposes.

B. Existing public facilities and services: The subject property lies in a triangular area described hereinabove which has a variety of public and private facilities and services. A substation of the Chiloquin - Agency Fire Department is located approximately 1/2 mile west of the subject property. Access to the subject property is provided by paved county roads with ample capacity to carry any additional traffic generated from the development of the subject property. The Agency residential area and the subject property are served by Pacific Power & Light electrical facilities and US West telephone facilities. In addition, in 1991, cable television will be provided in this area.

Pursuant to the provisions of Article 74 of the Klamath County Land Development Code, public water and sewer services are not provided in rural areas. The Oregon Shores subdivision has a community water system operated by the landowners in that subdivision. In other subdivisions in the area, water is provided by individual wells and septic systems located on each lot. The well logs, testimony of the Applicant and DEQ approval reports attest to the fact that this area in general and the subject property specifically are well suited for Rural level water and

sanitary services. Said services are in compliance with Klamath County's land use plan.

The subject property is located within the Klamath County School District, with the schools located in Chiloquin, Oregon, approximately eight (8) miles from the subject property. However, based on the demographics of prior sales in this area which show that the area is inhabited generally by people who do not have school age children and who are generally retired, it is expected that the development of this property will have no impact on the school systems.

C. Parcel size and ownership patterns of the exception area and adjacent lands: The exception area is 37 acres in size. Adjacent lands include the Bellavista Subdivision composed of one acre lots, the Perla Development land, of which 119 acres is developed in one acre or smaller lots, and numerous large lot residential ownerships which range in size from one acre to 45 acres. As stated above, the Perla Development subdivisions and the Bellavista subdivision are generally sold out with each lot owned by a different person. Perla Development Co. has retained a large block of land which it intends to develop for residential use in the future. All of the subdivisions and partitions which have occurred within the triangular area were approved pursuant to the land use plans then in effect. Klamath County adopted its initial zoning ordinance in 1972 and all of the subdivisions in this area were approved and platted

consistent with that zoning ordinance and the comprehensive plans and amendments which have followed it. None of the prior developments have been opposed by anyone, including the Land Conservation and Development Department. The existence of those subdivisions, the houses located thereon and the residential use of the land located in the triangle, demonstrate the suitability of this area, including the exception area, for the proposed use.

D. Neighborhood and regional characteristics: As discussed in detail in the Findings of Fact above, the subject property is located in the heart of a triangular area which has been substantially developed for rural residential use. Although two subdivisions contain small lots of approximately 10,000 square feet, the area is primarily in larger lots of one to five acres in size. One half mile south of the subject property is the Oregon Shores subdivision which contains in excess of 1,000 lots, all of which have been sold to individual owners. Between the Oregon Shores subdivision and the subject property is the Bellavista subdivision containing 70 one acre lots of which all but five have been sold. Continuing north, the subject property adjoins larger lot residential developments of lots ranging in size from one acres to five acres until you reach a point one mile north of the subject property when smaller lot residential subdivisions commence. Located 1/4 mile northeast of the subject property is a 119 acre subdivision containing generally one acre lots.

This area has its own fire station and is part of the Fire District which supports that fire station. It is surrounded by a state and county transportation system. It includes grocery stores, county parks, churches and other small community developments. The area within the triangle, because of its limitations for resource use and its physical separation by the state and county highways from resource uses outside the triangular area, has developed as a rural residential area.

E. Natural or manmade features or impediments separating the exception area from adjacent resource land:
There is no resource land adjacent to the subject property. The only land in the triangular area which qualifies for farm use tax deferral is a hobby farm located one mile east of the subject property. The owner of that property grazes a small herd of cattle on his land. The information provided by the Applicant and the Klamath County Extension Agent demonstrate that the subject property and the surrounding property, which is essentially of the same topography and soil types, is simply not suited for agricultural use. The rolling hills which contain some significant slopes, and elevation changes which range to 80 feet, prevent the land from being leveled and prevent the use of economical irrigation systems. The elevation of this property and its location east of the Cascade Range result in a very limited growing season. These factors combine to

prevent the viable or economic use of the subject property and adjacent land for agricultural purposes.

Prior to the fire in 1939, some of the area within the triangle was forested. The fire that occurred at that point destroyed that forest use. It is possible that the subject property and some of the adjoining land could be reforested. However, the conflicts associated with locating forest land in a residential area or vice-versa are well documented and include potential for wildfire coming from the residential areas onto the forest land. The conflicts involved in normal forest management practices including aerial spraying of herbicides, heavy equipment operation, chainsaws and other similar practices combine to limit the use of the subject property and adjacent land for forest uses. The triangular area in which the exception land is located is separated from resource uses by the state and county highways which entirely surround the property and by Agency Lake located on its westerly boundary.

F. Physical development of exception area: The subject property is not developed in any manner for any use. As pointed out above, the topography of the property and the short growing season in this area, make it impractical to use this property for agricultural purposes.

G. Other relevant factors: The most relevant factors in considering an exception to Goal 3 for the subject property are:

(1) That it is not physically suited for agricultural use;

(2) That because it lies adjacent to or near areas which have been irrevocably committed to residential use, it is not suitable for forestry uses; and

(3) It lies in an area which is physically separated from resource uses and is ideally suited for rural residential use. As stated several times above, the Agency Lake area has been and is continuing to be developed for rural residential use. It has the ammenities and services deemed necessary by the acknowledged Klamath County Land Use Plan for rural residential development. The addition of the subject property to the inventory of residential land in the area, is congruent with the development of the Agency Lake area in general. The private and public facilities and services available in this area can accomodate the additional demand that would be placed on them by future residents of this property.

Based on the foregoing criteria and findings of fact, the Board of County Commissioners finds it appropriate to grant an exception from the requirements of Goal 3 agriculture for the subject property. The applicant examined other potential land in the Chiloquin / Agency Lake area, all of which would require an exception, but eliminated other possible areas because of development limitations such as high water tables and their proximity to resource uses. The proposed development of the subject

property is a reasonable and appropriate extension of the prior development for residential use of the triangular area.

7.

DLCD OBJECTIONS

By letters dated February 9, March 6 and April 18, 1990, the Department of Land Conservation and Development objected to zoning the subject property R-1, one acre minimum lot size. The DLCD objections are centered around statewide goals 11 - Public Facilities and Services and 14 - Urbanization. The DLCD apparently considers one acre lots to be "urban" lots and argues that the County must take an exception to Goals 11 and 14 before allowing "urban" development in a rural area.

In support of its position, DLCD cites Patzkowsky v. Klamath County, 8 Or LUBA 64 (1983) and 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447, 724 P2d 268 (1984). We find that DLCD's reliance on said cases is inappropriate.

Patzkowsky v. Klamath County involved a request to subdivide 20 acres of land into 18 one-acre residential lots. The County's Order approving this request was issued prior to the adoption and acknowledgement of Klamath County's Comprehensive Land Use Plan. LUBA held that the County's Order failed to consider Goal 14.

1000 Friends of Oregon v. LCDC (Curry County) was an appeal of the LCDC's February 17, 1984 Order acknowledging

Curry County's Comprehensive Land Use Plan. The Court found that the County must take an exception to Goal 14 if the effect of the County's decision is to convert rural land (outside an urban growth boundary) to urban uses. (301 Or 469). The Court held that once a County's comprehensive plan has been acknowledged, land outside of UGB's is "rural" (301 Or 499). The Court then looked to the policies and definitions in the County's plan and found that it could not determine whether or not one acre residential lots constitute urban uses. (301 Or 504-511)

The subject application differs from the Patzkowsky and Curry County cases because Klamath County now has an acknowledged comprehensive land use plan and that plan distinguishes "urban" and "rural" land uses.

Klamath County Comprehensive Plan Policy 16, Goal 11, provides that the one acre R-1 zone is a "rural" land use. The said policy provides that a community sewer system is not appropriate in this zone, but that a community water system may be used. Klamath County Land Development Code Section 51.004 A provides:

"A. PURPOSE: The purpose of this zone is to establish areas for Rural Residential living styles. These areas allow for the pursuit of limited agricultural activities. These zones also serve to implement the Comprehensive Plan policy calling for buffers between Urban and Agricultural areas.

Typically, the zone is appropriate in rural or semi-rural areas, small family farm areas, and in areas with a pattern of one acre rural residential development. This zone may be applied where existing or proposed public facilities or services are appropriate for a one acre density, or where

there is no history of subsurface sewage problems, water problems, or other natural limitations. This zone is intended to implement the Comprehensive Plan designation of rural. This zone may be applied to rural lands, rural communities, and rural service centers."

The R-1 zone is a rural land use zone. The uses allowed in the zone are rural, not urban uses. Therefore, the approval of the subject request does not result in the conversion of rural land to urban uses, and no exception to Goal 14 is required.

DLCD also alleges that the approval of one acre zoning of the subject property will violate Goal 11. However, as discussed in other parts of this Order, Klamath County's Land Use Plan and Land Development Ordinance specifically identify the public facilities appropriate for R-1 zoning and those limited services are available to the subject property.

For the reasons set forth above we find that the DLCD objections are meritless.

8.

COMPREHENSIVE PLAN CHANGE REVIEW CRITERIA

Klamath County Land Development Code Section 49.003(a) sets forth the review criteria for approving a comprehensive land use plan change. The County makes the following findings of facts and conclusions of law concerning said review criteria:

A. That the proposed change is in compliance with statewide planning goals. The relevant statewide planning goals are Goal 3 Agriculture, Goal 11 Public Facilities and

Services and Goal 14 Urbanization. The subject property was planned and zoned for agriculture use because it is predominantly of soil class IV. However, the evidence described above demonstrates that this property is not physically suitable for use as agricultural land. Because of its topography, the limited growing season, the difficulty in irrigating or otherwise developing the property for agricultural use and its proximity and similarity to other land already devoted to rural use, the area in which the subject property is located is not and has not been used for any agricultural use. It is physically separated from agricultural uses in the general area by the existence of the county and state highways. The statewide goal of preserving and protecting agricultural lands from conflicting uses is not applicable to the subject property. The exceptions statement set forth hereinabove, demonstrates that the change in land use plan for the subject property to rural residential will not decrease the agricultural land inventory, will not take any agricultural land out of production and will have no impact whatsoever on any agricultural land or agricultural use in the area.

Goal 11 Public Facilities and Services is designed to plan for the timely, orderly and efficient arrangement for public facilities and services. In developing its comprehensive land use plan, the County studied the existing development of land in the county and the relationship between land development and the need for public facilities

and services. Those studies are part of Klamath County's comprehensive plan. For rural residential development, the County identified in its comprehensive plan a need for provision of the following services:

1. Road and drainage development and maintenance;
2. Water and septic services;
3. Fire protection; and
4. Power, telephone and other similar utilities.

In comparing the provision of those services to the subject property, we find that fire protection is provided by the Chiloquin Agency Fire Department which has a station and equipment located 1/2 mile from the subject property. We find that the subject property, and the Agency area in general, is served by a network of state and county highways which, according to the Klamath County Public Works Department, have the capacity to carry the increased traffic which may be generated by 30 to 35 homes on the subject property without any adverse impact. We find that adjacent Bellavista subdivision has been approved for onsite sewage disposal systems. The provision for onsite sewage disposal systems is consistent with rural area service standards established by Article 74 of Klamath County's Land Development Code. As the soil types and topography of the Bellavista subdivision are essentially identical to those of the subject property, it is reasonable to expect that the subject property will also qualify for onsite septic disposal. As the land development code requires approval of

onsite septic disposal systems prior to the subdivision of the property, the adequacy of those systems will be guaranteed prior to the development of this property.

For large lot rural uses, such as the type proposed in this application, the County has determined it appropriate to utilize either central water supply systems or individual wells at the option of the developer. The information provided by the developer and included in the record demonstrates that the use of individual wells by other residences in the areas is successful and the developer may choose to utilize that manner of providing water service to the property.

The subject property is supplied power by Pacific Power & Light and telephone service by US West. The subject property is in the heart of an area committed to this level of rural residential development and said area is serviced by public parks, privately owned grocery stores and other small rural businesses. We find that the development of this property as planned by the Applicant is consistent with Goal 11.

Land Use Goal 14 is intended to provide for the orderly and efficient transition from rural to urban land use. We find that the subject application is consistent with the requirements of Goal 14. As provided in Section 51.004 of Klamath County's Land Development Code, the purpose of the rural R-1 zone is to provide areas for rural residential living styles which may include limited agricultural

activities such as maintaining a horse or a small number of livestock. Rural residential development is appropriate in areas that do not have an expectation or history of subsurface sewage problems, water problems or other natural limitations. It is also appropriate for rural land that has little or no resource value. The subject property lies in the heart of a rural area that has been developed consistent with Klamath County's Land Use Plans and zoning ordinances for rural residential use. The land in this area, because of its elevation and topography, is generally not suitable for agricultural use. It is physically separated and buffered from resource uses in the general area. It has a history of appropriate development of onsite septic and water systems. And, it is an area which has, as described above, appropriate public and private facilities. The nearby subdivisions demonstrate that this area and the subject property do not require urban level services such as community water and sewer systems, but can be developed successfully with rural level services. Those services which the County deems important or necessary for rural development are already existing in the Agency Lake area and are of adequate size to accomodate the level of services and demands for services that the development of this property will add.

The large size of these lots will further enhance the ability of the land to accomodate rural residential development and demonstrates that the density of the

development on this land is not at urban levels. The development of this property at that level will not result in the conversion of rural land to an urban use.

B. The proposed change is in conformance with policies of the Klamath County Comprehensive Plan. The subject application has been submitted to review by the Klamath County Planning Department staff. Said staff has reviewed the proposed uses against the policies contained in Klamath County's Comprehensive plan and finds that the proposed plan change is in conformance with the review criteria. The comprehensive plan policies adopted by the County are intended to further the requirements of the state land use goals. The policies for goals 3, 11 and 14 are congruent with the findings made hereinabove.

Other policies which are particularly relevant to this request are: Policy No. 4 under Goal 10. That policy states:

"The County shall permit development of rural land for rural residential use on suitable lot sizes."

As is described and found hereinabove, this rural area is well suited for rural residential use, is well received by the public and is a desirable location for rural residential development. The subdivisions heretofore approved in conformance with Klamath County Zoning and Land Use Ordinances have sold out rapidly, and there is a definite need as demonstrated by the information provided by the applicant and as demonstrated by the speed in which the Bellavista and other subdivisions sold out for additional

lots. It is appropriate to place those additional lots in this area because this area is already committed to rural residential use. It contains the public and private services which the County deems necessary and those services can accommodate this growth without any adverse effect. In addition, the area is physically separated from any resource uses.

Policy 13 under Goal 11 which provides that new subdivisions in rural areas will only be approved where there is the provision of appropriate public and private services at levels capable of adequately serving the new development. As explained and found above, those services are available or can be appropriately provided on site by the developer as the property is platted.

C. The proposed change is supported by specific studies or other factual information which documents the public need for the change. As pointed out several times above, there is great demand for rural residential lots, particularly in the Agency Lake area. The parcels of land that have heretofore been subdivided are sold out. Many are being built upon and there are plans to build on other parcels. The area is ideally suited for this particular use because it is separated from resource uses and land and it has soils that are appropriate for the development of onsite septic and water systems. It is is not viable land for resource uses. And, it is located in an area that has

public services that are deemed appropriate for rural residential development.

9.

ZONE CHANGE REVIEW CRITERIA:

Article 47 of the Klamath County Land Development Code contains the review criteria which must be addressed in approving a change of zone. Our findings of fact and conclusions of law concerning said criteria are as follows:

A. The proposed change of zone from EFU/CG to R-1 is in conformance with the comprehensive plan and all other provisions of the land development code. The relevant comprehensive plan, findings and policies are discussed hereinabove, as are many of the land development code requirements. For rural residential use, Article 74 sets out the service standards for water and sewer service and also incorporates by reference, drainage, fire protection, road standards and electrical service requirements. All of the above except drainage, have heretofore been discussed and the findings and conclusions concerning those matters are incorporated herein by this reference.

With respect to drainage, the applicant has submitted a letter of opinion and map from its engineer attesting to the fact that the drainage from the development of the subject property can be dealt with on the subject property. Specific drainage plans are a requirement of the subdivision plat which must be submitted and approved prior to development of the property. We find, however, that based

on the evidence in the record and the findings contained in this order that the land development code requirements have been met.

B. The property affected by the change of zone is adequate in size and shape to facilitate the uses that are allowed in conjunction with such zoning. The property is 37 acres in size. The applicant has submitted a preliminary development plan which shows the proposed layouts of the lots and roads on the property and the contours of the property. The information in the records concerning wells and septic systems on adjoining and nearby land and the record showing that the soils and topography of the subject property are identical to those of the nearby land demonstrate that the property is suitable for the rural residential uses allowed by the R-1 zone.

C. The property affected by the proposed change of zone is properly related to streets to adequately serve the type of traffic generated by such use that may be permitted therein. The Klamath County Assistant Public Works Director has determined that the County and State roads which service the subject property have the capacity to carry the increased traffic which would be generated by the addition of 30 to 35 homes on the subject property. The subject property is accessed via county roads and dedicated public roads from adjoining subdivisions. The property has good access and will be properly served by the existing streets and roads.

D. The proposed change of zone will have no adverse affect on appropriate use and development of abutting properties. As found hereinabove, the subject property lies in the heart of an area which is irrevocably committed to development as a rural residential area. The abutting properties have been developed or are being held for development for rural residential use similar in type and density to that proposed on the subject property. There are no resource uses on any of the abutting or adjacent properties and this general area is physically separated from any resource uses. There have been no objections to the subject application except those raised by the DLCD. Those objections were not that an adverse affect would result, but rather that adequate findings were not made. All of the evidence in the record supports the use of the property for rural residential development. There is no indication whatsoever that there will be any adverse affect on any adjacent or abutting properties or the appropriate uses of those properties.

CONCLUSION AND ORDER

The Board of Commissioners finds that the Applicant has satisfied the pertinent review criteria as set out in OAR 660-04-0286, ORS 197.732 and Articles 47 and 48 of Klamath County's Land Development Code. Correct notice was given and the intent of statewide planning program has been met. The Board of Commissioners hereby approve the subject

8931

request for CLUP and zone change from Agriculture EFU/CG to Rural R-1.

Dated this 9th day of May, 1990.

Harry J. Finkbeiner
Chairman of the Board

Ray K. Kline
Commissioner

Paul Lindstrom
Commissioner

Approved to as to form and content.

Michael Spencer
Michael Spencer, County Counsel

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 10th day
of May A.D., 19 90 at 12:30 o'clock P.M., and duly recorded in Vol. M90,
of Deeds on Page 8903.

FEE none

Evelyn Bieh County Clerk
By Pauline Mueland etc

Return: Commissioners Journal