

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 22-90 FOR
KEN KUHLMAN TO LOCATE A RESIDENCE NOT
IN CONJUNCTION WITH FOREST USE

ORDER

1. NATURE OF THE REQUEST:

The applicant wishes to establish a single family residence not in conjunction with forest use on 10.0 acres m/l south of Keno.

The request was heard by the Hearings Officer June 1, 1990 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code Section 51.021 D.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Neil D. Smith. The applicant 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. Appearing to correct the record and give additional information was Mr. J. R. Martin and Ms. Cheryl Kloiber, owner of the private road described below.

3. LEGAL DESCRIPTION:

The subject property is a 10 acre parcel located in the NE 1/4 NE 1/4 of Section 29 T 40S R 8E W.M.. Generally located west of the Keno Worden Rd. and four miles south of the Keno, adjacent to the south boundary of the Cedar Trails subdivision. T.A. 4008-00000-3500.

4. RELEVANT FACTS:

A. ACCESS: The property is not accessible except through the license or easement from an adjoining property to the east. This road is privately maintained by the owner of the property to the east who also must grant an

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easeement to the applicant if this access is to be used.

B. FIRE PROTECTION: The property is within the Keno Rural Fire District and is approximately four miles from the nearest responding station. That distance represents a response time of only 15-20 minutes. The applicant has also agreed to fuel breaks (required by L.D.C. sec 51.020 G) around the residence to reduce the potential of a structural fire spreading to the lands to the north, south, east and west. The highway right-of-way to the east also provides a significant fire barrier to the lands east of the property and the Keno-Worden Rd.

C. LAND USE: The property is a parcel of approximately 10 acres of undeveloped land. The site was logged long ago and has very little second volunteer growth. The adjacent lands to the south, east and west are found not devoted to forestry uses. To the north is the Cedar Trails Subdivisions which consist of approximately 80 lots varying in size from one acre to twenty plus acres in size.

The Subdivision presently contains at least 25 residences with the nearest approximately 600 feet to the north of the subject property. The site selected by the applicant for his homesite is a 150 foot diameter clearing which has never been used for the production of trees or resource management.

D. SEWERAGE: The applicant has selected a septic installation location in the northeast corner of the property. Site specific site evaluation was accomplished in 1977 and is invalid due to age, but available soils information and the existence of nearby systems indicates site feasibility.

E. SLOPE: Available topographic mapping and site inspection indicates slopes of 0-10% predominate the site.

F. SOILS: The Soil Conservation Service mapping of the site indicates a land capability classification of VI and a timber site rating of V.

G. WATER: Proposed well

H. PLAN/ZONING: The plan/zone designation of the project site and properties to the south, east and west is Forestry Range/Forestry Range. The designation of the Cedar Trails Subdivision to the north is Rural/R-1 and R-5.

5. RELEVANT CRITERIA:

The standards and criteria relevant to this application are found in the Klamath County Comprehensive Plan (Goal 4) and the Klamath County Land Development Code, specifically Section 44.003, Section 51.021 and Article 69.

6. FINDINGS:

All evidence submitted as the staff report, exhibits b-d, and offered testimony were considered in this Order.

6.1 Goal Findings: With regard to the Statewide Planning Goals and the Klamath County Comprehensive Plan, the Hearings Officer makes the following findings:

A. The goal of the Forest Lands Element is to conserve forest lands for the production of wood fiber and other forest uses, protect forest lands from incompatible uses, and to ensure a continued yield of forest products and values.

B. Forest Uses are defined by Statewide Planning Goal 4 and the Comprehensive Plan to include:

1. The production of trees and forest products;
2. watershed protection and wildlife and fisheries habitat;
3. soil protection from wind and water;

4. grazing of livestock;
5. maintenance of clean air and water;
6. outdoor recreational activities
7. open space, buffers from noise, and visual separation of conflicting uses.

FINDING: The Hearings Officer finds that dwellings are not included in the list of forest uses. The Land Development Code does, however, permit residences subject to conditional use findings that the dwelling is located on lands generally unsuitable for timber management and not needed for other permitted forest uses and is otherwise consistent with the County's acknowledged criteria.

C. Policy 4 of the Klamath County Forest Lands Goal states "The County shall regulate development of nonforest uses in forest areas". The "rationale" for such policy is "to protect the health, safety and welfare of County Citizens" and "to reduce fire danger to man-made structures and forest resources".

FINDING: The Hearings Officer finds that active forest management has not occurred on properties directly adjacent to the property. Specifically, there is a substantial residential development to the north and east and the only legitimate forestry use nearby is to the northwest. This proposed residence would be adjacent to several other dwellings in the Subdivision and, with the proposed fuelbreaks and the readily available fire protection, there is an insignificant risk of fire. Present area residents, Mr. Martin and Ms. Kloiber, were asked their opinion regarding the impact to wildlife and both believed such impact would be either very slight or none.

6.2 Land Development Code Findings: With regard to the Klamath County Land

Development Code, the Hearings Officer makes the following findings:

A. Klamath County Land Development Code Section 44.003-Conditional Use Permit Criteria:

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

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

FINDING: Section 51.021 C 1.3 identifies residential-single family or mobile home as a nonforest conditional use when located on non-resource land.

44.003 E: "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. Forest Service, BLM, Weyerhaeuser, Gilchrist Timber;
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 property is not in forestry use. The property is within a "Medium to Low Density Deer Winter Range" and within the "Secondary Buffer" of the Bear Valley Eagle Refuge, as mapped on the Countys "Goal 5" mapping. The agencies with statutory responsibility, the O.D.F.W and U.S.F.W. were notified of this application and no response has been received. There was testimony received from two persons mentioned in section 2. who were concerned about wildlife in the immediate vicinity. Mr. Martin having observed Bald Eagle nests nearby and Ms. Kloiber who addressed the effect upon the deer population. Both citizens could not say that the home as planned on the applicants property would pose a negative impact to the wildlife resource. Accordingly, the Hearings Officer finds no significant impact to these resources is posed by this application.

FINDING: The subject property has a Timber Site Class Rating of 6, thereby meeting the definition of forest land. However, the site chosen for the homesite is clearly not in forest production.

FINDING: The small site is not large enough for legitimate forestry use and presently has no significant second growth. There is no property adjacent to the site which is presently in forestry use. The filing of a restrictive covenant will prohibit the permit holder from interfering with accepted resource management practices on nearby lands.

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

Rationale: To protect the health, safety, and welfare of county citizens. And to reduce the fire danger to man-made structures and forest resources.

FINDING: The proposed residence is within an established fire protection district and the response time is 15-20 minutes. Access to the property to

fight fire is good, being approximately 1/4 mile from the Keno-Worden Rd. Further, the applicant has agreed to place required fuelbreaks around the house to prevent the spread of fire to the north, south, and west and the Hwy 97 right-of-way provides a significant fuelbreak to the east.

44.003 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: Approximate access to the proposal is provided via an unnamed easement road which is a graded, gravelled, user-maintained all weather access road. The road provides access to this property and another and is not utilized by commercial timber operators or for other forestry uses.

FINDING: The proposal is only four miles from the nearest fire station, and will be accessible during the winter months. The residence will not significantly increase the risk of wildfire impacts to nearby forest land or increase the danger to firefighters.

FINDING: The property is located within the Klamath County School District and will have no impact on the school system. The existence of a new residential use within the district will slightly increase the tax base.

B. Klamath County Land Development Code Section 51.020 E - Non Forest Conditional Use Permit Criteria:

The uses conditionally permitted shall be subject to review in accordance with the following criteria:

1. The proposal is compatible with forest uses;

FINDING: Large lot rural-residential use predominates to the north as the Cedar Trails Subdivision. The predominant forest uses in the area west of the project are found to be watershed protection, wildlife habitat, and recreation use.

2. The proposal does not interfere seriously with the accepted forestry practices on adjacent lands devoted to forestry use, and does not significantly increase the cost of forestry operations on such lands;

FINDING: The adjacent lands to the north, south, east and directly to the west are found not devoted to forestry uses as set out in state and local goals. The Hearings Officer finds the predominant land use to the east and north to be large-lot residential. The location of a non-resource home will not conflict with management practices on those lands. The permit holder will be required to file a restrictive covenant which will prohibit the permit holder and successors in interest from filing complaints concerning valid resource management practices on adjacent lands.

3. The project will not materially alter the stability of the overall land use of the area;

FINDING: The subject parcel was created decades ago. The placement of a residence on the property will not destabilize the existing land use pattern of the area as residential use similar to that proposed has been established in the immediate vicinity.

4. The proposal is located on generally unsuitable land for the production of forest products and livestock, considering the terrain, adverse soil or

land conditions, drainage and flooding, vegetation, location and size of the tract;

FINDING: The project is on a parcel, 10.0 acres, too small to be considered for commercial forest uses. The site is found to be poorly located for forest management activities as it is located between a developed subdivision and Keno-Worden Rd., a heavily travelled highway. Forest practices may conflict with the residential and transportation uses long established in the area.

5. The proposal considers site productivity, minimizes the loss of productive forest lands; and is limited to the area suitable and appropriate to the needs of the proposed use;

FINDING: Site productivity for noncommercial forest uses may actually be increased due to the presence of an interested landowner. No loss of productive resource lands will result, rather the resident will enhance the noncommercial resource uses of the property through intensive management practices. The Hearings Officer finds the commercial Forestry land base of the County will not be compromised by the permitting of a nonforest home on 10.0 acres.

6. The proposal meets the standards set forth relating to the availability of fire protection and other rural services and will not tax those services;

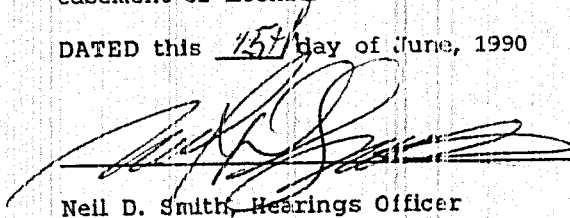
FINDING: Structural fire protection is provided by the Keno Rural Fire District. In addition, the owner shall adhere to the requirements outlined in Section 51.020 G of the Code, RESIDENTIAL SITING STANDARDS. Other rural services will be minimally impacted by the addition of another residence. Physical access exists from the Keno-Worden Rd., a graded, paved, county-maintained all-weather road.

7. ORDER:

Therefore, it is ordered the request of Ken Kuhlman for approval of C.U.P. 22-90 is approved subject to the following conditions:

1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permit grantee and successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands devoted to commercial resource use.
2. The applicant must comply with the fire safety and other siting standards of the land use code.
3. Proof of legal access shall be provided to the Planning Director prior to the issuance of any building permit for this property through a grant of easement or license.

DATED this 15th day of June, 1990



Neil D. Smith, Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified that this decision may be appealed to the Klamath County Board of Commissioners by filing with the Planning Department a NOTICE OF APPEAL as set out in Section 33.004 of the Code, together with the required fee within TEN DAYS of the date of mailing of this decision. Appeals must be received by the Planning Department no later than 5:00 P.M. on the tenth day or next business day if the tenth day falls on a weekend or holiday. Failure to file a NOTICE OF APPEAL within the time provided will result in the loss of your right to appeal this decision.

CUP 22-90 KUHLMAN

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 18th day of June A.D., 19 90 at 11:19 o'clock AM. and duly recorded in Vol. M90 of Deeds on Page 11846.

FEE none

Evelyn Biehn - County Clerk

By Rosanne Mulendore

Return: Commissioners Journal