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BEFORE THE HEARINGS OFFICER  
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 33-90 FOR WILLIS &  
MARIE VINCENT 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 20 acres east of the Crater Lake Hwy, 0.4 miles north of Hwy 422. This request was heard by the Hearings Officer July 13, 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 Neil D. Smith. The applicants and Bob Dortch 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 8, Township 35 south, Range 7 east, W.M.. T.A. 3507-8-1300.

4. RELEVANT FACTS:

The property is within the Agriculture plan designation and has an implementing zone of EFU-CG. The property accesses the Crater Lake Hwy, is 20 acres in size and is not under farm tax deferral.

Access to the property is provided by a private drive extending east from the State maintained Hwy.

The property has not been evaluated for subsurface sewage feasibility, and that issue is not before the Hearings Officer at this time.

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

The property is not rated for timber productivity.

The properties surrounding this property are found not devoted to commercial agricultural production. The zoning is the same as the subject property, EFU-CG. The Hearings Officer took note of his decision in the "Spuller" case (CUP 24-90), since this earlier case is in close proximity to the property under consideration.

Surrounding residential use includes eight homes and a church 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. The Hearings Officer finds this application;

##### 1. Is compatible with farm use because:

The proposed homesite is topographically screened from contiguous properties. The area of the project is found not devoted to agricultural use and the conversion to such would be practically impossible due to the soil condition, parcel size and micro-climatic aspect.

The Hearings Officer finds the use of the remnant property as a homesite compatible with potential agricultural use because the applicant has demonstrated conflict will not result from the conversion of the 20 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 and west are found not to be engaged in commercial agriculture. The property in question is found to be of little resource value due to its location, topography, soils limitations and size.

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 20 acres in size. The Hearings Officer finds this parcel size unsuitable for commercial agricultural use due to its size, poor soils, micro-climate 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

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exists that a new residential use may cause an impact to adjacent uses if a structural fire spreads to adjacent 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:

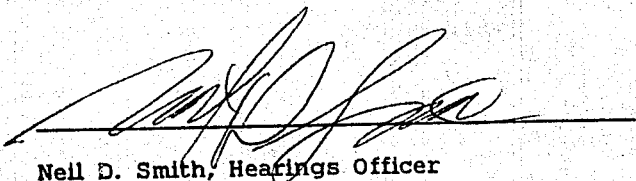
Therefore, it is ordered the request of Willis & Marie Vincent for C.U.P. 33-90 is approved subject to the following conditions:

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.

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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 re source lands.

DATED this 18th day of July, 1990

  
Neil D. Smith, 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.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 19th day  
of July A.D., 19 90 at 4:18 o'clock P M., and duly recorded in Vol. M90,  
of Deeds on Page 14444.

FEE None

EVELYN BIEHN

By Bernetha D. Hetch County Clerk