

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGONIN THE MATTER OF CUP 31-90 FOR
MONTE VANCE 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 23.56 acres m/1 1.5 miles east of the confluence of the Williamson River and Spring Creek, four miles north of Chiloquin.

The request was heard by the Hearings Officer June 29, 1990 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code Section 51.020 D 4.

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. Opposition was offered to this application by Nancy Batle and William Bryant.

3. LEGAL DESCRIPTION:

The subject property is a 23.56 acre rectangle located in the NE 1/4 Section 11, T 34S R 7E W.M.. Generally located east of Collier State Park and north of Chiloquin. T.A. 3407-11-800.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed by an easement road extending 1/2 mile north from Pine Ridge Rd., a county maintained all weather access road. Pine Ridge road leads south to the Sprague River Hwy three miles. Testimony indicated the primary access is to the north to Collier State Park through

graded dirt roads.

B. FIRE PROTECTION: The property is within the Chiloquin/Agency Lake R.F.D. and is approximately five miles from the nearest responding station. That distance represents a response time of 20-30 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 applicant has also agreed to provide a 1000 gallon on-site water storage tank for fire suppression. Larson Creek, on the western boundary of the property, is an all year stream and pumps can be utilized by fire department personnel to obtain a water supply.

C. LAND USE: The property is a parcel of approximately 23 acres of undeveloped land. The site was burned over 30 years ago and has very little healthy second volunteer growth. The adjacent lands to the north and south, are found devoted to low intensity agricultural use. Rural residential uses have been established on adjacent properties to the west.

D. SEWERAGE: The applicant has selected a septic installation location in the center of the property. Site specific site evaluation has been accomplished, and available soils information and the existence of nearby systems indicates site feasibility.

E. SLOPE: Available topographic mapping and site inspection indicates slopes of 0-5% predominate the site.

F. SOILS: Available mapping of the site indicates a land capability classification of IV to 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 north, south, east and west is Forestry/Forestry.

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 51.020 and Article 69.

6. FINDINGS:

All evidence submitted as the staff report, exhibits b-f, and offered testimony by proponents and opponents 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 commercial forest management has not occurred on properties directly adjacent to the property. Specifically, there is residential development to the west and south (CUP 27-90) and a State Park use to the west. The residence proposed would be adjacent to several other dwellings in the area, and with the proposed fuelbreaks, the readily available fire protection, and on-site water supplies, there is an insignificant risk of fire.

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 51.020 D 4 identifies residential-single family or mobile home as a nonforest conditional use.

44.003 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. 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 commercial forestry use and the site presents no resource for wildlife or fisheries habitat nor watershed protection or recreation values.

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

not apparent.

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 commercial forestry use. The signing of a restrictive covenant will prohibit the permit holder from interfering with accepted resource management practices if they do occur 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 20-30 minutes. Access to the property to fight fire is excellent, being only 1/2 mile from a paved county maintained road. Further, the applicant has agreed to required fuelbreaks around the house to prevent the spread of fire along with developing an on-site water supply specifically for fire suppression.

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: Access to the proposal is provided via an unnamed user maintained easement road extending north from the county road (Pine Ridge Road). Access to the property is also provided from the north which the applicant stated was the preferred access. The road provides access for the proposal and to similar properties to the west and is not utilized by commercial timber operators or for other forestry uses.

FINDING: The proposal is five 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 predominate to the west and south. Low intensity agricultural use is found to the north. Idle property with no discernible management is found to south and east.

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 west are found not devoted to forestry uses as set out in state and local goals. The Hear-

ings Officer finds the predominant land use to be large-lot residential. The closest forestry use lands are to the north and east some distance of the applicants property. 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 years ago as a result of parcelization prior to the current Land Development Code and determined to constitute legal parcels. 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, 23.56 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 developed properties and adjacent to an all year stream, Larson Creek. Commercial forest practices may conflict with the residential and low intensity agricultural 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 23.56 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 Chiloquin/Agency Lake R.F.D.. 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.

7. ORDER:

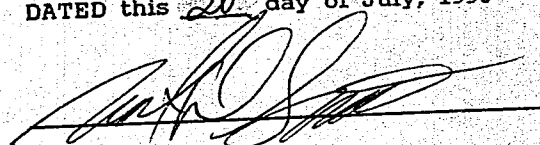
Therefore, it is ordered the request of Monte Vance for approval of C.U.P. 31-90 is approved subject to the following conditions:

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. The applicant shall file a covenant causing grantee and successors in interest to comply with the following conditions as set out on the O.D.F.W. response to this application as follows:

1. Livestock grazing will not be permitted within the riparian zone.
2. No alterations will be made to the stream channel or the riparian zone vegetation except as noted in "3" below.
3. The landowner shall retain a minimum of 90 percent of the original riparian plant community in its natural condition.

DATED this 20th day of July, 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.

STATE OF OREGON, ss.
County of Klamath

Filed for record at request of:

Klamath County
on this 24th day of July A.D., 19 90
at 11:51 o'clock AM and duly recorded
in Vol. M90 of Deeds Page 14726.
Evelyn Biehn County Clerk
By Pauline Mullendore
Deputy.

Fee, none

Return: Commissioners Journal

083507

I.D. TAG NO.

298

Local File Number

OREGON DEPARTMENT OF HUMAN RESOURCES

HEALTH DIVISION

Vital Records Unit

CERTIFICATE OF DEATH

136-

State File Number

1. DECEDENT'S NAME First: Annie Middle: Lorine Last: BARNETT		2. SEX Female	3. DATE OF DEATH (Month, Day, Year) July 16, 1990		
4. SOCIAL SECURITY NUMBER 447-10-8742	5a. AGE - Last Birthday (Years) 73	5b. Under 1 Year Mos. Days Hours	5c. Under 1 Day Mins.	6. BIRTHPLACE (City and State or Foreign Country) Pattison, Texas	7. DATE OF BIRTH (Month, Day, Year) May 29, 1917
8. WAS DECEDENT EVER IN U.S. ARMED FORCES? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
9a. PLACE OF DEATH (Check only one) <input type="checkbox"/> Hospital: <input type="checkbox"/> Inpatient <input type="checkbox"/> ER/Outpatient <input type="checkbox"/> DOA <input type="checkbox"/> Other: <input checked="" type="checkbox"/> Nursing Home <input checked="" type="checkbox"/> Decedent's Home <input type="checkbox"/> Other (Specify)					
9b. FACILITY NAME (If not institution, give street and number) 2453 Union Street			9c. CITY, TOWN, OR LOCATION OF DEATH Klamath Falls		9d. COUNTY OF DEATH Klamath
10a. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired.) Housekeeper		10b. KIND OF BUSINESS/INDUSTRY Domestic House Cleaning		11. MARITAL STATUS - Married, Never Married, Widowed, Divorced (Specify) Widowed	12. SPOUSE (If Married, Widowed) William - Barnett
13a. RESIDENCE - STATE Oregon		13b. COUNTY Klamath		13c. CITY, TOWN, OR LOCATION Klamath Falls	
13d. STREET AND NUMBER 2453 Union Street					
13e. INSIDE CITY LIMITS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		13f. ZIP CODE 97603		14. WAS DECEDENT OF HISPANIC ORIGIN? (Specify No or Yes - If yes, specify Cuban, Mexican, Puerto Rican, etc.) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Specify:	
15. RACE American Indian, Black, White, etc. (Specify) Black		16. DECEDENT'S EDUCATION (Specify only highest grade completed) Elementary/Secondary (0-12) College (11-4 or 5+) 12			
17. FATHER - NAME first middle last James W. Young		18. MOTHER - NAME first middle maiden Mattie - Walker		19. INFORMANT - NAME and relationship to deceased Audrey Williams SISTER-IN-LAW	
20a. METHOD OF DISPOSITION <input type="checkbox"/> Mausoleum <input checked="" type="checkbox"/> Burial <input type="checkbox"/> Cremation <input type="checkbox"/> Removal from State <input type="checkbox"/> Donation <input type="checkbox"/> Other (Specify)		20b. PLACE OF DISPOSITION (Name of cemetery, crematory, or other place) Eternal Hills Memorial Gardens		20c. LOCATION - City or Town, State Klamath Falls, Oregon	
21a. SIGNATURE OF FUNERAL SERVICE LICENSEE OR PERSON ACTING AS SUCH <i>Medi. Off.</i>		21b. LICENSE NUMBER (Of Licensee) 3287		22. NAME, ADDRESS AND ZIP OF FACILITY O'Hair's Funeral Chapel 515 Pine Street, Klamath Falls, OR 97601	
23. DATE FILED (Month, Day, Year) JUL 18 1990		24. REGISTRAR'S SIGNATURE <i>Grancy Kennedy</i>			
25. DID HOSPITAL REPRESENTATIVE MAKE REQUEST FOR ANATOMICAL GIFT CONSENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> N/A		26. WAS GIFT MADE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> N/A			
TO BE COMPLETED BY CERTIFYING PHYSICIAN					
27. TIME OF DEATH 11:25A M		28. WAS MEDICAL EXAMINER NOTIFIED? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
29. To the best of my knowledge, death occurred at the time, date, place and due to the cause(s) and manner stated. (Signature) <i>Charles D. Bury</i> M.D.					
30. DATE SIGNED (Month, Day, Year) July 17, 1990					
31. NAME, TITLE, ADDRESS AND ZIP OF CERTIFIER/MEDICAL EXAMINER (Type or Print) Charles D. Bury M.D. 2300 Clairmont Street Klamath Falls, Oregon 97601					
32. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)					
TO BE COMPLETED ONLY BY MEDICAL EXAMINER					
31a. TIME OF DEATH M		31b. DATE PRONOUNCED DEAD (Month, Day, Year, Hour) M			
32. On the basis of examination and/or investigation, in my opinion death occurred at the time, date, place and due to the cause(s) and manner stated. (Signature)					
33. DATE SIGNED (Month, Day, Year) COUNTY					
CONDITIONS IF ANY WHICH GIVE RISE TO IMMEDIATE CAUSE STATING THE UNDERLYING CAUSE LAST					
CAUSE OF DEATH					
36. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c). Do not enter mode of dying, e.g. Cardiac or Respiratory Arrest.					
PART I (a) <i>Unknown or Natural</i> DUE TO, OR AS A CONSEQUENCE OF:					
(b) DUE TO, OR AS A CONSEQUENCE OF:					
(c) DUE TO, OR AS A CONSEQUENCE OF:					
PART II OTHER SIGNIFICANT CONDITIONS - Conditions contributing to death but not related to cause given in PART I.					
40. MANNER OF DEATH <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Accident <input type="checkbox"/> Undetermined Manner <input type="checkbox"/> Suicide <input type="checkbox"/> Legal Intervention <input type="checkbox"/> Homicide		41a. DATE OF INJURY (Month, Day, Year)	41b. TIME OF INJURY M Yes <input type="checkbox"/> No	41c. INJURY AT WORK? Yes <input type="checkbox"/> No	41d. DESCRIBE HOW INJURY OCCURRED
41a. PLACE OF INJURY - At home, farm, street, factory, office, building, etc. (Specify)		41f. LOCATION (Street and Number or Rural Route Number, City or Town, State)			
RESERVED FOR REGISTRAR'S USE					

ORIGINAL - VITAL STATISTICS COPY

45-2 REV. 1-89

THIS IS A TRUE AND EXACT REPRODUCTION OF THE DOCUMENT OFFICIALLY REGISTERED AT THE OFFICE OF THE KLAMATH COUNTY REGISTRAR.

DATE ISSUED JUL 18 1990

DONNA A. VERLING
COUNTY REGISTRAR
KLAMATH COUNTY, OREGON

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Audrey Williams the 24th day of July A.D., 19 90 at 11:51 o'clock AM., and duly recorded in Vol. M90 of Deeds on Page 14736

Evelyn Biehn County Clerk

By *Pauline Mullender*

FEE \$8.00

Return: Audrey Williams

3618 Altamont, Klamath Falls, Or. 97603