BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 39-90 FOR
LE BEAU TO LOCATE A RESIDENCE NOT IN CONJUNCTION WITH FOREST USE

ORDER

1. NATURE OF THE REQUEST:

The applicants wish to establish a single family residence not in conjunction with forest use on 20.0 acres m/l west of pavements end, Beal Rd., east of Antelope Meadows, northern Klamath County.

The request was heard by the Hearings Officer August 17, 1990 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code Section 51.020 D 4.

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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. No live witness opposition was offered in regard to this application, and a letter from the Dept. of Forestry, exhibit "F" expressing concern was received.

3. LEGAL DESCRIPTION:

The subject property is a 5.0 acre rectangle located in the SE 1/4 Section 8, T 25S R 8E W.M.. Generally located between Hwys 31 and 97, Antelope Meadows area. T.A. 2310-15-1300.

4. RELEVANT FACTS:

A. ACCESS: The property is 1 1/2 miles west of Hwy 31, a state maintained arterial route. A county maintained paved road, Beal Rd., extends from the Hwy and provides all-weather access to the subject property.

B. FIRE PROTECTION: The property is not within a structural fire protection district. The Walker Range Patrol, the agency providing wildland fire protection, has requested a fuelbreak and independent power source for a water supply be required as conditions of approval. The applicant has 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.

C. LAND USE: The property is a parcel of approximately 20 acres of undeveloped land. The site was logged long ago and has very little healthy second volunteer growth, being heavily impacted with beetle infestation of the lodgepole pine. The adjacent lands to the north, south, and east are found not devoted to forestry uses. Rural residential use has been established on contiguous properties in all compass directions from the applicants property.

D. SEWERAGE: The applicant has selected a septic installation location in the south central portion of the property. Site specific site evaluation has been accomplished for this property and clearance issued per letter5 dated 6-25-90.

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

F. SOILS: Available 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 north, south, east and west is Forestry/Forestry. The designation of the properies 1/4 mile to the west is Rural/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 51.020 and Article 69.

6. FINDINGS:

All evidence submitted as the staff report, exhibits b-h, 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 residential development in all directions and a commercial use to the south. This proposed residence would be adjacent to twelve other dwellings in the area, and with the proposed fuelbreaks and an independent water source on the property, there is a reduced chance of fire spreading thru the properties protected by the Walker Range Patrol. The Hearings Officer specifically finds that this applicant in fact provided water which was of use in controlling a recent wildfire in this specific area, see exhibit "h".

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 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 the largest tree is only 12' high with beetle infestation being clearly apparent. The land immediately adjacent is in fact meadow land used for cattle grazing.

FINDING: The site is not large enough for legitimate forestry use and presently has no significant second growth. There is no property adjacent to the site north, south, east and west which is presently in 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 <u>not</u> within an established fire protection district. Wildland fire protection is provided by the Walker Range Patrol. Access to the property to fight fire is excellent, being on a maintained paved County road. Further, the applicant has agreed to required fuelbreaks around the house to prevent the spread of fire and will be required to establish an independent power source for the well on the property. The applicant has also provided a water pond in the immediate vicinity to provide water in case of fire as has occurred in August, 1990.

<u>44.003 C:</u> "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 the County maintained road system extending south from the state highway. The road provides access for the proposal and to similar properties in the area and is utilized by commercial timber operators or for other forestry uses.

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 in three compass directions.

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 Hearings Officer finds the predominant land use to be large-lot residential. The closest forestry use lands are far to the east. 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. He has specifically responded to inquiry regarding the potential for the use of insecticide spraying if required to control present beetle infestation and other forestry maintenance, use and production activities.

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 twelve residential uses similar to that proposed has been established in the immediate vicinity within section 16.

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, 20.0 acres, to 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 to the north, south and east.

5. The proposal considers site productivity, eliminates 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 20.0 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 not available. The owner shall adhere to the requirements outlined in Section 51.020 G of the Code, RESIDENTIAL SITING STANDARDS and provide an alternative independent power source for the domestic well to be drilled on the property so that on-site water is available to prevent the spread of fire. Impact to other rural services will be minimally impacted by the addition of another residence.

7. ORDER:

Therefore, it is ordered the request of Don and Suzanne Le Beau for approval of C.U.P. 39-90 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 forest resource use.

2. The applicant must comply with the fire safety and other siting standards of the land use code and provide an alternative independent power source for the domestic well to be drilled on the property.

DATED this 31st day of August, 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.

United States Department of Agriculture

Forest Service

Deschutes National Forest

1645 Highway 20 East
Bend, OR 97701

17664

Reply to: 6140

Date: August 11, 1990

RE: Letter of Appreciation

Dear Don,

Our sincere appreciation is extended to you for your assistance and quick response on the Finley Butte Fire. Your willingness to support firefighting efforts made the task safe, efficient and cost effective.

Continued hot and dry conditions and subsequent forest fires have put a great demand on our fire suppression resources and personnel. Your thoughtful cooperation made our job easier and contributed to the successful control of the fire.

On behalf of the entire team - THANK YOU!

Sincerely,

DAVE ANDERSON
Incident Commander

STATE OF OREGON, ss.
County of Klamath

Filed for record at request of:

Klamath County
on this 4th day of Sept. A.D., 19 90
at 1:02 o'clock P M. and duly recorded
in Vol. M90 of Deeds Page 17654.
Evelyn Biehn County Clerk
By Lauren Mullendore Deputy.

Fee, none

AUG 20 1990

Return: Commissioners Journal