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BEFORE THE BOARD OF COMMISSIONERS
KLAMATH COUNTY, OREGON

IN THE MATTER OF CLUP/ZC 10-90)
AND ADOPTION OF AN IRREVOCABLY)
COMMITTED LANDS EXCEPTION FOR)
KLAMATH CULTURE DEVELOPERS)

ORDER 91-030

SEP 19 AM 9 15

1. NATURE OF THE APPLICATION

On June 6, 1990, an application was submitted to the Klamath County Planning Department by Klamath Culture Developers requesting approval of a Comprehensive Land Use Plan amendment from Agriculture to General Commercial, zone change from Exclusive Farm Use-Cropland/Grazing (EFU-CG) to Commercial Recreation (CR), and an "irrevocably committed lands" exception. The affected property is generally located east of the Highway 97/62 intersection and west of the Williamson River, and is approximately 15 acres in size. As a result of Department of Land Conservation and Development (DLCD) concerns this application was amended and a revised application was submitted to the County for public hearing on August 14, 1990.

Additional information regarding the applicant's request and proposal is provided in Section II of the document entitled "Plan Amendment, Zone Change and Irrevocably Committed Lands Exception Request" submitted by the applicant, attached as an exhibit to this Order, and entered into the record of the County hearing.

A hearing on this application was held before the Board of County Commissioners on August 28, 1990, with the Planning Commission present and acting in an advisory role.

This application was reviewed pursuant to Articles 47 and 48 of the Klamath County Land Development Code and applicable provisions of Oregon Administrative Rule, Chapter 660, Division 4.

2. NAMES OF THOSE INVOLVED

The applicant's representative, Adkins Consulting Engineers, was present and provided testimony on behalf of the application. The Planning Department was represented by Carl Shuck, Planning Director; Kim Lundahl, Senior Planner; and the recording secretary was Karen Burg. Members of the Board of County Commissioners present included Chairman Fredricks, Commissioner Hamilton and Commissioner Lindow. The County Planning Commission, with a quorum present, participated in an advisory role. In this capacity the Commission, on a seven to two vote, recommended approval of the applicant's requests.

3. LEGAL DESCRIPTION

The subject property is generally located between State Highway 97 and the Williamson River, immediately east of the Highway 97/62 intersection, and is more specifically identified as being Lots 33, 38 and 39, Section 16, Township 35, Range 7, and Lots 2, 9 and 40, Section 21, Township 35, Range 7. The affected property is approximately 15 acres in size.

4. EXHIBITS

The following exhibits were introduced into the record of the hearing:

- A. "Plan Amendment, Zone Change and Irrevocably Committed Lands Exception Request" document (prepared and submitted by the applicant);
- B. Staff Report;
- C. Letter from DLCD
- D. Letter from Oregon Department of Fish and Wildlife
- E. Applicant maps (soil map, non-resource zoning map, mineral excavation map, and existing uses map)

4. FINDINGS OF FACT, CONCLUSIONS AND COMPLIANCE WITH APPLICABLE REVIEW CRITERIA

A Plan amendment and change of zone requires findings of fact and conclusions which support the criteria contained in Sections 47.003 and 48.003 of the Klamath County Land Development Code. Approval of an irrevocably committed exception requires findings of fact and conclusions

which document that the subject property is committed to uses other than agricultural and that agricultural use is impracticable, in accordance with Oregon Administrative Rule 660-04-028.

The following findings of fact and conclusions are hereby adopted to illustrate compliance with the above noted requirements and to support the Klamath County Board of Commissioner's decision regarding this request (applicable criteria is in bold print, followed by the findings of fact and conclusion):

ZONE CHANGE CRITERIA AND FINDINGS:

1. The change of zone is in conformance with the Comprehensive Plan, and all other provisions of the Land Development Code.

Evidence of this proposal's conformance with the Plan is provided in Section VII (C) of the applicant's submitted document. The applicant has conformed to those provisions of the Code related to review procedures (Chapter 2), hearings (Chapter 3), and land use procedures (Chapter 4). Conformance with Chapters 5 - 8 will occur as a result of site plan approval, as required by Article 41. Chapter 9 does not apply.

This proposed zone change therefore complies with this criteria.

2. The property affected by the change of zone is adequate in size and shape to facilitate those uses that are normally allowed in conjunction with such zoning.

The subject property is approximately 15 acres in size and is irregular in shape. The Commercial Recreation zone lists 19 permitted and 7 conditional uses. A cursory review of this list finds that each of the uses could be accommodated on the subject property. Additional evidence to support this finding is provided in the applicant's conceptual plan, in that 14 of the 19 permitted uses could be accommodated within the structure of the proposed project (administrative services, community recreation, cultural exhibits, parking services, postal substation, eating and drinking establishments, food and beverage sales, gasoline sales, playing fields, campground, horse keeping, lodging, resorts, and retail sales).

The proposed zone change complies with this criteria.

3. The property affected by the proposed change of zone is properly related to streets to adequately serve the type of traffic generated by such uses that may be permitted therein.

State Highway 97, a major north-south state highway corridor, serves as the western boundary of the subject property. The

applicant currently has approval for three access points to this highway. This project is not expected to generate traffic or increase traffic volumes on the highway, as the uses proposed are intended to capture existing tourist trade and traffic.

The property is properly related to streets to adequately serve the type of traffic generated by the proposed commercial development, and the zone change would therefore comply with this criteria.

4. The proposed change of zone will have no adverse effect on the appropriate use and development of abutting properties.

Existing development to the west of the subject property consists of a service station, motel and restaurant; to the north is privately held timber land; and to the east and south is the Williamson River. The conceptual plan identifies commercial development occurring toward the south and western edges of the property, with large amounts of acreage for a wastewater disposal system toward the northern "resource" lands. Given this buffering and placement of uses the proposed development of the subject property would have no adverse effect on the use and development of these abutting properties.

The proposed zone change would therefore comply with this criteria.

PLAN AMENDMENT CRITERIA AND FINDINGS:

1. The proposed change is in compliance with the Statewide Planning Goals.

Evidence of this is provided in Section VII (C) of the applicant's submitted document.

2. The proposed change is in conformance with all policies of the Klamath County Comprehensive Plan.

Evidence of this is provided in Section VII (C) of the applicant's submitted document.

3. The proposed change is supported by specific studies or other factual information which documents the public need for the change.

The applicant contends that a finding of public need for the change is required only for a "reasons" exception, and not for a

physically developed or irrevocably committed exception. Factual information which documents the committed exception and reason for the change is provided in Sections III and IV of the applicant's submitted document.

The proposed plan amendment therefore complies with this criteria.

IRREVOCABLY COMMITTED LANDS EXCEPTION FINDINGS:

A. Characteristics of the Exception Area

The subject property is situated near the junction of two major highways (US and State) and the Williamson River. The property consists of native grasses and a few Ponderosa and lodgepole pine. The general location of the existing vegetation is identified in Figure 4 (see applicant's submitted document).

According to Soil Conservation Service information this property is composed of two distinct soil types: Lobert loam (SCS class IV); and Laki loam (SCS class III). These types of soils yield 2.5 - 3 tons/acre/year of hay crops when irrigated (this property is not), and do not support rangeland vegetation suitable for grazing (Soils Survey of Klamath County, pages 187 and 189) (see Figure 5 contained in the applicant's submitted document).

In several locations on the subject property an extensive amount of earth and gravel have been removed as a result of quarrying activity, which has occurred over the past 20-years. This quarrying activity, which extracted approximately 2,000 cubic yards annually, has left a surface material which is coarse, gravelly, and absent of upper level soils necessary to support crop production or pasture grasses.

The property is relatively flat with slopes ranging from 0 -5%.

The subject property fronts US Highway 97 for a distance of approximately 950', and has three approved access points.

B. Characteristics of the Adjacent Lands

Lands to the immediate west of the subject property are fully developed to commercial use with a motel, restaurant and service station occupying approximately 8.03 acres. Further west and southwest (across US Highway 97) are a building supply store and recreational vehicle park. A 3-acre parcel, immediately north of the building supply store was recently used for the stockpiling of gravel and other materials needed in the reconstruction of the Williamson River Bridge.

To the north of the subject property is a 40-acre parcel of undeveloped land, currently planned and zoned forestry and forest/range, respectively; five smaller parcels, zoned for Exclusive Farm Use-Cropland Grazing,. These five smaller parcels average 5.06 acres and have three residences constructed on them. In addition, a 2.08 acre parcel, zoned for commercial recreation use is situated adjacent to the subject property's northwest border.

The Williamson River, a class I stream, serves as the subject property's eastern and southern border. Immediately east and beyond the river is property presently zoned for heavy industrial use.

C. The Relationship Between the Exception Area and the Adjacent Lands

The subject property is physically situated between properties which are currently developed or planned for non-resource use on all but the north and northeast border. Given that the "resource" zoned parcels referred to near the northeast border average five acres in size, are all in separate ownership, and show no physical or natural characteristics which suggest suitability for farm use, it may be logical to conclude that the only adjacent land devoted to "resource" use occupies just 455 feet of the subject property's perimeter (see Figure 7 contained in the applicant's submitted document).

Highway access and visibility at an intersection which reflects regional and statewide importance (only direct year round entrance to Crater Lake from US Highway 97) would further suggest the logical use of this property for highway and recreation related development.

D. Other Relevant Factors set forth in OAR 660-04-028 (6)

1. Existing Adjacent Uses

To the immediate west of the subject property is located a motel, service station and restaurant/gift shop. Further west, across State Highway 97, is a building supply store and recreational vehicle park (Williamson River Estates). A single family residence is located near the northwest corner of the subject property.

The Williamson River borders the subject property along the east and southern edges.

To the north are seven individually owned parcels of land ranging in size from 41.2 to 2.38 acres. These properties are covered with a scattering of Ponderosa and lodgepole pine, and native grasses. Three of the seven parcels are occupied by single family residences.

2. Existing Public Facilities and Services

Existing public facilities and services consist of a Rural fire protection district (Chiloquin/Agency Lake), police (State and County), and school district (Klamath County). There are currently no water or sewage services provided to the subject property. Adjacent commercial development obtains water and sewer service through private wells and septic systems.

3. Parcel Size and Ownership Patterns

The subject property is approximately 15 acres in size and is held in single ownership. Information regarding adjacent parcel sizes and ownership patterns is provided in preceding sections of this document. It should be noted that "physically developed" exceptions have been taken to those adjacent parcels on which "non-resource" uses are located. These exceptions were part of the revised Klamath County Comprehensive Plan adopted in February, 1984 and subsequently acknowledged by the Land Conservation and Development Commission in August, 1984.

A graphic display of the surrounding ownership patterns and parcel sizes is provided on the "Ownership Map", contained in the applicant's submitted document (Figure 6).

4. Neighborhood and Regional Characteristics

The immediate neighborhood is characterized as an area which has developed due to the presence of nearby natural and man-made features. More specifically, recreational subdivisions have developed along the Williamson River to take advantage of the scenic qualities and fishing opportunities offered by the river. Highway related businesses have occurred between the Williamson River bridge and Highway 62/97 junction to capture a portion of the high volume of tourist and truck traffic trade which passes this neighborhood each day.

The region in which the subject property is located shares similar characteristics of the property's immediate neighborhood. Within a one hour drive of the subject property are numerous recreational amenities including the Williamson River, Crater Lake, Klamath Lake, Agency Lakes, national forest lands, and the proposed Pelican Butte downhill ski area. Recreational subdivisions containing several hundred lots have been developed along the eastern shore of Agency Lake and along several of the waterways in the region.

Agricultural activities occur primarily within the Fort Klamath/Wood River valley area, west of the subject property. These land holdings and operations generally average in excess of

160 acres in size with several containing over 1,000 acres. The primary crops grown in this area are alfalfa and other grasses.

The nearest full service community to the subject property is Chiloquin, located approximately seven miles north.

5. Natural or Man-Made Features Separating the Exception Area from Adjacent Resource Land

The subject property would be physically separated from resource lands located to the north by the construction of a wastewater disposal system along the subject property's northern edge. This would provide a substantial and somewhat permanent buffer between the "Forest/Range" zoned lands and Klamath Culture Developer's property.

All other lands which border the subject property are planned and zoned for non-resource uses (Highway Commercial to the west and south, and Heavy Industrial to the east) (see Figure 7 and 8).

6. Physical Development (OAR 660-04-025)

The subject property is absent any physical development, as defined in OAR 660-04-025.

7. Other Relevant Factors

As noted previously, the subject property has a history of mineral extraction activity which has contributed significantly to making farm use on this property unfeasible and impracticable (see Figure 4).

5. CONCLUSIONS AND ORDER

The Board of County Commissioners finds the applicant has satisfied the applicable review criteria as required by Klamath County code and Oregon Administrative Rules, as cited herein.

Therefore, it is ordered that the request for CLUP/ZC 9-90 is approved for an amendment of the Land Use Plan from Agricultural to General Commercial, zone change from Exclusive Farm Use-Cropland Grazing (EFU-CG) to Recreation Commercial (CR), and adoption of an irrevocably committed lands exception for the subject property.

DATED this 12 day of Sept., 1990.

Harry J. [Signature]
CHAIRMAN OF THE BOARD

[Signature]
COMMISSIONER

COMMISSIONER

Approved as to form and content:

[Signature]
Michael L. Spencer, County Counsel

NOTICE OF APPEAL RIGHTS

You are hereby notified that this decision may be appealed to the Land Use Board of Appeals (LUBA) within 21 days of the date of mailing of this Order. If you wish to appeal this decision, please contact the Klamath County Planning Department for information. Failure to act in a timely manner may affect your ability to appeal this decision.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 18th day
of Sept. A.D., 19 90 at 9:15 o'clock A.M., and duly recorded in Vol. M90
of _____ Deeds _____ on Page 18676.

FEE \$none

Evelyn Biehn, County Clerk

By *[Signature]*

Return: Commissioners Journal