

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the matter of the request)

of BRUCE & JANET FAIVRE)

CONDITIONAL USE PERMIT
 MAJOR PARTITION
 NO. CUP 58-90
 NO. MP 36-90

This matter came before Neil D. Smith, Hearings officer for Klamath County, Oregon on 14 December 1990 in the County Commissioners' Meeting Room in Klamath Falls Oregon. The Klamath County Planning Department was represented by Mr. Kim Lundahl the recording secretary was Ms. Karen Burg. The Klamath County Planning Department file and all the exhibits and other contents therein is incorporated by this reference into this matter.

The Hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related Statutes and Ordinances.

FINDINGS OF FACT

1. Those property descriptions and application information contained in the exhibits A through D are hereby made a part of the record and by this reference incorporated herein as findings of fact.
2. there has been no accommodation between the applicant and the Oregon Fish & Wildlife Department and the Oregon Department of Forestry regarding this application.
3. There has been no significant change in the topography, use, or habitation of the area since 1985 when the applicant's previous application was granted after hearing in case No. CUP 33-86 and Major Partition No. 19-86.
4. This property abuts the California State line on the South. Directly on the line in California is a developed area containing more than 600 building sites.
5. This site has been continuously occupied by the applicant and his family since 1979.
6. The site which would be partitioned from the original parcel contains a natural clearing in or near to which the petitioner's son wishes to construct a home.

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7. The persons who will occupy the proposed building are presently residing in the existing home. The occupation of the proposed building would NOT increase the population density.

8. The applicants have on at least two prior occasions prevented wildfire by extinguishing lightning caused fires and have prevented greater loss to another fire which consumed approximately 20 acres.

9. The applicants have constructed and maintain a pond of approximately .75 acre which is used in both fire control and wildlife watering.

10. There was no one who appeared at either hearing on behalf of either agency who objects to this petition. By their failure to appear the hearings officer was unable to inquire or adduce any testimony contrary to that put into the record by the petitioner. Specifically the hearings officer would have had the witnesses address the following issues:

- (a) inquiry into the specific items within the review criteria applicable here.
- (b) inquiry into the issues raised by applicant's attorney's letter dated 10 December 1990-[exhibit D], and read into the record.
- (c) technical assistance in assessing the cost/benefit of the wildlife visa via the risk or loss involved here to wildlife.
- (d) any assistance in resolving the issues brought forth in Attorney Smith's letter and the views expressed by the agencies in opposition.

11. There appears to be sufficient evidence to meet the criteria set forth in Section 83.004 (c)(2)(a-g) as specifically set forth below.

A. "The resource or site must be disturbed to provide for reasonable use of the site, and if not disturbed, the applicant would be substantially damaged."

- (a-1) The applicant wishes to establish a separate dwelling for his son or daughter in the near proximity of the present dwelling so that the younger couple could be available to assist the applicants in their later years.
- (a-2) The disturbance to the site would be minimal, the owner estimating that the new construction would only require the removal of approximately six (6) trees.
- (a-3) Access will not change except for a one lane cinder/gravel lane to the proposed site. Which would merely extend an existing lane.
- (a-4) Applicant has had long term plans and has been previously granted a permit after hearing, the permit was allowed to lapse. Failure to grant this application would substantially damage applicant and unnecessarily frustrate his purposes and expectations.

B. "The use proposed will directly benefit the community and satisfies a substantial public need or provides for a public good which clearly outweighs retention of the resource."

- (b-1) The resource will not be affected to any substantial degree.
- (b-2) The public good has already been demonstrated by the applicants extinguishment of at least two potential wildfires.
- (b-3) The public and wildlife benefit from the water supply impounded by the applicant will directly benefit both the public and wildlife.

C. "The proposed development would not result in the loss of a rare, irretrievable, or irreplaceable natural feature or scientific opportunity, or the disturbance of a substantially unaltered natural feature or area in or adjacent to the proposed site, unless the benefit to the public from the proposed use clearly outweighs the public good from retaining the feature or area."

- (c-1) There is no rare, irretrievable or irreplaceable feature or scientific opportunity at this site.

D. "The public benefit due to the development of the particular site would be maximized when compared to the development of similar properties in the area not possessing a unique site or resource."

- (d-1) The continued use of the property here will act as a preventative measure since it will act as a buffer between the small lot development to the south and the large timber tracts to the north.

E. "The identified site or resource cannot be physically developed for an energy source or has a low potential for an energy development based upon an evaluation of environmental, social, and economic factors."

- (e-1) There is no geothermal, hydroelectric or other known power resource on this site.

F. "The proposed development will disturb or destroy only an area or areas of low preservation value, and will not significantly alter or disturb other portions of the resource area on or adjacent to the site."

- (f-1) This area is one of high preservation value threatened by development from the south. The proposed use will enhance the preservation value by preventing further encroachment of small lot development.

G." In big game winter ranges, the cumulative effect of the proposed land use change and other development in the area must be consistent with the maintenance of long term big game habitat values.

(g-1) This site is located at approximately 5,000 feet elevation. The applicant contends that ODF&W's assertion that this is big game winter range is over broad. Without the ability to gain testimony on this issue, the finding, based upon observations of the applicant that this area is one of transition between summer and winter range must stand.

(g-2) This same issue was previously decided in the prior application referred to in finding 3 above.

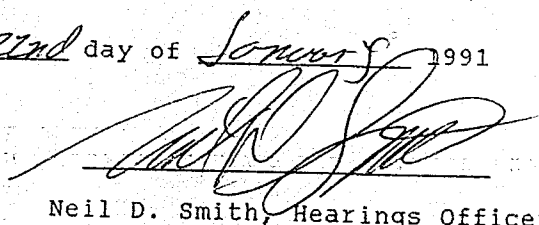
CONCLUSION

The resulting change which will be made by construction the proposed building will not have any significant effect upon the present use of the surrounding property and is not inconsistent with the uses to which the adjacent properties are being used and those to which this parcel is presently being used. The preservation of this area as a buffer between development and large timber tracts will inure to the benefit of the public and the natural resources in the area.

ORDER

Based upon the findings and conclusion herein the Conditional Use Permit and major partition herein is granted.

DATED this 22nd day of January 1991



Neil D. Smith, Hearings Officer

KLAMATH COUNTY LAND DEVELOPMENT CODE SECTION 24.007 PROVIDES:

" An Order of the Hearings Officer shall be final unless appealed within seven (7) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of this Code"

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 23rd day of Jan. A.D., 19 91 at 4:22 o'clock P M., and duly recorded in Vol. M91 of Deeds on Page 1481.

FEE none

Evelyn Biehn County Clerk

By Pauline Muelendare

Return: Commissioners Journal