

NE  
26432

BARGAIN AND SALE DEED

Vol. m91 Page 3722

KNOW ALL MEN BY THESE PRESENTS, That.....  
 WILLIAM R. LEE AND DANA M. LEE....., hereinafter called grantor,  
 for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto.....  
 JOHN M. HILDUM AND RAE J. HILDUM, husband and wife.....  
 hereinafter called grantee, and unto grantee's heirs, successors and assigns all of that certain real property with the  
 tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, situated in the County  
 of Klamath....., State of Oregon, described as follows, to-wit:

Beginning at the most Northerly corner of Lot 5, Block 47, Hillside  
 Addition to the City of Klamath Falls, Oregon, thence Southwesterly  
 along the line between Lots 4 and 5 of said Block, 50 feet; thence  
 Southeasterly parallel with the Northeasterly line of said Lot 5,  
 40 feet; thence Northeasterly parallel with the Southeasterly line  
 of said Lot 5, 50 feet to the Southwesterly line of Hillside Avenue;  
 thence Northwesterly 40 feet to the place of beginning; being the  
 Northerly 40 feet of the Northeasterly 50 feet of Lot 5, Block 47  
 Hillside Addition.

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$.....-0-

However, the actual consideration consists of or includes other property or value given or promised which is  
 the whole consideration (indicate which). (The sentence between the symbols @, if not applicable, should be deleted. See ORS 93.030.)

In construing this deed and where the context so requires, the singular includes the plural and all grammatical  
 changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

In Witness Whereof, the grantor has executed this instrument this 27th day of February....., 19 91;  
 if a corporate grantor, it has caused its name to be signed and its seal affixed by an officer or other person duly author-  
 ized to do so by order of its board of directors.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DE-  
 SCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND  
 USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING  
 THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE  
 PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR  
 COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

WILLIAM R. LEE

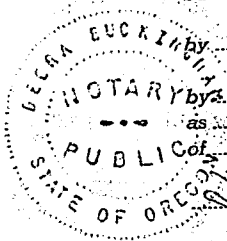
DANA M. LEE

STATE OF OREGON, County of Klamath.....) ss.

This instrument was acknowledged before me on February 27....., 19 91,

William R. Lee and Dana M. Lee

This instrument was acknowledged before me on....., 19.....,



Debra Euckeny  
 Notary Public for Oregon  
 My commission expires 12-19-92

William R. &amp; Dana M. Lee

GRANTOR'S NAME AND ADDRESS

John M. &amp; Rae J. Hildum

GRANTEE'S NAME AND ADDRESS

After recording return to:

Mr. &amp; Mrs. John M. Hildum

401 Mesa Street

Klamath Falls, Oregon 97601

NAME, ADDRESS, ZIP

Until a change is requested all tax statements shall be sent to the following address.

Same As Above

NAME, ADDRESS, ZIP

SPACE RESERVED  
FOR  
RECORDER'S USE

STATE OF OREGON,

County of Klamath.....) ss.

I certify that the within instru-  
 ment was received for record on the  
 28th day of Feb....., 19 91,  
 at 3:56 o'clock P.M., and recorded  
 in book/reel/volume No. M91..... on  
 page 3722..... or as fee/file/instru-  
 ment/microfilm/reception No. 26432  
 Record of Deeds of said county.

Witness my hand and seal of  
 County affixed.

Evelyn Biehn, County Clerk

NAME

TITLE

By Pauline Mueller, Deputy

Fee \$28.00

91 FEB 29 PM 3 56

322

BEFORE THE HEARINGS OFFICER  
KLAMATH COUNTY, OREGONIN THE MATTER OF CUP 2-90 FOR  
MARY BETH CHESNUT 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 on 25.0 acres more or less in the Sun Mountain area of Klamath County, Oregon. Applicant's description of the residence, intended use and reasons for developing the property suggest, with the submission of a forest plan, that development of the residence may be an outright permitted use under LDC Section 51.020 b 7, in that applicant intends to complete a small rustic cabin now under construction for use as a temporary residence while she and her family are on the property harvesting mature trees, thinning existing stands, removing dead and diseased trees, clearing brush, removing slash and otherwise managing the property; something she claims is impractical to do as she lives in excess of 1 1/2 hours away. Nevertheless, applicant has applied for a conditional use permit to establish a single family residence not in conjunction with forest use under LDC Section 51.020 D 4 and the application is reviewed under those criteria. Previously, this matter was before the hearings officer based upon citation 43-89 alleging that applicant initiated construction of nonforest residence without an approved conditional use permit. Based upon that citation, applicant applied for conditional use permit 2-90 to locate a residence not in conjunction with forest use. Applicant proceeded to hearing before hearings officer Richard C. Whitlock, who recommended denial. In a subsequent appeal to the Board of County Commissioners, applicant sought to introduce additional evidence which request was denied. The final order by the Board of Commissioners denying the application was entered on June 1, 1990. No appeal was taken. On remand for the consideration of the violation, applicant, without waiving the right to contest a finding of violation, sought waiver of the time limitations to apply for a new hearing to introduce evidence not available at the time of the prior hearing.

In response to hearings officer approval, the present application was filed. This request was reviewed for conformance with the Land Development Code, specifically Section 51.020 D 4.

2. The Nature of Those Who Participated. The hearings officer in review of this application was Neil D. Smith. The applicant appeared personally by and through Bradford J. Aspell of Aspell, Della-Rose & Richard, her attorney. The Planning Department was represented by Kim Lundahl, senior planner. The recording secretary was Karen Burg. The planning staff offered the record developed in conditional use permit 2-90 and an additional staff

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report developed for this hearing. Applicant testified as did her counsel and presented testimony of professional forester Robert Mezgar. No live witness opposition was offered in regard to this application, however, a letter from the Oregon Department of Forestry, exhibit G, and a letter from the Department of Land Conservation Development, exhibit H, was received.

3. Legal Description. The subject property is a 25 acre m/1 parcel located five miles west of Hwy. 97 at Milepost 236. two miles north of the intersection with the Greensprings Hwy.. The parcel is described as a portion of the SE 1/4 Section 5, Township 33 south, Range 7, east W.M.. T. A. 3307-5-500.

4. Relevant Facts.

A. Access: The property is accessed by forest road 100, a graded road providing access to a number of separate properties in the area, principally, providing timber operations. The road is not an all weather road.

B. Fire Protection: The property lies outside the area designated as either "extreme" or "high fire" danger under the wild fire hazard rating map. The property is not within the a structural fire protection district. Wildlife fire protection is provided by the Department of Forestry maintaining a station at Fort Klamath. This distance represents a response time of 18-20 minutes. Applicant indicates familiarity with "Planning For Survival", a booklet published by the United States Forest Service dealing with protection of structures from fire in forested areas, and indicates a willingness to comply with the planning standards as set forth therein, and also 50.020 G, residential siting standards in forestry zones. The applicant also will complete a well on the property and will install, at minimum, a 500 gallon holding tank and provide right of use to the U. S. Forest Service, the State Department of Forestry and any other fire protection agency to draw water from the holding tank and well for fire protection or suppression efforts.

C. Land Use: The property is a parcel of approximately 25 acres of undeveloped land constituting one of six parcels in the immediate vicinity of small ownerships (15-40 acres). The property within the surrounding area includes extensive holdings of J. Speer Ranch (Modoc Lumber Company), the Oregon State Department of Forestry and the United States Forest Service. The small parcels represent holdings created after termination of the Klamath Indian Tribe. The 25 acres in question has been owned by applicant's family since approximately 1965. Applicant reports significant timber trespass and theft occurred in approximately 1976. Applicant had the property selectively logged in 1988. Since that date, applicant and her family have been replanting the logged area, removing blow downs and cutting diseased lodge

pole pine on the property. There are two dwellings within 1/2 mile; one full time, and one part time. Applicant proposes to complete a rustic rural cabin of approximately 16 by 20 feet on the property with a partial sleeping loft and a small root cellar. Applicant describes the use as a "rustic shelter" for use as an occasional retreat, and while harvesting and thinning timber, clearing and disposing of brush, removing dead and diseased trees and while replanting the harvested areas.

D. Sewerage: The applicant has selected a septic installation location in the northeast corner of the clearing. Site specific site evaluation has not been accomplished.

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

F. Soils: The Soil Conservation Service mapping of the site indicates the property is within the "LaPine/Steiger Soil Series". This soil and its properties are set out in the publication SOIL SURVEY OF KLAMATH COUNTY, OREGON on file in the Planning Department, by and large the soils are good for tree production.

G. Water: Partially completed well exists.

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) made applicable through the Klamath County Land Development Code in effect at the time of this application; specifically Section 44.003 (Conditional Use Permits); Section 51.020 (Property Development Standards of Forestry Zone); and Article 69 (Fire Protection).

6. Evidence. All evidence submitted, including the record of violation number 43-89, conditional use permit number 2-90, this staff report and exhibits thereto marked b-h and offered testimony were considered in this order.

7. Standards of Review. "Forest uses" as defined by the Klamath County Comprehensive Plan, Policies (February 29, 1984, pp. 21-25 are: (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 and related support services; and (7) open space, buffers from noise, and visual separation of conflicting uses.

As implemented by the Klamath County Land Development Code, Section 51.020-Forestry (F), subparagraph B, defines purpose; it provides:

"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."

In furtherance of forestry purposes, LDC 51.020 B provides for 10 outright permitted uses, of which LDC 51.020 B 7 provides:

"(7) Residential - single-family, mobile home and worker residential uses as permitted for the owner, family members or employees when accessory and necessary to permitted uses."

The Klamath County Land Development Code does define "residential uses", "accessory and necessary to permitted uses". Application was not made under LDC 50.020 F and hence is not addressed.

Beyond an outright permitted use, LDC 51.020 D 4 provides nonforest residents may be approved through the Goal 4 exception process or upon finding that:

1. The improvement is located on land generally unsuitable for timber management.
2. Not needed for other forest uses.
3. That the conditional use permit criteria of LDC 51.020 E, 1 through g, have been met, and upon
4. Application of the General Conditional Use Permit criteria of LDC 44.003.

#### 8. Findings.

A. In reviewing each of the relevant criteria, the hearings officer has taken into consideration the Oregon Department of Forestry letter dated February 12, 1990, its subsequent letter of November 6, 1990 and Exhibit H of the Department of Land Conservation and Development. All three letters are generalized statements made in opposition to siting any residence in a forestry zone. The letters do not address specifics of the individual application, specifics of the land in question or site facts, the relevancy or accuracy of which can be tested. Indeed, the conclusory nature of the comments without the right of cross examination makes a property analysis difficult. On the other hand, the applicant presented from a consulting forester with education, training and work experience, a review of the application in question. He proved to be a credible witness.

Accordingly, the hearings officer relies strongly on the direct testimony given in response to questions of applicant's attorney, staff and the hearings officer himself.

B. LDC Section 44.003 provides criteria which are site and location specific. In this instance, applicants seeks to build a 16 by 20 foot cabin deck and porch, together with accessory structures, and out buildings, including a well at a particular location. Therefore, the approval of the conditional use permit can be specific to a particular portion of a larger parcel of property. The hearings officer finds, from the testimony of Robert Mezgar, who has toured the subject site, that the location of the improvement under construction is within a natural clearing in which no forest vegetation grows. Absent was a particular natural or man made cause to explain the lack of growth. For whatever reason, if trees and other forest vegetation do not grow in that location, that particular site is generally unsuitable for timber management. Additionally, no one has identified any of the other ten enumerated forest uses set forth within LDC 51.020 B identifying a higher forest need.

C. In addition, the following relevant criteria of LDC 51.020(E)(1) must be met before approval can be granted:

1. First, the use must be compatible with forest uses. LDC 51.020(E)(1). Those uses include production of trees and forest products and outdoor recreation activities. The applicant indicates her intended completion of a rural, rustic shelter which will lack access by all weather roads, or commercial electrical service. Applicant intends to use the cabin occasionally while harvesting merchantable timber, cutting and removing dead or diseased trees while cleaning up from prior logging operations and clearing brush, removing diseased lodgepole pine and the selected harvest, thinning and replanting, to protect the property from repeated timber theft and vandalism and incidentally for recreation activities. The hearings officer finds that the size of the structure, its location and a lack of public facilities and amenities and the limited improvements contemplated, that the proposed use is compatible with forest uses both on and adjacent to the property.

2. The second finding requires that the use does not interfere seriously with accepted forest by practices on adjacent lands or significantly increase the costs thereof. The Oregon Department of Forestry identifies in its two letters the following principal concerns: (a) Forest owners adjacent to residential property incur complaints or additional costs in harvesting/disposal chemical application, road building, log hauling and similar uses, and (b) Location of a residence would significantly increase the cost of slash burning because of the threat of run away fire to a home would affect burning practices.

As to the first of these two conditions, applicant has indicated a willingness to execute covenants running with the land so as to exempt adjacent forest owners from complaints of nuisance associated with normally accepted forest practices. Forester Mezgar was asked to comment upon the standard form of covenant and he felt that it should adequately protect adjacent forest properties from such claims. As to the second issue, the hearings officer finds the Department of Forestry to be wrong. As testified to by consulting forester Bob Mezgar, good forestry practices require that slash fires be located, ignited and monitored to assure that they remain under control on one's own property and not cause a forest fire. A trespass caused by an improperly constructed or maintained fire, which leaves the confines of one's own property and starts a conflagration, may subject the property owner or logging contractor to damages for forest fire suppression and damages for destruction of timber of significant amount. The hearings officers finds that the loss associated with the destruction of a forest home is modest compared to the cost of fire suppression and payment for destroyed stumpage resulting from an out of control slash fire. Accordingly, good forest burning practices are not dictated by the proximity to a dwelling and the costs associated thereto should not be affected.

3. LDC 51.020(E)(1)(C) requires that the use does not materially alter the stability of the land use pattern in the area. This application is not incidental to a comprehensive land use plan or zone change, nor does it result from a partition. The existing lot was lawfully created prior to effective land use regulation which would control the division of large parcels of forest land into smaller ones. The applicant at present has the right to use the forest and locate temporary facilities on her own property, such as a travel trailer or tent trailer. The question is whether to permit the construction of an in-ground structure as opposed to a moveable one. The hearings officer finds approval of this application will not create pressures for a resubdivision or result in inconsistent uses which will drive adjacent property owners from continuing existing forest uses, or create inconsistent pressures for urban amenities for services, but instead will assist in incidental forest management on the particular tract. The hearings officer finds that subsection C has been met.

4. LDC 51.020(E)(1)(D) requires that the hearings officer find that the land is generally unsuitable for the production for forest crops and livestock. As noted above, the hearings officer finds that the cabin in question is being constructed on a natural clearing, of which there is no historical evidence of the growth of trees. The hearings officer specifically finds that while the reason for the lack of growth of trees on the subject clearing has not been identified, the historical significance of

such fact cannot go unnoticed. If neither trees nor grass grow on the site and have not for many years without the influence and participation of man, the land must be unsuitable. This finding has been met.

5. LDC 51.020(E)(1)(E) requires a consideration of forest site productivity so as to minimize the loss of productive forest lands to an area suitable and appropriate to the needs of the proposed use. The hearings officer finds that the size of the proposed structure, accessory structures and building, including fuel breaks and set backs necessary to meet residential siting standards contained within LDC 51.020(G) will result in a coverage of .3 of 1% (.003) of the total parcel. The hearings officer finds this condition addressed.

6. LDC 50.020(E)(1)(F) requires that the application meet the standards relating to the availability of fire protection as set forth in Article 69. Article 69 deals with critical wildfire hazard areas. The subject property is not within said areas. The hearings officer finds no other rural services which may be demanded and hence does not over tax those services. The hearings officer finds that compliance with the standards of LDC 51.020 G will assure adequate fire protection.

F. The final specific condition is found at LDC 50.020(E)(1)(G) which requires that the application comply with such other conditions as the review authority considers necessary to protect forest uses. The hearings officer, considering the unique nature of the structure presently under construction and applicant's stated intention as to her uses and those uses of her family, the parcel size, prior use of it, the lack of suitability of the property for full time residential use and: (a) Applicant's agreement to provide access to her water source for fire suppression; (b) execution of covenants running with the land so as to protect the right to maintain forest practices on adjacent properties; (c) with the following special conditions that adjacent forestry uses will be protected.

G. The hearings officer further makes the following findings of fact in applying LDC Section 44.003:

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".

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 liveability; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development".

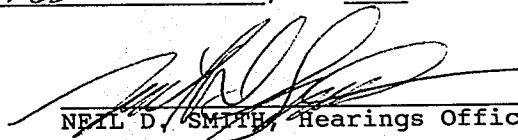
FINDING: The intended use will have a di minimus affect upon total available land and timber production based upon the condition imposed herein the structure will be limited to the size and uses proposed. With the exception of the screened in porch and deck contemplated, no additional expansion of the residential structure will be made. The hearings officer finds that with the execution of the covenants running with the land and with the existing set backs from the adjacent properties, the occasional use contemplated by the applicant and limitations placed thereon by the roads and lack of public facilities and amenities will have no adverse affect upon either the applicant's use of the forest lands or adjacent properties.

H. Order. Therefore it ordered that the conditional use permit request of Mary Beth Smith Chesnut for approval of CUP 2-90 as approved subject to the following conditions:

1. That the applicant shall file a restrictive covenant with the County Clerk, prohibiting the permit grantee, successors and interests from bringing actions concerning accepted resource management practices that may occur upon nearby lands devoted to commercial forest resource use.
2. That the applicant shall comply with fire, safety and other siting standards of the Land Use Code, shall limit the size of the structure and accessory buildings as set forth hereinabove.
3. That applicant shall provide by grant of easement, license or other instrument, the right of access to and permission to remove water from any cistern developed on the property and any well

located thereon to any public or private agency engaged in fire protection or suppression activity on or near the property.

DATED this 25<sup>th</sup> day of Feb, 1991.

  
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 from the date of mailing of this decision. Appeals must be received by the Planning Department no later than 5:00 p.m. on the 10th day or next business day when the 10th 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.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 28th day  
of Feb. A.D., 19 91 at 4:11 o'clock P M., and duly recorded in Vol. M91,  
of Deeds on Page 3723.

FEE none

Evelyn Biehn - County Clerk

By Caroline Mulholland

Return: Commissioners Journal