

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGONIN THE MATTER OF CUP 24-91 FOR VP ENTERPRISES
TO ESTABLISH A FACILITY FOR THE WHOLESALING, STORAGE
AND DISTRIBUTION OF AGRICULTURAL PRODUCTS

ORDER

1. NATURE OF THE REQUEST:

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The applicant wishes to establish a use not in conjunction with forest use, a wholesaling, storage and distribution center for agricultural products, on 40 acres m/l north of Sprague River and west of the Klamath Forest Estates. The request was heard by the Hearings Officer May 3, 1991 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code Section 55.2

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, Administrative Secretary.

3. LEGAL DESCRIPTION:

The subject property is a 40 acre parcel located north of Sprague River and west of and adjacent to the Klamath Forest Estates subdivision. The property is described as a portion of section 34, T 35S R 10E W.M., T.A. 3510-34B-1800.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed via Klamath Forest Dr. and the roadnet providing access to the Klamath Forest Estates subdivision. These roads are maintained by the Road Improvement District for the subdivision.

B. FIRE PROTECTION: The property is within the jurisdiction of the Department of Forestry and Klamath County Fire District #3 whose station is within 1/2 mile of the property.

C. LAND USE: The property is a parcel of approximately 40 acres which has been used as for low intensity agricultural use and was the site of a "boys ranch" in years past. A large home is located on the property and is the residence of the applicant. Rural residential use is the predominant use to the east and north. Limited agricultural use is found to the south and west.

D. SLOPE: Available topographic mapping indicates the property is largely level.

E. PLAN/ZONING: The plan/zone designation of the project site is Forestry Range. The rural subdivision to the north and east is zoned R-1.

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 55.2.

6. FINDINGS:

All evidence submitted as the staff report, exhibits b-f, 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 wholesaling, storage and distribution facilities are not included in the list of forest uses. The Land Development Code does, however, permit these facilities subject to conditional use findings that the site 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. With the development of fuelbreaks and the readily available on and off site fire protection, 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 44.030-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
44.030 A: "That the use complies with policies of the Comprehensive Plan."

FINDING: Section 55.230 C identifies the proposed use as a nonforest con-

ditional use.

44.0030 C: "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 significant resource for wildlife or fisheries habitat nor watershed protection or recreation values.

FINDING: The subject property has a Timber Site Class Rating of 6, thereby meeting the definition of forest land. However, the site chosen for the use is clearly not in forest production and testimony clearly indicates tree production is negligible due to the shallow soils and rocky outcrop.

FINDING: The small site to be diverted from forest uses is not large enough for legitimate forestry use and presently has no significant second growth.

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 use is within an established wildland and also an established structural fire protection district. Access to the property to fight fire is excellent, being only a few hundred feet off a district maintained graded road. Also, the applicant has agreed to required fuelbreaks around the site to prevent the spread of fire to the adjacent properties.

FINDING: Access to the proposal is provided via the roadnet providing access to the adjacent rural subdivision, Klamath Forest Estates.

B. Klamath County Land Development Code Section 55.240 - Non Forest Conditional Use Permit Criteria:

The uses conditionally permitted shall be subject to review in accordance with the following criteria:

A. The proposal is compatible with forest uses;

FINDING: The Hearings Officer finds the proposed site and the surrounding area is not devoted to forest uses. The closest forest use being about 1 mile to the west, a ranch/grazing operation. The proposed site/use is physically separated from the ranch by a series of buttes.

B. 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 are found to be devoted to rural residential use and are an acknowledged "exception area" having been platted some 30 years ago. The proposed use will not impact the existing use of the area or have any impact on forest uses.

C. The project will not materially alter the stability of the overall land use of the area;

FINDING: The site has been developed in years past to low intensity agricultural use and was a "boys ranch" for which the large residence was constructed. The proposed use, a wholesaling, storage and distribution facil-

ity at the level proposed, will not impact the stability of the area as the physical impact will be minimal over what historic use has been.

D. 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, 40.0 acres, too small to be considered for commercial forest uses. The Hearings Officer finds that other forest uses as set out in the Goal will not be compromised by the proposed use.

E. Does not apply.

F. 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: Wildland and Structural fire protection is provided by the Dept. of Forestry and Klamath County Fire District #3.

7. ORDER:

Therefore, it is ordered the request of VP Enterprises for C.U.P. 24-91 is approved subject to the following conditions:

1. The applicant will file proof of clearance to operate from the Oregon Department of Agriculture and will comply with all development conditions imposed by such agency.
2. The applicant must comply with the fire safety and other siting standards of the land use code.

DATED this 14th day of May, 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 Article 33 of the Code, together with the required fee within SEVEN 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 seventh day or next business day if the seventh 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 14th day
of May A.D., 19 91 at 10:26 o'clock AM., and duly recorded in Vol. M91
of Deeds on Page 9059.

FEE none

Evelyn Biehn County Clerk

By Pauline Muelender

Return: Commissioners Journal