

BEFORE THE HEARINGS OFFICER
KLAMATH COUNTY, OREGONIN THE MATTER OF CUP 57-92 FOR
DORTCH TO ESTABLISH A RESIDENCE NOT
IN CONJUNCTION WITH FOREST USEREVISED ORDER1. NATURE OF THE REQUEST:

The applicant wishes to establish a home as a single family residence not in conjunction with forest use on 80 acres m/1 north of Chiloquin. The request was heard by the Hearings Officer AUGUST 21, 1992 pursuant to Ordinances 44 and 45. The request was reviewed for conformance with Land Development Code Article 55.

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.

3. LEGAL DESCRIPTION:

The subject property is located east of Larken Creek, 1 1/2 miles east of Collier State Park, north of Chiloquin. The parcel is described as a portion of section 2, Township 34S, Range 7E W. M.. T. A. 3407-2-300 & 600.

4. RELEVANT FACTS:

A. ACCESS: The property is accessed by easement roads from Hwy 97.

B. FIRE PROTECTION: The property is within the Chiloquin/Agency Lake RFD, a structural fire protection district. The applicant has also proposed fuel breaks around the residence to reduce the potential of a structural fire spreading to the surrounding lands.

C. LAND USE: The property is 80 acres of undeveloped land. The site has been used for limited grazing over the last 30 years. There is a non

commercial density of trees on the property. Two parcels to the south were approved for non forest residential use in 1990.

D. SEWERAGE: The applicant indicates three septic system location have been approved.

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

F. WATER: On site well.

G. PLAN/ZONING: The plan/zone designation of the project site and properties in all compass directions is Forestry.

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 Article 55.

6. FINDINGS:

All evidence submitted as the staff report, exhibits b-e, and offered testimony were considered in this Order.

6.1 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. Evidence was adduced which showed the County Assessor has deemed this land ineligible for forest tax deferral since it is not suitable for such use because of soil and water conditions. The forest technician was contacted at the Chiloquin Ranger District and his comments were much the same as the Assessors. There was a fire labeled "Chiloquin Burn" approximately 25 years ago and nothing has been established since then even though attempts to plant were made. An examination of the land shows this area is approximately 90% meadow.

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 proposed residence is within a structural fire protection district. And with the provision of required fuelbreaks, the readily available wildland fire protection provided by the ODF and access provided, there is an insignificant risk of fire and risk to the adjacent uses.

6.2 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 is conditionally permitted in the zone in which it is proposed to be located."

FINDING: Article 55.080 sets out procedures/eligibility/criteria for non-forest dwellings:

44.030 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, Crown Pacific;
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 to the south of the property is found devoted to rural use. The remainder is in commercial resource use.

FINDING: The subject property is rated Class V for timber productivity and the site chosen for the homesite is clearly not in forest production. The only trees on the property are small pines with significant beetle kill apparent (see Ex e).

FINDING: The small site is not large enough for legitimate commercial forestry use and presently has no significant forest growth. However, nearby property is being managed as a forestry resource, and the signing of a restrictive covenant will prohibit the permit holder from interfering with accepted resource management practices 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 within an established structural fire protection district. Access to the property to fight fire is excellent, being off of an all-weather road. Further, the applicant has proposed fuelbreaks around the house to prevent the spread of fire to the adjacent properties. The threat of fire spreading to resource properties is found to be mitigated.

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 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 a user-maintained graded road. The road provides access for this parcel and properties to the north and south.

FINDING: The site is 6 miles from the nearest community, Chiloquin, and will be accessible during the winter months. The residence will not significantly increase the risk of wildfire impacts to nearby forest land or increase the danger to firefighters.

FINDING: The property is located within the Klamath County School District and will have no impact on the school system. The existence of additional residential uses within the district will slightly increase the tax base.

B. Klamath County Land Development Code Section 55.080 - Non Forest Dwellings.

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

A. 2.. The applicant shall provide documentation showing the proposed use will not interfere with forestry uses in the area.

FINDING: Rural-residential and commercial resource use dominates in all compass directions.

FINDING: The adjacent lands are found devoted to the permitted uses as set out in state and local goals/zoning regulations. The location of a non-resource home will not conflict with management practices on those lands. The permit holder must 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.

B. 1. The parcel upon which the dwelling is proposed to be located was lawfully created prior to February 5, 1990.

FINDING: The subject parcel was legally created per local ordinance prior to date set out.

B. 2. The parcel upon which the dwelling is proposed to be located is composed primarily of soils which are: b. technically capable of greater than 50 cu. feet/acre/year.

FINDING: The Hearings Officer finds that although the soil capability technically meets the definition, the evidence presented in the applicants testimony, a transcript of which is included and attached to this Order, convinces the Hearing Officer that local conditions prevent the production of greater than 50 cu. feet/acre/year. Therefore the criteria set out in 55.080

B. 2. (a) prevail.

FINDING: Nine parcels exist within a 160 acre square when centered on the center of the subject parcel.

B. 3. The parcel upon which the proposed dwelling is to be located is within a rural fire district.

FINDING: The proposed home will be within the protection of the Chiloquin/Agency Lake RFD.

C. 1. The dwelling will not force a significant change in, will not significantly increase the costs of, or will not impede farm or forest practices on nearby farm or forest land.

FINDING: The location of a non forest residence on the property will not destabilize or impede the existing land use pattern of the area as use similar to that proposed are established in the immediate vicinity.

C. 2. A written statement is recorded which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act.

FINDING: The applicants shall file a restrictive covenant with the County Clerk prohibiting the permit grantee and successors in interest from dividing the property or filing complaint concerning accepted resource management practices that may occur on adjacent or nearby lands.

C. 3. The entire parcel upon which the dwelling is to be located has been disqualified from receiving farm or forest tax deferral.

FINDING: The applicant has presented testimony indicating the Klamath County Tax Assessor has not considered this property for tax deferral due to the lack of merchantable timber which would qualify the property for tax deferral status.

C. 4. If road access to the dwelling is by a road owned and maintained by a private party or by a governmental agency, then the applicant shall provide proof of a long term road access use permit or agreement.

FINDING: The applicant is required, as a condition of approval, to demonstrate legal access to the satisfaction of the County Surveyor.

C. 5. All other applicable requirements of the Code are met.

FINDING: The applicant shall be required to demonstrate siting in conformance with the standards of Article 69, RURAL/WILDLAND FIRE SAFETY STANDARDS.

FINDING: The proposal considers site productivity, minimizes the loss of productive forest lands; and is limited to the area suitable and appropriate to the needs of the proposed use; The applicant has personally cruised and made a random spot count of trees on this parcel. He found approximately 30 very small lodgepole from 2' to 3 1/2' on about 20 acres to the south end of the parcel. There are some larger trees, about 20 Ponderosa and numerous Lodgepole, some beetle kill to the north and northwest (see exhibits marked 1-4 received at the hearing).

FINDING: Site productivity for noncommercial forest uses is found to be minimal considering the size and aspect of the parcel. No loss of productive resource lands will result. The Hearings Officer finds the commercial Forestry land base of the County will not be compromised by the permitting of nonforest home on 80 acres.

FINDING: 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 currently provided. And, the owner shall adhere to the requirements outlined in Section 55.260 of the Code,

SETBACKS FOR FIRE SAFETY AND OTHER STANDARDS. Other rural services will be minimally impacted by the addition of another residence. Access exists from the existing road.

This Hearings Officer takes note and includes by reference a letter dated August 3, 1992 from the applicant and the application dated 6-29-92 as facts considered in this matter and makes those documents a part of this order along with a transcript of the AUGUST 21 Hearing.

The Hearings Officer notes the Oregon Department of Land Conservation and Development has chosen to submit a FAX which was dated 8-20-92 at 13:12 P.M. objecting to this Conditional Use Permit. The Hearings Officer considered the objections contained therein but must give weight to those objections which are appropriate. It is further noted this document was submitted approximately 3 1/2 hours prior to the scheduled hearing time. Such practices do not give the applicant sufficient time to gather information to refute any item which may need research nor does it give him time to find independent witnesses to present evidence. Although there is not the formal rules of evidence required in hearing these matters there is a basic constitutional due process and fairness requirement that those who oppose an application at least give timely notice there is opposition. It is further found the DLCD did not produce any witnesses who could be confronted or examined by the applicant. It appears the basis for the objection is consultation of soil maps and other secondary information while the applicant has examined the actual site and submitted photographs and oral statements from

those who are most familiar with the actual site.

Based on the above and the detailed testimony given at the hearing the greater weight is given to the applicants testimony and exhibits, even though the witness was closely examined regarding the objections of the DLCD.

7. ORDER:

Therefore, it is ordered the request of DORTCH for approval of C.U.P. 57-92 is approved subject to the following conditions:

1. The applicants shall file a restrictive covenant with the County Clerk prohibiting the permit grantee and successors in interest from dividing the property or filing complaint concerning accepted resource management practices that may occur on nearby lands devoted to commercial resource use.
2. The applicant must comply with the fire safety and other siting standards of the land use code.
3. The applicant must demonstrate legal access to the satisfaction of the County Surveyor prior to the issuance of a development permit.

4. The applicant must provide proof of clearance from the Environmental Health Services Division, and Building Dept. within two years following the date of this order, or obtain an extension of time, or this approval will become null and void.

DATED this 16th day of SEPTEMBER, 1992



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.

CONDITIONAL USE PERMIT
APPLICATION

NON FOREST
HOME

20803

1. APPLICANT:

Name BOB A. DORTCH Phone 884-1343
Address 4729 South Sixth St., Klamath Falls, Oregon 97603

LEGAL LANDOWNER (if different from above):

Name Torrence R. and Tina Parker Phone (310) 377-7646
Address 27 Mala Lane, Rancho Palos Verdes, Calif. 90274

2. SPECIFIC PROPERTY DESCRIPTION:

Section 2 Township 34S Range 07E WM
Tax Lot Number Portion of Tax Lots 300 and 600 (See attached lot line adjustment)
Street Address None
Subdivision None Lot Block
Legal Description See attached

General Location Adjacent to Larsen (Larken) Creek and approx. 1 1/2 miles due east of Collier State Park and approx. 3/8 miles up-stream from the confluence of Larsen Creek & Williamson River.
Lot or Parcel Size 80 acres.

* * * * * FOR PLANNING DEPARTMENT USE ONLY * * * * *

FILE REFERENCE NO. CUP 57-92 FILE REFERENCE NAME DORTCH

DATE RECEIVED 7-17-92 BY KIM DATE COMPLETE

FEE 300 RECEIPT NUMBER 5573 REVIEW DATE 9-21-92 H.O. (Kim)

EX. C

3. GENERAL PROPERTY DESCRIPTION:

Zone: "F" Forestry

Current Use: SEE NARRATIVE ENTITLED "CURRENT USE"

Physical Character: The site is predominately level to slightly rolling with large treeless meadows especially along Larsen Creek. There are very few trees on the property with the largest number being Lodge Pole Pine and concentrated in the northerly part where they are sparse and widely spaced. Some aspens are present in the southeasterly portion of property. Soil is mostly pumice.

Water: Existing well drilled in 1976 Septic tank & drainfield approved by Sewerage, D.E.O. in 1978 (Approvals attached)

Fire District: Chiloquin Agency Lake Fire District.

Irrigation District: NONE

Road Access: Via U.S. Forest Service Access roads (See attached letter)

4. SURROUNDING PROPERTY:

Describe buildings and land uses on adjacent property and give their approximate distance from your property lines.

Land to the full length of north boundary is private but unimproved. Forest Service begins approx. 450 feet north of subject property. Land to the east is private on portion and Forest Service on remainder and is unimproved. Land to the south is private but unimproved. Tax Lot 700 to southwest is cleared but otherwise unimproved. Tax Lot 800 to southwest has house and outbuildings approx. 400 feet from creek boundary. Tax Lot 900 to southwest has house and outbuildings approx. 350 feet from creek boundary. Land uses on developed properties generally to the southwest are almost identical to proposed land use of subject property. Land uses on adjacent unimproved properties are unimproved pasture to the south, reforested land to east belonging to Forest Service and unimproved pasture to east on private land. Property to the north is lightly forested Lodge Pole Pine with some Ponderosa Pine but otherwise idle. Property to the west is Forest Service.

NARRATIVE OF CURRENT USE, ITEM #3 ON APPLICATION

The current owners of the subject property began negotiations to purchase this property in 1978 with the intentions of establishing a residence and small hobby ranch on the site. The property already had the domestic well drilled, obviously for residential use in 1976 and the property was approved for septic tanks and drain fields in three locations on the property in 1978 (see attached well log and D.E.Q. approvals. In the past three decades, the property has occasionally been grazed with cattle but since the Chiloquin Burn in about 1960, there has ^{not} been nor is there now any substantial number of trees on the property. There is a small scattering of trees on the southeast corner of the property consisting of mostly Aspens and a small sparse scattering of mostly Lodge Pole Pine with a few Ponderosa in the northwesterly portion of the property where the improvements are proposed (see attached aerial photo). The trees are widely spaced and do not present a spacing conducive to the spread of wildfire. Most of the property is sub-irrigated meadow which will continue to be used for grazing of cattle. It should be noted that the predominate soil in the area is of a pumice nature and that there is a noticeable absence of reproductive forest growth. Part of the development plan for this property would be to try to re-establish forest growth on this property in areas with soil conditions conducive to such an endeavor. Most of the property, however, will remain as grazing land as it now is.

5. DESCRIBE YOUR DEVELOPMENT PROPOSAL:

Plans are to build a log house and detached garage/workshop substantially in conformance with the attached plan in a location as shown on the attached site plan which is in one of the areas already approved by D.E.Q. for septic tank & drainfield and nearby the well which is already drilled. From the well to the house, all electrical lines and telephone lines will be underground. House will be sited well away from any groups of trees and all flammable brush and undergrowth will be removed from a prudent distance from the house and fire retardant vegetation will be planted. House will have a metal roof as will the shop. Although the trees are sparse on this property, the house will be sited in such a manner as to screen it from view of houses on adjacent parcels. Commitments have been obtained from P.P.&L. to extend power to the site and the necessary easements have been obtained. Access has been obtained to provide three access directions, one from an adjacent land owner and two through U.S.F.S. land to provide emergency evacuation if necessary. The dwelling will be Log Construction similar to the home shown on the annexed house plan but will have either metal or tile roof. The house will be similar to and compatible with the log home directly across the creek to the west and with numerous other log homes in the immediate area. Trees in the area are scattered or absent as can be seen on the attached photos, therefore, the development proposal will present no fire threat to surrounding properties nor should the surrounding property present a fire threat to the subject property. (see photos and aerial photo).

6. DESCRIBE HOW YOUR PROPOSAL WILL BE COMPATIBLE WITH SURROUNDING LAND USES:

The band of property approx. a mile wide on the easterly side of the Williamson River extending from the Town of Chilocuin, northward, to the subject property has, for the most part, been divided into small tracts ranging from about an acre in size (Woodland Park) to tracts of approx. 100 ac. in size with the majority being in the smaller tracts of 10 to 30 acres. Most of these small tracts have been improved as small hobby ranches with dwellings and outbuildings. Many of the dwellings are log home construction, very well constructed that fit in well with the semi-woodland surroundings. The house directly across Larken Creek from the Subject Property is such a Log Home. The house being proposed in this application is also such a log home as shown on the accompanying house plan. The subject home will be sited on a parcel of land larger than the prevailing parcel size in the area except for Forest Service and State land but the construction of the planned improvements will be extremely typical of many of the log homes in the immediate area. There is only one other undeveloped parcel north of the subject property before U.S.F.S. land.

7. I, THE UNDERSIGNED APPLICANT CERTIFY THAT THE STATEMENTS AND INFORMATION CONTAINED IN THIS APPLICATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNED: Bob A. J. Jotter DATE: 6/22/92

8. I (WE), THE UNDERSIGNED LEGAL OWNER(S) OR CONTRACT PURCHASER(S) OF THE SUBJECT PROPERTY, AUTHORIZE THE PERSON LISTED AS THE APPLICANT ON THIS APPLICATION TO ACT IN MY (OUR) PLACE, AND TO APPEAR AS MY (OUR) AGENT WITH RESPECT TO THIS APPLICATION.

SIGNED: Therence R. Pugh DATE: 7/2/92
Jana Pugh

Klamath County Planning Department
Court House, 334 Main St.
Klamath Falls, Oregon 97601



Aug. 3, 1992

20867

mailed to
Ding White
8-6-92

Gentlemen,

With regards to My Application for a Conditional Use Permit to allow a Non-Forest Dwelling on an "F" Zoned parcel situated in Section 2 T34S R07E W4 near the conjunction of Larken Creek with the Williamson River, I offer the following in connection with Section 55.080-B-2-(a) of the Land Use Code.

It should be pointed out that the Subject Property was within the limits of what is commonly known as the "Chiloquin Burn" or the "Cave Mountain Burn" which was a significant fire that occurred in the area in approx. 1961 or 1962, about 30 years ago. Although this burn started at the Chiloquin dump far to the south and extended further to the north in the higher elevations, the burn terminated at this property in its' northward advance in the lower elevations primarily because of the sparse timber growth and relative absence of significant quantities of undergrowth.

An examination of the property will reveal a notable absence of burned snags or stumps simply because this property does not now have nor has it ever had any significant volume of timber growing on the property except perhaps a sparse growth of Lodge Pole Pine in the extreme northwest corner of the property covering approx. 10% or less of the total parcel.

The soil conditions on the Subject property is predominately pumice, very coarse in texture and very susceptible to frost heave in the fall and early winter each year. Soils subject to this type of frost heaving combined with the soil's poor water retaining characteristics, render the property unable to allow seedlings to root and grow. The area is also in a high rodent populated area which further discourages seedling propagation. As mentioned earlier, an inspection of the property will reveal a notable absence of reproductive growth after 30 years since the "Burn". One will notice, on the property, that outside the meadows, even on level ground, one has difficulty traversing the property in a vehicle without four-wheel drive because the soil is flocculated or "puffed up" from the previous winter's frost heave. This type of condition makes it almost impossible for Conifer seedlings to properly develop.

Conditions on the Subject property render it incapable of producing 50 cubic feet/acre/year as can be readily observed on the site from the almost total absence of tree growth on over 90% of the site.

Attached is a map upon which I have plotted a 160 acre square centered on the Subject property. As you can see, there are nine (9) other parcels in addition to the subject parcel located in the 160 ac. square. They are numbered by me as follows: (1) Lot R3407 00200-00400; (2) R3407-00200-00500; (3) R3407-00200-00700; (4) R3407-00200-00800; (5) R3407-00200-00300; (6) R3407-00200-00200; (7) R3407-00200-00900; (8) R3407-01100-00200 (9) R3407-01100-0300.

I hope the above addresses the Code adequately. If not, please don't hesitate in contacting me.

Very Truly Yours,

Bob A. Dortch
4729 So. Sixth St.
Klamath Falls, Or. 97603

Ex.E

861

This unit is made solely for the purpose of assisting in locating said premises and the company has no liability for variations, if any, in dimensions and location ascertained by actual survey.

MOUNTAIN TITLE COMPANY
of Klamath County

(2)

(2)

149

(2)

(3)

(4)

(2)

(3)

(2)

117

149

117

SCALE 1:25000

JUL 1 92 11:22 AM

This plan is made solely for the purpose of assisting in locating said premises and the company has no liability for variations, if any, in dimensions and location ascertained by actual survey.

208C8

HEARINGS OFFICER HEARING

August 21, 1992

Present: Neil Smith, Hearings Officer
Kim Lundahl, Senior Planner
Karen Burg, Recording Secretary

This is a transcript of Item #2 of above hearing, Conditional Use Permit 57-92 for Bob Dortch

The Hearings Officer read the ORS 197.763 statutory notice at the outset of the hearing.

NEIL SMITH: Item #2 is a Conditional Use Permit for Bob Dortch. I would like to comment, incidentally, Mr. Dortch, that I have read your application and find it to be extremely thorough and very well set out and explained. I do note, however, that the DLCD has decided to pick on it. We will have to pursue that matter. May we have a staff report, please.

KIM LUNDAHL: Mr. Dortch wishes to establish a home not in conjunction with forest use on 80 acres. The property itself is located east of Larken Creek which in turn is about a mile and a half east of Collier Park north of Chiloquin. The zoning of the property is Forestry, and it does have a Class V timber rating. It is within the Chiloquin/Agency Lake Rural Fire District which is kind of unusual for Forestry zoned property, but it does comply with that provision of the Code. This application came to the Department on July 17, and was transmitted per the usual channels up to the agencies including the DLCD. I received a call from Doug White who is our plan reviewer for Klamath County, and he requested that we apply what they call the 160 acre block rule to this property. I did contact Mr. Dortch about this, and he did do a very good job of complying with this request in his letter dated August 3rd with a nice exhibit showing how things were done and how they complied. We sent this up to the DLCD on August 6th, and were fat, dumb, and happy and thought this would make them happy. Yesterday we received a fax from the DLCD dated August 20 which if you read it seems like they've never received anything from Mr. Dortch or his application. We're standing with our recommendation for approval; however, Mr. Dortch is quite ready and willing to discuss how his August 3rd letter can be incorporated into the order and plus some other items that he's discovered over the time which he feels will make a better case for a non-forest use on this property. Again, DLCD are the only people that have participated in this application. We've included an eight page order recommending that you do approve this application, and we'd like to go ahead with it today upon that basis.

NEIL SMITH: I certainly have no problem with proceeding on that. Mr. Dortch, I have read both your application and this August 3rd letter. This morning I was given a copy of the fax that was sent down by DLCD. Have you seen that letter?

BOB DORTCH: Yes.

NEIL SMITH: Have you anything to say that you would like to add or respond to that?

BOB DORTCH: Yes.

Bob Dortch
3039 Front Street
Klamath Falls, OR 97603

Mr. Dortch was administered the oath and responded, "I do."

NEIL SMITH: Mr. Dortch, before you begin, I wonder if in fact you recognize me?

BOB DORTCH: Sure, you bet.

NEIL SMITH: Let's clear the record up, it has been some 10 years probably since we have spoken, is that not correct?

BOB DORTCH: I was here in this room when you were the Hearings Officer, but actually I think it's been more like 15 years. This was before I went to Alaska.

NEIL SMITH: And there's no personal connection between yourself and myself in regard to this application?

BOB DORTCH: None.

NEIL SMITH: Do you have any objection to my hearing this matter?

BOB DORTCH: Absolutely none.

NEIL SMITH: Now let's get on with it now that the record is clear.

BOB DORTCH: First of all, I suppose I would like to somehow assure that my letter of 8-3-92 is incorporated into the order because I feel that I fairly well addressed the issues raised by DLCD. Apparently they either didn't receive it or didn't pay any attention to it. My letter was in part written from information that I gathered from about a one hour conversation with the reforestation technician of the Chiloquin Ranger District with the Winema National Forest, specifically, their activities to the north and to the east of this property where they have attempted to reestablish Lodgepole pine. There is a stand of this reprod growth to the north and to the east. It is not Ponderosa pine which of course is a higher product if you will than Lodgepole pine because of the soil conditions, and what I found upon examination of the site and also talking with him is that the higher you get to the east and the higher you get in elevation, the better the reproduction seems to be catching on. I had indications that this replanting should have been in the neighborhood of five to six feet high where in fact it's ranging, the very smallest ones are about two feet and probably the tallest ones are about four or five feet.

Hearings Officer Hearing 8-21-92
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NEIL SMITH: Now are you talking about the Ponderosa or the Lodgepole?

BOB DORTCH: No, there is no reproduction of the Ponderosa Pine. This is off of the property on the Forest Service property to the north and to the east, primarily to the east near the northeast corner of the property is where I was looking. They also have signed the area. What I mean by signed is they have put signs all up I guess warning you to watch your pets because they have had a severe rodent problem with that reproduction so they have entered into some type of rodent control. Other than the little plastic things they put around the trees, they may have...I don't know what all they do, but I did discuss with the reforestation technician some of the problems that they do have with that soil out there, and I incorporated his comments into my letter specifically about the frost heave. And also frost heave is mentioned in the same sections on page 78 and 80 of the letter that came down late yesterday afternoon on the eve of this hearing where if you read on further, they talk about areas of these soil classifications which I challenge the specifics of the soil classifications because those lines can be off. They're done by aerial photographs. But at any rate, they do mention that when the soil is disturbed by fires, logging operations, and what not, they do talk about introductions of new species, etc. I think talking mainly of brushes and what not because of fertility problems with the soil, especially following a fire. This fire was 30 years ago.

What I would like to do is I have four pictures here in addition to the pictures that I've already submitted. I hope I don't have too many repeats. I guess the proof of the pudding is that it's been 30 years plus, and the reason I center on the 30 years is that's about when that fire was. There wasn't much timber on this property even before that fire occurred, but certainly that can be used as a bench mark. In these four pictures that I'm going to give you, I've marked them on the back as 1-4. Picture number one is near the center of the property looking north. You can see all the way to the north boundary. There's no trees in the way. There's none there, hardly any stumps. As you can see, most of it is meadow. In my August 3rd letter, I referred to a small wooded parcel up near the northwest corner of the property. This is down in the meadow looking northwest toward that wooded parcel, and you can see the spacing on the trees that are in there, and there are certainly less than 100 trees to the acre which I will refer to the significance of that here in a moment. That's picture number two. Picture number three is the edge of the same meadow looking north also. I think that you can tell that predominantly these trees are Lodgepole, not Ponderosa, but there a couple of Ponderosas up in that corner only. And this says it all. This is the edge of the meadow up near the northwest portion of the property where there is a small patch of trees. This is looking south to southeast but predominantly south down the full length of the property. You can see corner to corner. If you put a flag on the fence corners at both southerly corners, you can see them. Again, a picture is worth a thousand words. If I had had time, I would have brought somebody here, either an agronomist or a forester, and I think he would have agreed with me as to the ability of this property to grow timber without a great deal of hands on effort, maybe even as a detriment to better uses, but since I didn't find out about this letter until 4 o'clock yesterday afternoon, obviously I couldn't line anybody up to be here. However...

NEIL SMITH: Well, I would like to comment for the record that DLCD by sending these faxes down does not give either the Hearings Officer or the party applying for this any opportunity to rebut their allegations. Since they choose not to appear and they choose not to send anyone here to offer any testimony to the contrary, I will certainly give more weight to what testimony you have to give than what they have given.

BOB DORTCH: Thank you. I did, however, yesterday afternoon at fifteen minutes before closing time, come in to the tax assessor's office here and I spoke with Gary Freitag. In fact, he offered to come up here if you think it's necessary, and I would basically swear which I already have that these pictures are pictures of the property. Based on that because he's not specifically familiar with this parcel, although he is familiar with the area, he would tell you that this property is ineligible for forest use on the taxation. The property is currently appraised by the Assessor's Office at approximately \$1,000 per acre. The taxes on this particular 80 acres are about \$1,840 a year. He would not let us put it into a reforestation program or forestry program because it certainly does not have 100 trees to the acre or merchantable timber. It does not have 100 trees to the acre period. Even, I think, the most dense trees on this property which is again up near the northwest corner won't be 100 trees per acre. There are certainly 60 acres of this that don't have for all practical purposes any trees on it. There are some aspen trees down near the southeast corner that you can see from all the way up at the north end. But anyway, it is ineligible to put into a reforestation program. If Weyerhaeuser had to pay taxes on property at this rate, we wouldn't have any budget problems.

I'd again like to point out that the Forest Service in what efforts they have made to reforest that area to the east have planted Lodgepole and not Ponderosa pine which the letter of last night that was faxed down seems insist on. I've already mentioned the frost heave, the rodent control, and referencing the SCS soils manual that if you go on a little bit further, it tells you what happens on those two pages, pages 78 and 80 of the southern section of the manual about burns and prior logging practices. As far as their comment about how we prove that this won't have any adverse affects on allowable uses on adjoining property, we agree to enter into a covenant with the County, the State, the Forest Service, that we won't interfere with any allowable practices on the neighboring lands. We're not asking to build any additional roads that will interfere with those logging practices. We have no plans nor can we foresee in any way how we would interfere with the allowable practices on the adjoining land. We will enter into a contract which is a covenant that we won't. It's kind of a difficult thing to prove that you won't. It's a negative application here. If a question could be raised as to how we would interfere with it, then maybe I could respond to that, but I can't even think of a way that we would interfere with it. Certainly, no additional roads to be built, no complaining about the noise. We'll enter into a covenant and record it as to our posture with regard to allowable uses. Logging equipment, we understand that.

NEIL SMITH: I might point out to you and I assume that you have received a copy of the proposed order in this matter, the first item is that you will file a restrictive covenant with the clerk that you won't divide it or file a complaint concerning accepted resources management practices that

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may occur on nearby lands devoted to commercial resource use. You have no problem with that?

BOB DORTCH: No, I don't. DLCD must not have read that because they bring that up again on their fax letter.

NEIL SMITH: Yes, I wondered also about it. Mr. Dortch, it appears to me, I'm looking at photographs 1, 2, and 3, and even 4, all of your photographs seem to show that there looks like a substantial amount of beetle kill up in there.

BOB DORTCH: There are some dead trees up in the area where there are trees.

NEIL SMITH: And I also notice that some of these trees, one of which appears to be a Ponderosa, it's a little hard to tell from the photograph, is also dead or dying. Would you attribute that the drought conditions?

BOB DORTCH: I certainly think the drought conditions have a bearing on that. Even their ability to withstand beetle infestation of course is diminished during these kind of conditions. I feel comfortable that in that regard the use that we're asking for on this property will improve that situation. You've all seen what happens if you do get a beetle infestation where the trees are weakened and not able to resist that and no one takes any steps to prevent the spread of that. Irish Bend subdivision is a good example.

NEIL SMITH: I would also like for you to explain for me, this appears to be mostly meadow land.

BOB DORTCH: This property is mostly open land. That's the whole point that I've tried to make is it is meadow and brush. There's brush on the higher plateaus.

NEIL SMITH: Have you any evidence from the forester or anyone who is familiar with that area that this was a meadow prior to this Chiloquin burn?

BOB DORTCH: There aren't many foresters around here that have been around here longer than me. In fact, I surveyed this property back in 1974, and, of course, that was after the burn.

NEIL SMITH: At the time you surveyed it, were there stumps and snags on it?

BOB DORTCH: There were some, but not many. You can drive if you don't mind scratching your paint up, you can even drive out through the brush. You're not going to run over anything. Right along the edge of the meadow, there's a few little downed logs, but they've been down a long time.

NEIL SMITH: This parcel that you're purchasing, do you know whether that parcel was created before 1990?

BOB DORTCH: The parent parcel was created before 1990. We applied for and received a boundary line adjustment with the adjoining property, and there was a boundary line adjustment, but the parcel, itself, yes was created probably about 1980 or even sooner.

NEIL SMITH: After your discussion with the forest technician in the Chiloquin area who is familiar with this area, did he agree that you would grow less than 50 cubic feet per acre per year.

BOB DORTCH: He didn't agree because quite honestly I didn't pose that question to him. This was quite amazing to me that anybody would even suggest that it would grow more than 50 cubic feet per acre. That's a lot of wood.

NEIL SMITH: Have they ever tried to plant on that parcel do you know?

BOB DORTCH: Not that I'm aware of. There are a few seedlings. I went up there two Sundays ago. I was going to actually count these trees. I actually got through about a fourth of the property and I started down at the southeast corner, and I don't know, there were 12 of 14 little trees like this down there aside from the Aspens, and then as I started going along this bench and what not, there are a few little ones like this. I think I had counted 37 and I said I'm not going to count these.

NEIL SMITH: Were they Ponderosas or Lodgepole?

BOB DORTCH: They were all Lodgepole.

NEIL SMITH: Fifty cubic feet a year of Lodgepole a year would take an awful lot of trees, wouldn't it?

BOB DORTCH: Yes. Plus even the criteria for forestation taxation deferrment is 100 trees an acre. That's a tree every 20 feet. The thickest part of this doesn't have 100 trees per acre, and that's only 10 or 15 acres of this up in the northwest corner.

NEIL SMITH: For the record, and I apologize to the persons who are waiting for their matter to be heard, but I think that we'd better make a rather complete record here. I'm looking at the review criteria on 55.030, non-forest dwellings. A sets forth the procedures and it simply sets forth that the review shall be done (tape change) ...you have met #2 and shown that the dwelling won't interfere with forest operations in the area. I note from these photographs and the photographs that you included in your initial application that this is a meadow, not a forest, and from what you have said so far, apparently it has been a meadow for as long as you have been familiar with the property, and that's been at least 20 years.

BOB DORTCH: Well what is showing up in the photographs as meadow is in fact meadow and I think was even older than me. There up above that is maybe a six or eight foot rise to the east then it flattens out again. That's mostly brush and pummy.

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NEIL SMITH: That is shown clearly in your photograph #3, and we will incorporate these photographs in the record in this matter. We've already discussed that this, at least the parent parcel to this was established before 1990. We have, I think, discussed at incredible length this 50 cubic feet per year per acre requirement in 2A. Item #3, the parcel upon which the proposed dwelling is to be located is within a rural fire protection district. I believe that the staff report shows that in fact it is in the Chiloquin/Agency Lake Rural Fire Department protection area. In C of the review criteria, based on the information that has been set forth here today, I find that it will not force significant change in, nor will it significantly increase the cost of any accepted farm or forest practices on nearby land. There is as a condition of this order a covenant that will run with the land that you will not, nor will your successors in interest interfere in any way with normal and accepted forest practices. It has been dis-qualified quite clearly from the evidence this morning from receiving forest tax deferral.

BOB DORTCH: To my knowledge, it has never been in tax deferral because Mr. Freitag says he would not put it in there, so it hasn't been dis-qualified per se by the tax office, they just won't consider putting it in. It's obviously taxed as a rural parcel to justify that type of value by a government body, the Assessor's Office.

NEIL SMITH: And I believe as part of the order, I may be mistaken here, you are required to file, no, we will have to add that you do have long-term road access to this property. That said, I don't know of any further information that is required. I will order that the letter dated August 3rd and the exhibit attached thereto be incorporated as an exhibit to this order and made part of the order. In regard to the letter of August 20th from the DLCD, I believe that we have taken each item and closely examined it. I find from the testimony here which is uncontroverted that in fact you meet each and every matter set forth in that letter. That being the case, we will modify the order somewhat as written so that we can accomplish these matters, and then I will grant the Conditional Use Permit. Thank you, Mr. Dortch.

Hearing continued on with remainder of agenda items.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 11th day
of Sept. A.D. 19 92 at 2:44 o'clock P M., and duly recorded in Vol. M92
of Deeds on Page 20792

FEE none

Evelyn Biehn - County Clerk

By *Debra M. Mullendore*

Return: Commissioners Journal