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BEFORE THE BOARD OF COMMISSIONERS
OF KLAMATH COUNTY, OREGONIn the matter of the CLUP/ZC
2-94 for SHAMROCK DEVELOPMENT
COMPANY,

Order No. _____

1. NATURE OF THE APPLICATION: The Applicant is requesting a Comprehensive Land Use Plan and Zone Change from Forestry Range/FR to Nonresource/NR on 390 acres located southerly of the Cedar Trails subdivision on the west side of the Keno-Worden Road and south of Keno, Oregon.

2. NAMES OF THOSE INVOLVED: The applicant was represented by its President, Robert Mullen, and attorney William M. Ganong. The Planning Department was represented by J. Kim Lundahl. The recording secretary was Karen Burg. Written comments concerning this request were submitted by the Oregon Department of Forestry and by the Oregon Department of Land Conservation and Development.

3. LEGAL DESCRIPTION: The subject property is described as the SE1/4 NE1/4 NE1/4, W1/2 NE1/4 NE1/4, W1/2 NE1/4 NE1/4, NW1/4 NE1/4, S1/2 NE1/4, N1/2 SE1/4 and SE1/4 NE1/4 of Section 29; and S1/2 NW1/4, N1/2 SW1/4 of Section 28, Township 40 S., Range 8 E.W.M., Klamath County, Oregon.

4. FINDINGS OF FACT:

A. The subject property is composed of three individual

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parcels of property which were legally created pursuant to the Klamath County Comprehensive Plan and Land Use Ordinances by land partition 31-92. Parcel 1 contains 80.3 acres, Parcel 2 contains 80.5 acres, and Parcel 3 contains 230 acres. The subject property is currently zoned Forestry Range. The subject property is located east of Pearson Butte, west of the Keno-Worden Road and Parcel 3 adjoins Block 1 of Tract 1083-Cedar Trails. Cedar Trails is a legally established residential subdivision composed primarily of lots ten acres in size. The applicant was the owner-developer of the Cedar Trails Subdivision and all other subdivisions located in this general area. The trend of development in the general area has been for rural residential use.

B. The subject area lies within the Pearson Butte Medium Density Deer Winter Range. The Klamath County Comprehensive Plan provides for a minimum lot size of 80 acres in said Deer Range. A portion of the property also lies within the secondary management area of the Bear Valley Bald Eagle Winter Roost. Article 83.007 limits residential density in the secondary buffer area to one unit per twenty acres.

C. Access to the subject property is provided by easements established in conjunction with the approval of Land Partition 31-92. Improved roads provide access to each of the three individual parcels via dedicated easements sixty feet in width.

D. The property is composed of mostly barren hillsides with

slopes ranging from 5% to 35%. Vegetation on the property is composed primarily of native grasses, sage brush, and juniper.

E. Apart from its value as Deer Winter Range, no other resource use has been made of the property for many years. An attempt was made to use the property as grazing land. However, because of the sparsity of the grass produced by the land, it was uneconomical to use the property for that purpose. The applicant has a long history of cooperation with the Oregon Department of Fish and Wildlife and the U.S. Fish and Wildlife Service. The applicant was a major partner in the establishment of the Bear Valley Eagle Roost area. The subject application was reviewed by the Oregon Department of Fish and Wildlife and no objection was filed to the request by that Department.

F. The property is composed of five types of SCS soil classes. The largest component, Capona Loam, comprises 32% of the subject property and has a SCS soil class rating of IV. The next largest component is two types of Dehlinger Stoney Loam, which comprises 36% of the subject property and has a SCS rating of VII. Woodcock Association Soils make up approximately 27% of the property and have a soil class rating of VIe. Lorella Very Stoney Loam soils make up the remaining 5% of the property and have a soil class rating of VII. Of said soil groups, only the Woodcock Association Soils are suitable for the production of commercial trees and have a site class rating for that purpose of 5.

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G. Notwithstanding its

G. Notwithstanding its subclass VIe site class rating, Woodcock Association Soils are not productive agricultural soils. The soil survey of Klamath County, Oregon southern part, produced by the United States Department of Agriculture, Soil Conservation Service, which is an adopted component of Klamath County's Comprehensive Land Use Plan, provides, with respect to Woodcock Association subclass 81E in part as follows: They are mostly north facing soils of 5% to 40% slopes. The frost free season for said soils is 35 to 50 days. These soils are used mainly for timber and wildlife habitat. The Woodcock soils are not rated for either yields per acre of irrigated crops or for range land productivity. Table 7 of the SCS report which lists range land productivity of certain soils, provides in part that only soils that support range land vegetation suitable for grazing are listed. Therefore, the absence of the Woodcock Soils from said table supports the finding that they are not generally suitable for range land use.

H. The SCS survey for the Capona series provides in part that these soils are located on areas with slopes of 0% to 35%. The native vegetation of the soils is dominated by Western Juniper and Blue Bunch Wheat Grass. In areas where it can be irrigated, it will support the production of hay and other irrigated crops, although it is not a good soil for the production of potatoes. In situations such as the subject property where the slopes of the soils are significant and where it is located at a higher

elevation, the value of the Capona soils for agricultural use is significantly limited to whatever range land production can be obtained therefrom.

I. The Dehlinger and Lcrella Stoney Loams have significant limitations for either agricultural or timber uses due to their slopes, the stoney composition of the soils and other factors.

J. The subject property is within the Keno Rural Fire District. Power is available to the property from Pacific, Power and Light Company. Any residential development of the property would incorporate the use of individual residential wells and septic systems.

5. AGENCY OBJECTIONS. The Oregon Department of Forestry filed a written objection to the application which states the Agency's opinion that the subject property does not qualify as "non-resource" land as that term is defined and the County's land development code. The Department's letter states that 180 acres of the parcel have a Forest Site Class of 5. We find that allegation is not correct. The Woodcock Association Soils which compose 104 acres, or 27%, of the property do have a Class 5 Forest Site rating. However, none of the other soils which compose the property have a Forest Site rating. As is noted above, these other soils are not suitable for the production of commercial trees.

Both the Department of Forestry and the Department of Land Conservation and Development, in their comments, point out that

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over 50% of the property is composed of soils that have been classified in capability classes IV and VI. While those allegations are correct, we find that the Woodcock Soil has no farm use. As is stated above, the Woodcock Soils have neither a range land rating nor a crop yield per acre rating. In this case, the soils on the subject property have slopes that limit the possibility of irrigation and a very short growing season which prohibits any viable agricultural use of the property. DLCD's comments also note that the subject property is within the Deer Winter Range and the Bear Valley Eagle Roost Range. Those statements are correct and the Klamath County Land Development Code will limit any conflicting use on the subject property. Each of the three existing parcels comply with the minimum lot sizes required by the code for the Winter Range and the Secondary Eagle Roost Area.

6. COMPREHENSIVE PLAN CHANGE REVIEW CRITERIA. The Klamath County Land Development Code Section 49.003 sets forth the review criteria for approving a Comprehensive Land Use Plan Change. We make the following Findings of Fact and Conclusions of Law concerning said review criteria:

A. The proposed change is in compliance with the statewide planning goals. The relevant statewide planning goals in this instance are Goal 3 - Agriculture, Goal 4 - Forestry, and Goal 11 - Public Facilities and Services. The subject property is currently

planned and zoned as Forestry Range. Section 51.021 states that the purpose of the Forestry Range Zone is to promote management and conservation of lands valued primarily as wildlife habitat and range land. Section 51.002 provides that the purpose of the non-resource zone is to implement the non-resource land use designation. Lands appropriate for non-resource planning and zoning include those that have low forest site class potential are predominantly SCS soil capability class 7 and 8, are not identified as wildlife or fish habitat, are not irrigated or irrigable, and are not necessary to permit farm and forest practices to be undertaken on adjacent or nearby lands.

With respect to Goal 3 - Agriculture, it is true that the subject parcel is composed of soils that are predominantly in classes IV and VI. However, the classification of the Woodcock Soils as agricultural soils is inappropriate and incorrect with respect to the subject property. The Woodcock soils on the subject property have slopes which prevent irrigation, they have no crop or range land rating under the SCS code, and therefore, provide no agricultural benefit to the county, state or to the landowner. When the limitations of the Woodcock soils are noted, it becomes apparent that the subject property is not composed primarily of agricultural soils.

With respect to Goal IV Forestry, as is found above, the subject property is composed primarily of soils which have no

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woodland rating and are not appropriate for commercial forestry practices. The subject parcel adjoins a rural residential area. It has value as wildlife habitat, however, the large size of each of the three parcels of property involved place the property in compliance with the provisions of the Klamath County Land Development Code which prohibit conflicting uses. Therefore, any development of the property for residential use on lots 80 acres in size or larger would be in compliance with the Comprehensive Plan and Land Development Code.

With respect to Goal XI Public Facilities and Services, as is consistent with other rural lands, the subject property does not require public facilities and services other than road access and power. Both of said services are provided to the subject property and any development of the subject property in the large lots noted above will have no impact on the provisions of public services. In addition, the subject property is within the Keno Rural Fire Protection District which can and does provide fire protection services to the subject property.

As the subject property is not physically suitable for agricultural land due to limitations of the soils on the property, the limited growing season, and the topography of the property, and because the land is predominantly composed of nonforest soils, we find that the subject request is in compliance with Klamath County's Comprehensive Plan and Statewide Planning Goals.

B. The proposed change is in conformance with the policies of the Klamath County Comprehensive Plan. The subject application has been submitted to review by the Klamath County Planning Department Staff. The Staff has reviewed the proposed request and possible uses of the property under the nonresource zone against the policies contained in Klamath County's Comprehensive Plan and has found that the proposed plan change is in conformance with the review criteria. The Comprehensive Plan Policies adopted by the County are intended to further the requirements of the Statewide Land Use Goals. The policies for Goals III, IV, and XI are congruent with the findings made hereinabove.

Other policies which are relevant to this request are:

1. Policy 12 under Goal II which provides:

"Lands which are not agriculture or forest lands as defined in Statewide Planning Goals III and IV shall be designated non-resource (NR) and subject to the regulations of the non-resource (NR) zone contained in the land development code."

Under the rationale for said policy, the County's Comprehensive Plan provides:

"To identify and plan appropriate uses and densities for non-agricultural and non-forest lands compatible with adjacent resources and non-resource lands and commensurate with existing and proposed level of services."

As is discussed above, the subject property is neither agricultural land nor forest land. It is outside the Klamath Falls Urban Growth Boundary, adjacent to land zoned for rural residential

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use but within Goal V Resource Overlays for Deer Winter Range and Eagle Roost Protection. But for said Goal V overlays, the subject property would be suitable for zoning as rural residential land. But, in order for the property to be compatible with the adjacent resource and non-resource lands, it is appropriate to plan and zone this property as non-resource land.

2. Policy 11 under Goal V provides:

"The County shall promote through Goal V significant overlay zone ordinances, the prudent management of significant fish and wildlife habitats in mutual cooperation with appropriate state and federal agencies."

Policy 12 under said Goal provides:

"The County shall recognize the ongoing attempts by U.S. Fish and Wildlife Service and private property owners to establish a bald eagle refuge at Bear Valley, and further encourage equitable solutions."

Policy 13 provides:

"The County shall protect the Bear Valley Eagle Roosting area (Core Primary and Secondary Buffers) and flyway."

The implementations under said policies provide for the County to encourage cooperative management agreements between public and private interests which address the needs of both and to provide minimum lot sizes and other matters which eliminate or mitigate conflicting uses within said overlays. In this instance, the applicant was a major partner in the establishment of the Bear Valley Eagle Roost area. The applicant has continually cooperated with the Oregon Department of Fish and Wildlife in planning the development of these parcels and other parcels in this area to

protect against any conflicts with resources identified by the Klamath County Comprehensive Plan and by said Department. The applicant did consult with Oregon Department of Fish and Wildlife concerning this particular application and said Department has no objection to this application. The zoning of the subject property as non-resource with the accompanying 80 acre minimum lot size overlay of the significant resource overlay zone does protect the Goal V resources applicable to the subject property while allowing the applicant reasonable use of its property. In addition to the policies under Goal V noted above, this application is also consistent with Policy 16 which provides for protection of Big Game Winter Ranges.

Each of the relevant policies were considered in approving the prior major of this property, which partition was made without objection from any person or agency. The approval of the subject plan and zone change will not allow any use of the subject property that was not allowed in 1992 by the division of the subject property into parcels.

C. The proposed change is supported by specific studies or other factual information which documents the public need for the change. The effect of the change in plan designation and zoning from forestry/grazing to non-resource is to place the subject property in the plan and zoning designations appropriate for the subject property. This matter does not involve a plan and zone

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change which will materially change the use of the subject property such as a zone or plan change from a resource zone to a residential or commercial zone. The only impact of this zone change is to allow the uses which were allowed in 1992 at the time the partition of the subject property was approved. The change of plan and zone designation to non-resource will not allow any additional or new uses of the subject property. Therefore, Criteria C is not relevant to the subject request.

ZONE CHANGE REVIEW CRITERIA

Article 47 of the Klamath County Land Development Code contains the review criteria which must be addressed in approving a change of zone. Our Findings of Fact and Conclusions of Law concerning said criteria are as follows:

A. The proposed change of zone from forestry/range to non-resource is in conformance with the Comprehensive Plan and all other provisions of the land development code. The relevant comprehensive plan, findings and policies are discussed hereinabove as are many of the land development code requirements. Planning staff has reviewed the subject application and the land development code provisions and has determined that the subject zone change is in full compliance with the provisions of the land development code.

B. The property affected by the change of zone is adequate in size and shape to facilitate the uses that are allowed in

conjunction with said zoning. As is found above, each of the subject properties is at least 80 acres in size. Said parcel size conforms with the minimum lot size requirements of the big game medium density range overlay zone and exceeds substantially the requirements of the Eagle Roost Overlay Zone. The uses permitted by the non-resource land are limited and provide only for a single family residence, an additional residence for family members, essential services, and those uses permitted in agricultural and forestry zones. The size of the subject parcels is adequate to allow said uses.

C. The property affected by the proposed change of zone is properly related to streets to adequately serve the type of traffic generated by such use that may be permitted therein. This application affects three individual parcels of property. The largest of said parcels could be divided in half to create two parcels and still meet the minimum lot size of 80 acres provided by the Big Game Overlay zone.

Therefore, by approving the zoning request to non-resource, it is possible that the applicant could establish a total of four single family residences on the subject property. Each of the parcels is served by an improved road over a 60 foot easement which was created in conjunction with the 1992 partition of the subject property. The subject property does have appropriate access for residential, forestry, and agricultural uses and essential services

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allowed under the non-resource land. It is appropriately related to existing roads which serve the Cedar Trails residential subdivision and will be properly served by said roads and by the Keno Worden Highway.

D. The proposed change of zone will have no adverse effect on appropriate use and development of abutting properties. As found hereinabove, the approval of the subject applications maintains the potential uses of the property which existed at the time the property was partitioned into three parcels in 1992. The subject property is in compliance with the requirements of the Goal V Resource Overlays which are applicable to the property. The potential uses of the subject property have been reviewed by all of the applicable resource agencies. No agency has noted any adverse effect of this zoning and plan use change request on the appropriate use and development of abutting properties. The abutting property to the north of parcel 3 is the Cedar Trails Residential Subdivision. The abutting properties to the west, south and east are similar in nature to the subject property, are lying in an unused state and will not be impacted in any manner by the change of zone from forestry range to non-resource

CONCLUSION AND ORDER

The Board of Commissioners finds that the applicant has satisfied the pertinent review criteria set out in Articles 47 and 48 of the Klamath County Land Development Code. The correct notice

was given and the intent of statewide planning goals has been met. The Board of Commissioners accepts the recommendation of the Klamath County Planning Commission that the subject application be granted.

THEREFORE, it is hereby ORDERED that the change of Comprehensive Land Use Plan and Zoning from Forestry/Range to Non-resource for the real property owned by Shamrock Development Co. and described hereinabove is approved.

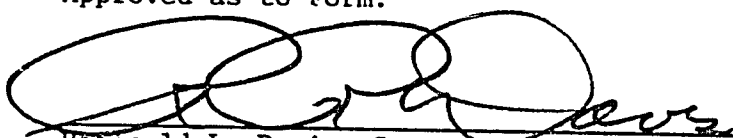
DATED This 19th day of April, 1994.


Chairman of the Board


Commissioner


Commissioner

Approved as to Form:


Reginald L. Davis, County Counsel

STATE OF OREGON.
County of Klamath ss.

Filed for record at request of:

Klamath County
on this 22nd day of April A.D., 19 94
at 9:26 o'clock A M. and duly recorded
in Vol. M94 of Deeds Page 12015.
Evelyn Biehn County Clerk
By Debbie Mullenbore
Deputy.

Fee, none

Return: Commissioners Journal



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PERSONAL PROPERTY TAX WARRANT Vol. m94 Page 12030
(This is a lien demand and not an arrest warrant)