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BEFORE THE BOARD OF COMMISSIONERS
OF KLAMATH COUNTY, OREGON

In the Matter of CLUP/ZC
7-94 for ROBERT MULLEN
and KERRY PENN,

ORDER NO. _____

Applicants.

1. Nature of Application: The applicants are requesting a Comprehensive Land Use Plan and Zone Change from Agriculture/EFU-CG to Rural/R-5 on 133 acres located immediately north of Oregon Shores Unit 1 and between Modoc Point Road and Highway 62.
2. Names of Those Involved: The applicants are Kerry Penn and Robert Mullen. The applicants were represented by attorney William M. Ganong. The Planning Department was represented by J. Kim Lundahl. Karen Burg was the recording secretary. Written comments concerning the application were submitted by the Oregon Departments of Transportation and Land Conservation and Development, and by the Klamath County Department of Human Services.
3. Legal Description: The subject property composed of Klamath County Tax Assessor lots 3407-3100-02900 and 3507-600-100 & 300. The legal description of the property is set forth on Exhibit A attached hereto and incorporated herein by this reference.

4. Findings of Fact:

A. Background Information:

The subject property consists of approximately 133 acres, which are situated in Section 31, Township 34 S., Range 7 E.W.M. and Section 6, Township 35 S., Range 7 E.W.M. of Klamath County, Oregon. The northerly 100 acres of the property has been cleared and has been used for agricultural purposes in the recent past. The southerly 30 acres of property is covered with dense brush and grass. Submitted with the application, Hearing Exhibit B, was a proposed preliminary plat for Tract 1287-Agency Lake Ranches showing the proposed layout of 25 residential lots with a minimum lot size of 5 acres. The vicinity map on the preliminary plat shows the location of the property in the Agency Lake residential area.

The Agency Lake residential area was recognized and defined by the Board of Commissioners of Klamath County in its Order issued in CLUP-ZC 6-89 for H. W. and Elizabeth Turnquist. The Agency Lake residential area is defined by Agency Lake to the west, highway 62 to the east and northeast, and Highway 422 to the southeast. In

addition, Modoc Point Road, a County road, serves the triangle and lies in a generally north-south direction, parallel to and near the edge of Agency Lake. In its said Order, the Board of Commissioners found:

"Beginning in the early 1970's, large tracts of land within the triangle have been zoned and divided as residential subdivisions. The first such subdivision was Oregon Shores No. 1, which is primarily built out as a mobile home subdivision. All lots in that subdivision have been sold. In the late 1970's, Oregon Shores No. 2 was developed. That subdivision contains 1,196 lots with mobile homes and conventional home areas. The Oregon Shores subdivisions have community water systems, recreational facilities and a homeowner's association which maintains the roads and common areas within those subdivisions. The Oregon Shores subdivisions contain lots which range in size from 10,000 square feet to one acre and have been fully sold out.

In 1986, Bellavista, which adjoins the southern boundary of the subject property (Turnquist property) and consists of 71 acre lots, was developed. Bellavista was placed on the market in 1988 and as of the first hearing on this matter, (Turnquist application) all but five of the lots, which were originally held by the developer and included in the public report, have been sold.

Scattered within the triangle are numerous parcels of property which range in size from 1/2 acre to approximately 400 acres. However, the 400 acre parcel is an exception. It is owned by the developer of the Oregon Shores subdivisions and it adjoins one of the Oregon Shores subdivisions. Eliminating that particular parcel from the inventory provides an average lot size in the triangle of less than five acres. The zoning map shows several parcels that are zoned for agricultural use. However, out of all of the parcels located within the triangle zoned for agricultural use, only one parcel qualifies for farm use tax deferral. That parcel's farm use consists of limited grazing by approximately a dozen cattle." (Order, pages 5 & 6)

The Agency Lake residential area is served by grocery stores, county parks, privately owned recreational facilities, telephone and power service from public utilities, State Highway 62 and the Modoc Point Highway. It is within the Chiloquin - Agency Lake Rural Fire District with a fire station being located approximately 1 1/2 miles south of the subject property.

Many years ago, the Agency Lake residential area was partially

forested. However, the Pine Ridge fire, which occurred in 1939, destroyed most of the trees located in the triangle. Following the fire, regrowth has been in the form of manzanita and sage brush which has choked out and prevented seedlings from reestablishing the area as forested. Like the subject property, the Agency Lake residential area is composed primarily of rolling hills that are either brush covered or have been developed for residential use.

B. Historic Use of the Property:

The subject property was destroyed by the Pine Ridge Mill fire in 1939. Following the fire, the property was re-vegetated by natural manzanita, sage brush, and native grasses. Thereafter, the northerly 100 acres of the property was cleared of the brush and first planted to grass for pasture use and then later to alfalfa. The current owner, Birch Chiropractic Corp., through its President, Lowell Birch, began purchasing the property in 1987. Lowell Birch attempted to use the property as grazing land for sheep. Birch Chiropractic and Mr. Birch lost considerable money in that enterprise because they were not able to control significant losses to predators. The property, along its south boundary, adjoins Oregon Shores Subdivision No. 1. The Oregon Shores Subdivision is a residential subdivision with lots 10,000 in size. Due to the proximity of the adjoining residential use, conventional predator control methods such as shooting the coyotes or using baits for the coyotes are not deemed prudent due to the range of a bullet traveling into the residential area and the danger of poisoning domestic animals with coyote bait.

After abandoning the sheep operation, Mr. Birch attempted to grow alfalfa hay on the subject property. Again, after suffering significant financial loss, Mr. Birch allowed the property to lie fallow in 1993. Cultivation of the property is difficult due to several factors.

The first factor is that the property is uneven. It rises a total of 160 feet from the low area near Modoc Point Highway to the highest point located in the southeast corner of the property near Highway 62. Mr. Birch used Agency Lake as his water supply. Using conventional aluminum mainline and wheel lines, Mr. Birch found it nearly impossible to maintain a sufficient volume of water and water pressure, particularly on the higher ground which encompasses the easterly two-thirds of the property. In addition, the slope of the land stressed the joints in the wheel lines and made it difficult to move the wheel lines in a straight manner across the land.

In addition to the water supply problem, the elevation of the property is a significant limiting factor in its productivity. The Agency Lake residential area is located at the southerly end of the Wood River valley. The soil survey of Klamath County, Oregon conducted by the Soil Conservation Service at page 1 finds that due

to the Wood River Valley's exposure to cold air drainage from the Cascades and Crater Lake, it has a growing season of less than 50 days, the shortest season of all of the basins in southern Klamath County. The report finds that only irrigated pasture is suitable in the Wood River Valley. At page 2, the report notes that the minimum air temperatures in Chiloquin range from 6 degrees cooler in the winter to 12 degrees cooler in the summer than the minimum temperatures in the Klamath Falls' area. The climatic limitations of the property resulted in an alfalfa hay crop of approximately 3 tons per acre. Said production is consistent with the estimated hay crop for the Lobert Loam soils on the property as shown in the SCS Soil Survey. Production of 3 tons of alfalfa per acre is not economically viable in situations such as the subject property where the water must be pumped at commercial power rates, and where the topography of the property increases the labor required to irrigate and harvest the crop.

Prior to the beginning of the 1993 crop season, the owner became aware of a further problem which substantially limits the agricultural use of the property. In 1990, the Oregon Department of Water Resources began in earnest the process of adjudicating the water rights in the Klamath River Drainage. Agency Lake is a major component of said drainage basin. The Department promulgated regulations which required the filing of an application for water rights from Agency Lake, which said application had a filing deadline of June 30, 1991. The owner of the property was unaware of the adjudication process and did not file such an application. Even if an application had been filed, it is likely the final adjudication would have assigned a relatively recent priority date to the application.

Upper Klamath Lake, which is attached to Agency Lake, and Agency Lake are habitat for the Lost River Sucker and the Short Nose Sucker, both of which fish species were listed in 1988 as endangered species under the Endangered Species Act of 1973. A biological opinion issued by the United States Fish and Wildlife Service to the Bureau of Reclamation in 1992, and thereafter amended, provides operational criteria for Upper Klamath and Agency Lakes. Said criteria require minimum surface elevations at different times during the year.

Currently pending before the Fish and Wildlife Service are applications to list as endangered species several runs of salmon in the Lower Klamath River. The Klamath River is the drainage for Agency Lake and Upper Klamath Lake. If said fish are listed as endangered species, then it will be necessary to maintain minimum stream flows in the Klamath River. For a period of seven years, terminating in 1993, the Klamath Basin experienced severe drought which lead to a significant reduction of the surface level of Agency Lake and which also lead to reductions of agricultural water deliveries in the Klamath Project of the Bureau of Reclamation. The property owners could now apply for a water right for

diverting water from Agency Lake to the subject property. However, it is highly probable that said water rights application would be challenged by parties interested in preserving their rights to water from the Upper Klamath Lake - Agency Lake system and also by parties who are pressing the listing of salmon in the Lower Klamath River and attempting to reduce the diversions of water from the Upper Klamath River drainage basin. In the current environmental - political climate, it is highly unlikely that a surface water right from Agency Lake would be granted to the subject property.

An alternative to a surface water right would be for the owners to drill an irrigation well on the property. However, there are several risks with drilling a well. The first is that the Oregon Department of Water Resources, due to staff reductions resulting from Ballot Measure 5, is several years behind in processing applications for ground water permits. Therefore, if the owners chose to drill an irrigation well, it is likely their permit to use that well would not even be considered by the licensing agency until 1996 or beyond. In addition, there is no guarantee that, due to other considerations, the permit would be granted. One of those considerations is the fact that the domestic water supply for all of the residential area in the Agency Lake residential area is supplied by wells. A typical single family residence in Klamath County uses approximately 500 gallons of water per day (Klamath County Comprehensive Plan Atlas) whereas an agricultural irrigation system, such as the one used on the subject property, with three 1/4 mile wheel lines consumes over 800 gallons of per water per minute. The 25 residences proposed by the applicant would use approximately 12,500 gallons of water per day, whereas an irrigation well for the subject property would consume in excess of 380,000 gallons in one day. It is probable that the domestic ground water users in this area would object to an application by the property owner for a agriculture well permit.

When faced with the knowledge that they did not have the legal right to pump water from Agency Lake, the owners had no choice but to discontinue irrigating the property effective with the 1993 year. The owners did allow a neighbor to cut some grass on the westerly edge of the property during 1993. However, they realized no economic benefit from the property. Filed herewith is a photo copy of a May 5, 1989 letter to Jim Leggett signed by Rodney Todd, Extension Agent for Klamath County. Mr. Leggett was the applicant for the CLUP-Zone Change in the Turnquist matter referred to above. The soils on the Turnquist property are the same as the soils on the subject property. The Turnquist property is located approximately 1 1/2 miles south of the subject property. The opinion of Mr. Todd stated in the letter is that the soil type on the property is poorly suited to farming and that the cost of developing the property for farming could not be supported by any feasible crop.

C. SCS Soil Classifications:

Submitted with the application was a photocopy of a portion of sheet no. 14 from the soil survey of Klamath County, Oregon southern part prepared by the USDA Soil Conservation Service. The map shows that all of the soil on the property is composed of soils from the Lobert Loam series. The western 1/3 of the property has 48 A soils with a slope of 0 to 2%, the middle 1/3 has 48 B soils with slopes of up to 5%, and the easterly 1/3 having C and D soils with slopes up to 25%. Although the characteristics of the Lobert series are conducive to agricultural use, the elevation of this property and its location at the south end of the Wood River Valley severely limit the crops that can be grown thereon. Also, as additional limiting factors are the slope of the property and the lack of water supply for the property.

The Lobert soils have a SCS Agricultural Soil Classification of IV, which by definition makes them agricultural soils. These soils have a forestry site index of 74, which is a middle range index for Ponderosa Pine. The soils could grow Ponderosa Pine trees, however, the location of the property in proximity to the surrounding residential uses would make it difficult to apply broad leaf plant killers necessary to eliminate competitive vegetation during the early years of the trees in order to allow the trees to get a good start. In addition, the southerly 30 acres of the property would require extensive brush clearing and removal. The objections of surrounding residential landowners to common forestry practices would most likely create significant problems for the landowner. The lack of an existing stand of trees on the property means that a significant economic investment would be required to initiate the stand of trees with no economic benefit expected until 60 to 80 years after planting.

The Lobert Loam soils, as is stated in the SCS text, are well suited for use as homesites and are well suited for most types of sanitary facilities. There are no known septic tank failures in any of the residential subdivision developed on similar types soils in this area.

D. Exceptions Documentation:

In order for the County to allow the subject CLUP and zone change request, the County must take an exception to Statewide Land Use Planning Goal III Agriculture and Goal IV Forestry. We find that the subject property is irrevocably committed to residential use as a result of the relationship between the subject property and the lands adjacent to it.

a) Characteristics of the Exception Area. The physical characteristics of the exception area, including its topography and current development, are set forth above.

b) Characteristics of Adjacent Lands. The subject property adjoins on its south boundary Oregon Shores Tract 1053 Unit 1. Said Tract is a residential subdivision with lots ranging from 10,000 square feet to approximately one acre in size. Oregon Shores Subdivision is developed with an integrated road system and community water system. A homeowner's association maintains the roads, water system, and a recreational area located along the shore of Agency Lake. The road system on the subject property, if developed as provided on the proposed preliminary plat submitted herewith will connect with Lakeland Road, a part of the road system within Oregon Shores. The property fronts, on its westerly border, on the Modoc Point Highway. Across the highway is a strip of land which lies between the highway and the shore of Agency Lake. Said strip of land has been divided into residential lots which range from one acre in size up to several acres in size. The northerly most said lot was recently partitioned by Ronald Rima which said partition was approved by the county during February 1994. To the north of the subject property lies the only other large parcel in this area. It is comprised of 66 acres. It contains a residence, some farm buildings, and is under sprinkler irrigation. North of said parcel, the small lot pattern of this area resumes with the lots averaging approximately five acres in size. To the east of the subject property are a number of parcels which range in size from 1/2 acre to 25 acres, most of which also contain private residences. The area east of the subject parcel is composed of the same type of rolling hills covered with dense manzanita, sagebrush, and native grasses. None of the adjoining lands are devoted to forestry practices, and only the 66 acre parcel north of the subject property is being used for any agricultural purposes. Approximately two miles north of the property and west of the Modoc Point Highway, you enter the low-lying Wood River Valley area which is a productive agricultural area devoted to irrigated pasture land. However, as stated above, the vast majority of the land located within the Agency Lake residential area has been irrevocably committed to residential use with lots ranging in size from 10,000 square feet to five acres.

c) Existing Public Facilities and Services. The subject property is located in the Chiloquin-Agency Lake Fire District, and a fire station is located approximately 1½ miles south of the subject property on Modoc Point Road. Primary access to the property will be from Modoc Point Road. However, the road system proposed for the property will also connect with the road system in Oregon Shores Unit 1. Modoc Point Road is a paved, county road with ample capacity to carry any additional traffic generated from the development of this property. The Agency residential area and the subject property are served by Pacific Power & Light electrical facilities and U. S. West telephone facilities. In addition, cable television services are currently planned for this area.

Article 74 of the Klamath County Land Development Code prohibits public water and sewer services in rural areas. The

Oregon Shores subdivisions have community water systems operated by the landowners in those subdivisions. In other residential subdivisions in the area, water is provided by individual wells and septic systems located on each lot. The use of individual wells and septic systems has worked well in this area. The Lobert loam soils are well-suited to septic use. The ground water used by private residences is significantly less than the ground water demand from agricultural uses.

The subject property is located within the Klamath County School District with schools located in Chiloquin, Oregon, approximately eight miles from the subject property. The Chiloquin Schools have sufficient existing capacity for additional students. However, based upon the demographics of prior sales in this area which show that the area is inhabited generally by people who do not have school-age children and who are generally retired, it is expected that the development of this property will have little or no impact on the school systems.

The Turnquist Subdivision, which was named Monte Vista, was approved in 1990. Applicant Robert Mullen was a partner in Monte Vista. Of the 33 residential lots in Monte Vista, all 30 that were placed on the market have been sold, primarily to people in California who intend to retire to this general area.

d) Parcel Size and Ownership Patterns of Exception Area and Adjacent Areas. The exception area is 133 acres in size. The adjacent lands, which are primarily used for single family residential purposes, range in size from 10,000 square feet to 66 acres, but are predominately less than 2 acres in size. All of the subdivisions and partitions which have occurred within the Agency Lake residential area were approved pursuant to the land use plans then in effect. Klamath County adopted its initial zoning ordinance in 1972, and all of the subdivisions in this area were approved and platted consistent with the zoning ordinance and the comprehensive plans and amendments which have followed. The existence of these subdivisions, the houses located thereon, and the residential use of the land located in the Agency Lake residential area, demonstrates the suitability of this land, including the exception area, for the proposed use.

e) Neighborhood and Regional Characteristics. As discussed in detail above, the subject property is located in the heart of a triangular area which has been substantially developed for rural residential use. The residential subdivisions and partitions in the area have created lots which range in size from 10,000 square feet to five acres. The exception area adjoins a large residential subdivision with lots generally 10,000 square feet in size. The area contains its own fire station, a grocery store, county parks, private recreational facilities, a cemetery, churches, and other similar low-impact developments appropriate for the support of rural residential areas.

f) Natural or Man-Made Features or Impediments Separating the Exception Area from Adjacent Resource Land. The only land currently employed for a resource use in this general area is the land which lies directly north of the subject property. That parcel of land is 66 acres in size and appears to support pasture or alfalfa. To the north of said parcel are small-lot residential uses which separate it from agriculture and forest lands which lie several miles north of the subject parcel. The subject property is separated from resource land on its easterly boundary by state Highway 62. Immediately across Highway 62 from the subject property is similar land covered by manzanita and other similar brush. To the south of the subject property is a large residential subdivision, and to its west lie small residential lots and then Agency Lake. The information provided by the applicant, the SCS and the Klamath County Extension Agent demonstrate that the subject property and the surrounding property which are essentially of the same topography and soil type is simply not suited for agricultural use. The rolling hills contain significant slopes with the elevation change on the subject property exceeding 160 feet. Said slopes prevent the subject property from being leveled and prevent the use of an economical irrigation system. In addition, the unavailability of surface water and the difficulty in obtaining ground water permits creates significant restrictions on the agricultural use of the property. The subject property due to climatic limitations, topography, and surrounding land uses cannot be used or employed in a viable or economic manner for agricultural or forestry purposes. The adjoining high-density, residential uses conflict with normal forest management practices including aerial spraying of herbicides, heavy equipment operation, chain saws, and other similar practices to limit the use of the property for forest uses. The triangular area in which the exceptions land is located is separated from resource uses by the state and county highways which entirely surround the triangle and by Agency Lake located on its westerly boundary.

g) Physical Development of the Exception Area. The northerly 100 acres of the exception area was cleared and planted for agricultural uses. However, the experience of the owner has shown that it may not be viably employed for agricultural purposes. The property is fenced, however, portions of the fence are in a state of disrepair. There is a small hay barn located along the westerly edge of the property.

h) Other Relevant Considerations. The most relevant factors in considering an exception to goals 3 and 4 for the subject property are:

- (1) That it is not physically suited for agricultural use;
- (2) That it lies adjacent to and is substantially surrounded by areas which have been irrevocably committed to residential use; and
- (3) That it lies in an area which is physically separated

from resource uses and is ideally suited for rural residential use.

The Agency Lake area has been and is continuing to be developed for rural residential use. It has the amenities and services deemed necessary by the Klamath County Land Use Plan for rural residential development. The addition of the subject property to the inventory of residential land in the area is congruent with the development of the Agency Lake area in general. The private and public facilities and services available in this area can accommodate the additional demand that would be placed on them by future residences of the exception area.

Other considerations include the fact that other areas in the Chiloquin-Ft. Klamath-Agency Lake area which could be used for residential use lie in productive agriculture or forestry areas whereas the subject property is buffeted from resource uses. In addition, the development of the subject property with five-acre lots provides for a transition from the high-density 10,000 square foot lots of the Oregon Shores Subdivision to the lower density residential lots lying northerly of the subject property. The subject property is particularly well-suited for large lot, rural residential use and is not suited for any resource use.

5. Comprehensive Plan Change Review Criteria:

Klamath County Land Development Code Section 49.003(a) sets forth the review criteria for approving a comprehensive land use plan change. The criteria and the applicant's evidence which responds to the criteria are as follows:

a) That the proposed change is in compliance with state-wide planning goals. The relevant state-wide planning goals are Goal 3, Agriculture; Goal 4, Forestry; Goal 10, Housing; Goal 11, Public Facilities and Services; and Goal 14, Urbanization. The subject property was planned and zoned for agricultural use because it is predominately a Soil Class IV. However, the evidence described above demonstrates that this property is not physically suitable for use as agricultural land. Because of its topography, the limited growing season, the difficulty in obtaining irrigation water, the difficulty in irrigating the property, and its proximity and similarity to other land already devoted to rural residential use, the property is not suited to viable, commercial farm use. In addition, due to its proximity to high-density residential use and the surrounding lower-density residential uses, the conflicts which would arise from attempting to manage the property for forest uses prevent that resource use of the property. The property is physically separated from commercial, agricultural uses in the general area. The state-wide goals of preserving and protecting agricultural and forest land from conflicting uses are not applicable to the subject property. The exceptions information set forth hereinabove demonstrates that the change in land use plan for the subject property from agricultural to rural residential will

not decrease the agricultural land inventory and will not take any viable agricultural land out of production. The development of the property for rural residential use with a five-acre density will have no impact whatsoever on any agricultural land or agricultural uses in the area.

Goal 10, Housing, of the county's Comprehensive Plan, requires that the county provide and allow for flexibility of housing location, type, and density. The fast sell-out of other residential subdivisions in this area demonstrates the desirability of this location and type of rural residential development. The proposed development provides lots that are slightly larger than other subdivisions in the area, thus providing choice of density to prospective purchasers. The large lots also provide a transition or buffer from the much higher density Oregon Shores Subdivision to the lower density residential lots that exist along the west, north, and east boundaries of the subject property.

Goal 11, Public Facilities and Services, is designed to plan for the timely, orderly, and efficient arrangement of public facilities and services. In developing its Comprehensive Land Use Plan, the county studied the existing development of land in the county and the relationship between land development and the need for public facilities and services. Those studies are part of Klamath County's Comprehensive Plan. For rural residential development, the county identified in its comprehensive plan a need for the provision of the following services:

- (1) Road and drainage development and maintenance;
- (2) Water and septic services;
- (3) Fire protection; and
- (4) Power, telephone, and other utilities.

In comparing the provision of those services to the subject property, the preliminary plat for the subject property shows the layout of roads which will be constructed to county standards and which interface with the roads in the Oregon Shores Subdivision which adjoins the subject property. In addition, the preliminary plat provides for the collection of drainage water from the roads and the retention of the drainage water in two detention areas which will be established on the subject property. The roads and drainage system will be maintained by a homeowners' association formed of the landowners in the subdivision.

Water and septic services will be provided by individual wells and septic tanks. The use of individual wells and septic tanks is consistent with the provision of water and sewer services on other residential subdivisions and individual parcels in this general area. The Oregon Shores Subdivisions have community water systems, however, the density of lots in these subdivisions is significantly greater than the density planned for the subject property. The experience of the applicants in developing and marketing similar

properties including obtaining appropriate permits for septic systems and water wells demonstrates the suitability of the provision of sewer and water systems in that manner.

The property is located in the Chiloquin-Agency Fire District, and a fire station is located approximately $1\frac{1}{2}$ miles south of the subject property. The development of this property will aid in the control of wildfire by putting in a good road system, including the 30 acres now covered with brush, and by providing water sources on site.

Electrical services and telephone services are available to the property lines. The property is served by a network of state and county highways which have the capacity to carry the traffic which would be generated by 25 homes on the subject property. Other services available in the general area include public parks, privately owned grocery stores, churches, a cemetery, and other small community services.

Land Use Goal 14, Urbanization, is designed to provide for the orderly and efficient transition from rural to urban land uses. The applicants intend to divide the subject property into 25 rural residential lots with a minimum size of five acres each. The Klamath County Land Development Code in Section 51.003 provides that the purpose of the rural (R-5) zone is to establish areas for rural residential living styles. These areas allow for the pursuit of limited agricultural activities and serve to provide buffers between urban and agricultural areas. Typically, this zone is appropriate in rural or semi-rural areas, small family farm areas, and areas with patterns of lot sizes larger than 1 acre. Although the adjoining property to the south contains lots less than one acre in size, the planned division of the subject property provides an appropriate buffer area between said small lots and the larger lot development north of the property. Development of the property in five-acre lots will provide housing opportunities for people who desire to keep recreational horses, 4-H animal projects, and other small-scale agricultural uses so popular in our society today.

b) The proposed change is in conformance with policies of the Klamath County Comprehensive Plan. The subject application and planned use for the property are congruent with the policies for state-wide planning Goals 3, 4, 10, 11, and 14 which are described hereinabove.

In addition to the policies described above, policy number 4 under Goal 10 provides:

"The County shall permit development of rural land for rural residential use on suitable lot sizes."

As described above, this rural area is well-suited for rural residential use, is well-received by the public, and is a desirable location for rural residential development. The subdivisions heretofore approved and developed were done in compliance with the Klamath County Zoning and Land Use Ordinance and have sold out rapidly. There is a definite, demonstrated need for this type of rural development. The evidence of which is the speed in which the Bella Vista, Monte Vista, and other subdivisions sold out. The subject area contains the public and private services which the county deems necessary and services can accommodate the growth that will arise from the development of this property without any adverse effect.

c) The proposed change is supported by specific studies or other factual information which documents the public needs for the change. As is pointed out above, applicant, Robert Mullen, has been an active developer of other subdivisions in this area including the Monte Vista Subdivision. Applicant, Kerry Penn, is a real estate broker who has been engaged in the sale of many of the residential lots in this general area. Lots in this general area have generally sold to out-of-state residents who are looking for retirement situations which remove them from the large cities of California and the resident crime and congestion associated therewith. The parcels of land that have heretofore been subdivided are sold out. Many have been built upon, are being built upon, and there are plans to build on other parcels. The area is ideally situated for this particular use because it is separated from resource uses and the land and its soils are well-suited for development of on-site septic and water systems. It is not viable land for resource uses, and it is located in an area that has public services that are deemed appropriate for rural residential development.

6. 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. The criteria and the applicants' evidence of compliance therewith is as follows:

a) The proposed change of zone from EFU/CG to R-5 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. In addition, many of the Land Development Code requirements are also discussed above or demonstrated on the preliminary plat filed herewith. For rural residential use, Article 74 of the Land Development Code sets out the service standards for water and sewer service and also incorporates by reference drainage, fire protection road standards, and electrical service requirements. The provision of all of said services has been discussed in detail hereinabove, and the discussion concerning said services is incorporated herein by this

reference.

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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 such zoning. The property is 133 acres in size. The applicants have submitted herewith a preliminary development plan which shows the proposed layout of the lots and roads on the property and the contours of the property. The information submitted herewith and the development of prior subdivisions demonstrates that individual wells and septic systems are well-suited for the residential development of the subject property. The subject property is adequate in size and shape to facilitate the planned use and the planned use provides a reasonable transition from small lot residential development on the subdivisions lying southerly of the subject property to the larger lot developments lying north of the subject property.

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. The proposed preliminary plat submitted by the applicants shows the street layout plan for the property. Said layout provides an integration of the streets on the subject property with the streets located on the adjoining Oregon Shores Subdivision, and it also provides access to the Modoc Point Road. The development of the property will entail three cul-de-sacs. The length of the cul-de-sacs is in compliance with the length allowed under the Land Development Code. The county and state roads which serve the subject property have the capacity to carry the increased traffic which will be generated by the addition of 25 homes on the subject property. The property has good access and will be properly served by the existing streets and roads and those developed on the property.

d) The proposed change of zone will have no adverse effect on the appropriate use and development of abutting properties. As described above, the subject property lies in the heart of an area which is irrevocably committed to development as a rural residential area. The abutting properties, with the exception of the abutting property to the north, have been developed or are being held for development for rural residential use similar in type to that proposed on the subject property. The residential use to the south is significantly denser than that on the subject property and the subject property will provide a reasonable transition area between the larger lot development to the north and the small lots to the south. The development of this property will not interfere or impact the commercial agriculture and forestry uses which lie several miles to the north and five or more miles to the south. The subject property and this general area is physically separated from all commercial resource uses.

7. Other Considerations:

The subject property does not lie within any identified fish or wildlife resource areas. It contains no mineral or aggregate resources, energy resources, or other resources listed under Goal 5 of the Klamath County Comprehensive Plan. The proposal does not conflict with any natural resource values, and it does not conflict with any air, water, or land resource quality criteria. The development of the subject property will help relieve development pressures on agriculture and forestry areas such as those in the Henley area south of Klamath Falls or in the Chiloquin area and along the Williamson and Sprague Rivers, by providing larger type rural residential lots in an area that is irrevocably committed to such use.

The subject property is not in an area subject to natural disasters or hazards and is not required for the recreational needs of the state and its visitors. The development of the property will enhance economic development of Klamath County by providing construction jobs for the citizens that are here and providing demands for the private retail and commercial interests of the Agency Lake Residential Area.

8. Agency Comments:

The Oregon Department of Land Conservation and Development reviewed the subject application and submitted written comments:

a) That the supplement to the application submitted by the applicants addresses the standards required to take an exception to Statewide Planning Goals III and IV.

b) That the 5-acre minimum lot size of the R-5 Zone avoids Department concerns that urban level development not take place on rural land.

c) That the Department has no objection to this application.

The Oregon Department of Transportation submits comments which do not specifically object to the subject application but do raise a concern that the county develop and implement a transportation plan which includes system development changes. The county is currently working on such a plan. However, it is not now a requirement of our code and cannot be applied to the subject application.

The county Department of Human Services pointed out in its comments that it will be necessary for the applicants to comply with all rules and regulations pertaining to on-site sewage disposal.

9. Conclusion and Order:


14809

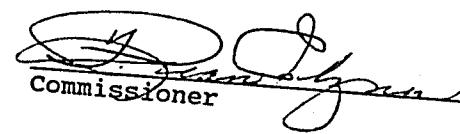
The Board of Commissioners finds that the subject property is particularly well-suited and sited for development as five-acre rural residential lots. The development of the property will meet a demonstrated market demand for rural residential uses and will relieve development pressures on high-quality agriculture and forest areas in the Klamath Falls-Chiloquin area. Development of the subject property provides for a transition area from the high-density rural residential use on the Oregon Shores Subdivision to the lower-density residential uses lying west, north, and east of the subject property.

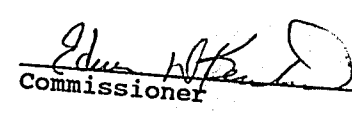
The applicants have satisfied the review criteria set out in Articles 47 and 48 of the Klamath County Land Development Code. Proper notice of the application and the hearing was given. The intent of the statewide planning goals have been met. The Board of Commissioners accepts the recommendation of the Klamath County Planning Commission that the subject application be granted.

THEREFORE, it is hereby ORDERED that the change of Comprehensive Land Use Plan Designation and Zoning of the subject property from Agriculture/EFU-CG to Rural/R-5 is approved.

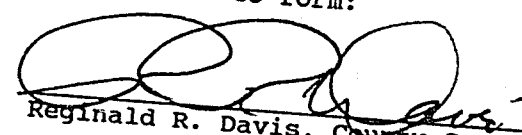
DATED THIS 5th day of May, 1994.


Chairperson of the Board


Commissioner


Commissioner

Approved as to form:


Reginald R. Davis, County Counsel

14810

EXHIBIT "A" LEGAL DESCRIPTION

PARCEL 1

A tract of land situated in the S1/2 of Section 31, Township 34 South, Range 7 East of the Willamette Meridian, and Government Lots 1, 2, and 3, Section 6, Township 35 South, Range 7 East of the Willamette Meridian, in the County of Klamath, State of Oregon, and more particularly described as follows:

Beginning at a 3/4" iron pipe marking the Southeast corner of Government Lot 1, Section 6, Township 35 South, Range 7 East of the Willamette Meridian; thence South 89 degrees 14' 33" West along the South line of Government Lots 1 and 2 of said Section 6 a distance of 2632.14 feet to a 1/2" iron pin on the Southwest corner of said Government Lot 2, Section 6; thence West along the South line of Government Lot 3, said Section 6, a distance of 727.6 feet to a 5/8" iron pin on the Easterly line of the Old Dallas-California Highway (State Highway No. 427); thence North 0 degrees 13' 00" East along the Easterly line of said highway a distance of 745.03 feet to a 5/8" iron pin on the section line common to said Sections 6 and 31; thence continuing North 0 degrees 13' 00" East along the Easterly line of said highway in Section 31, Township 34 South, Range 7 East of the Willamette Meridian a distance of 986.39 feet to a 5/8" iron pin on the North line of the S1/2 N1/2 SE1/4 SW1/4 of said Section 31; thence South 89 degrees 59' 17" East along the North line of the S1/2 N1/2 SE1/4 SW1/4 and the North line of the S1/2 N1/2 SE1/4 of said Section 31 a distance of 3366.60 feet to a 1/2" iron pin on the East line of said Section 31; thence South 0 degrees 03' 37" East along the East line of said Section 31 a distance of 985.66 feet to a 1 1/4" iron pipe on the Southeast corner of said Section 31; thence South 1 degree 10' 36" West along the East line of Government Lot 1, Section 6, Township 35 South, Range 7 East of the Willamette Meridian, a distance of 710.38 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM that portion lying East of State Highway 62 conveyed to Train Mountain, Inc., an Oregon corporation in deed recorded December 6, 1990 in Book M90 at page 24248, Microfilm Records of Klamath County, Oregon.

PARCEL 2

The Easterly 716 feet of Government Lot 5 and all of Government Lot 6 in Section 6, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, EXCEPTING THEREFROM that portion of Government Lot 6 lying Northeast of Highway 62.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 11th day
of May A.D. 19 94 at 10:00 o'clock A. M., and duly recorded in Vol. M94
of Deeds on Page 14794

FEE none

Return: Commissioners Journal

Evelyn Biehn County Clerk

By Douglas M. Henderson

3 OF REPORT NO 32046-MK
PRELIMINARY REPORT

PRELIMINARY REPORT ONLY