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BEFORE THE BOARD OF COMMISSIONERS
OF KLAMATH COUNTY, OREGONIN THE MATTER OF CLUP/ZC
15-94 for DONALD POPE

Order No. _____

1. **NATURE OF THE APPLICATION:** The Applicant is requesting a Comprehensive Land Use Plan and Zone Change from Forestry Range/FR to Non-Resource/NR on 360 acres located at the north end of Adams Point Rd., north and west of Malin.
2. **NAMES OF THOSE INVOLVED:** The applicant was represented by his brother, Randall Pope. The Planning Department was represented by Kim Lundahl. The recording secretary was Karen Burg. Written comments concerning this request were submitted by the Oregon Department of Forestry, the Oregon Department of Land Conservation and Development and OSU Extension. Members of the Board of County Commissioners who heard this application were F. Jean Elzner and Ed Kentner. The Planning Commission, with a quorum present, participated in an advisory manner.
3. **LEGAL DESCRIPTION:** The subject property is described as parcel 3, LP 12-93.
4. **FINDINGS OF FACT:**
 - A. The subject property is composed of 360 acres described as parcel 3, LP 12-93 which was legally created pursuant to the Klamath County Comprehensive Plan and Land Use Ordinances. The subject property is currently zoned Forestry Range. The subject

property is located at the north end of Adams Point Rd., north and west of Malin, north of the Merrill-Malin Rd.

B. A twenty acre portion of the property lies within an area designated as a Low to Medium Density Deer Winter Range. Article 57 of the Land Development Code provides for a minimum lot size of 80 acres in said deer range.

C. Access to the subject property is provided by easements established in conjunction with the approval of Land Partition 12-93.

D. The property is composed of mostly barren hillsides with slopes ranging from 5% to 35%. Vegetation of 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 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, Harriman-Lorella, comprises 65% of the subject property and has a SCS soil class rating of IV. The next largest component is the Lorella complex, which comprise 28%

of the subject property and has a SCS rating of VII. Dehlinger Association Soils make up approximately 4% of the property and have a soil class rating of VIIs. Stukel Capona soils make up the remaining 3% of the property and have a soil class rating of VIe. The SCS utilizes aerial mapping in classification of soil series and land capability classifications. These judgments are not routinely verified by "on the ground" investigation.

G. At the request of the Planning Commission, Mr. Pope had the property evaluated "on the ground" by Rodney Todd of the OSU Extension Service. In review of the classifications delineated by the SCS based on aerial photos, Mr. Todd found only twenty five acres of the property "could have value for farming if irrigation water were available--currently it is not." We find this evaluation to have greater validity than the classification done by the SCS.

H. The subject property is within the Merrill 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 Land Conservation and Development entered 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 in the County's Land Development Code.

The Department of Land Conservation and Development, in their

comments, points out that over 68% of the property is composed of soils that have been classified in capability classes IV. While this allegation is correct based on their interpretation, we rely on the work done by Mr. Todd and find that the Harriman-Lorella Soil has no farm use due to its small practible size and lack of irrigation.

The Department of Land Conservation and Development also note 20 acres of the property is included within a Goal 5 overlay, Low to Medium Density Deer Winter Range. Those statements are correct and the Klamath County Land Development Code will limit any conflicting use on the subject property.

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 and 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. However, upon review by the OSU Extension Service, the classification of the Harriman-Lorella Soils as agricultural soils is inappropriate and incorrect with respect to the subject property. The 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 soils are noted, it becomes apparent that the subject property is not composed primarily of agricultural soils.

With respect to Goal 4 Forestry, as is found above, the subject property is composed primarily of soils which have no woodland rating and are not appropriate for commercial forestry practices. It has value as wildlife habitat. However, the twenty acre area of the Pope property within the designated Goal 5 overlay will not be affected by this application or subsequent division of the property.

With respect to Goal 11 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 Merrill 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 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 Non-Resource 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 3, 4, and 11 are congruent with the findings made hereinabove.

Other policies which are relevant to this request are:

1. Policy 12 under Goal 2 which provides:

"Lands which are not agriculture or forest lands as

defined in Statewide Planning Goals 3 and 4 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.

2. Policy 11 under Goal 5 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"

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. 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.

Each of the relevant policies were considered in approving the prior division 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 prior to the adoption of HB 3661.

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 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 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.

7. 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 and 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 will be at least 20 acres in size. 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 service the type of traffic generated by such use that may be permitted therein. This application affects twelve proposed individual parcels of property.

Therefore, by approving the zoning request to non-resource, it is possible that the applicant could establish a total of twelve

single family residences on the subject property. Each of the parcels will be served by an improved road over a 60 foot easement which was created in conjunction with the 1993 partition of the subject property. The subject property does have appropriate access for residential, forestry, and agricultural uses and essential services allowed under the non-resource land. It is appropriately related to existing roads which connect to the Adams Point Rd., south to the Merrill-Malin 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 1993. The subject property is in compliance with the requirements of the Goal 5 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 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.

8. CONCLUSION AND ORDER

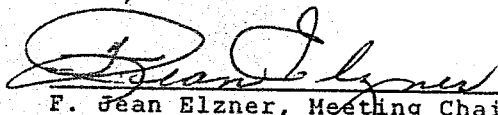
The Board of Commissioners finds that the applicant has satisfied the pertinent review criteria set out in Articles 47 and 48 of the Klamath County Land Development Code. The correct notice was given and the intent of statewide planning goals has been met. The Board of Commissioners accepts the recommendation 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 DONALD POPE and described hereinabove is approved subject to:

The maximum density of 20 acre parcels over the property affected by this approval is twelve.

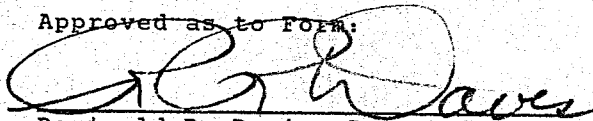
No development will be permitted with the Goal 5 overlay, low to medium density deer winter range.

DATED This 12th day of September, 1994.


F. Jean Elzner, Meeting Chair


Ed Kentner, Commissioner

Approved as to Form:


Reginald R. Davis, County Counsel

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 14th day
of Sept A.D., 19 94 at 1:18 o'clock P M., and duly recorded in Vol. M94
of Deeds on Page 28954.

FEE none

Commissioners Journal

Evelyn Biehn County Clerk

By Caroline Mullen