

94253

IN THE MATTER OF CLUP/ZC 27-94  
FOR VINCE MOTZ

Order

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 60 acres located two miles west of Wild Billy Lake, one mile south of the Oregon Pines Rd., west side of Bug Butte, Knot Tablelands. The applicants intent is to establish a second residence on this property for a relative.

2. NAMES OF THOSE INVOLVED: The applicant was present and testified. The Planning Department was represented by Kim Lundahl. The recording secretary was Karen Burg. Members of the Board of County Commissioners who heard this application were Wes Sine, F. Jean Elzner and Ed Kentner. The Planning Commission, with a quorum present, participated in an advisory manner. Beth Waterbury, representing the Oregon Dept. of Fish & Wildlife, appeared and enter oral and written testimony in opposition to this application.

3. LOCATION: 60 acres in Section 25, T 35S R 11E. T.A. 3511-25-800.

4. FINDINGS OF FACT:

A. The subject property is composed of a 60 acre parcel 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 on the west slope of Bug Butte, Knot Tablelands. A legally established residence, a log home, exists on the property.

B. Access to the subject property is provided by easements and established travelled ways.

C. 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.

D. No resource use has been made of the property for many years. An attempt was made to plant pine trees on the property. Of 3500 planted twelve years ago, two survive.

E. The property is composed of two types of SCS soil classes. The largest component, MASET, comprises 65% of the subject property and has a SCS soil class rating of VIe. The second component is the NUSS complex, which comprise 35% of the subject property and has a SCS rating of VIII.

F. The subject property is NOT within a rural fire district. Power is NOT available to the property. Any residential development of the property would incorporate the use of individual residential wells and septic systems.

5. AGENCY OBJECTIONS. Response was received objecting to this change by the Oregon Dept. of Fish and Wildlife.

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 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 4 Forestry, 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 as reiterated by the ODFW.

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 already existing.

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 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.

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 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. 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 parcel 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. The applicant wishes to establish a second home on the property for a relative. By approving the zoning request to non-resource, it is possible that the applicant could establish a second residence and retain the original on 60 acres.

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 application maintains the potential uses of the property which existed at the time the property was created. The potential uses of the subject property have been reviewed by all of the applicable resource agencies. The ODFW showed concern over the impact additional residences are thought to have on wildlife resources. 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 described hereinabove is approved subject to:

The maximum residential density over the property affected by this approval is two per 60 acres.

DATED This 23<sup>rd</sup> day of December, 1994.

\_\_\_\_\_  
Wes Sine, Board Chair

\_\_\_\_\_  
Ed Kentner, Commissioner

\_\_\_\_\_  
F. Jean Elzner, Commissioner

Approved as to Form:

\_\_\_\_\_  
Reginald R. Davis, County Counsel

#### NOTICE OF APPEAL RIGHTS

This decision is subject to appeal to the Land Use Board of Appeals. An appeal must be made within 21 days of the date of mailing of this Order. For additional information contact the Planning Department. Failure to do so may invalidate your right to appeal this decision.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 31st day  
of Jan A.D., 19 95 at 1:47 o'clock P. M., and duly recorded in Vol. M95  
of Deeds on Page 2162

FEE none

Comm. Journal

Bernetha G. Letsch

County Clerk

By Douglas J. Middleton