

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

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|--|---|------------|
| In the Matter of the Application for a |) | |
| Conditional Use Permit for |) | CUP 119-94 |
| |) | |
| TRAIN MOUNTAIN FOUNDATION, |) | ORDER |
| |) | |
| Applicant. |) | |
| |) | |

This matter came before Neal Buchanan, Hearings Officer for Klamath County, Oregon, on January 20, 1995, in the Klamath County Museum Meeting Room in Klamath Falls, Oregon. The hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related statutes and ordinances. The Klamath County Planning Department was represented by Mr. Kim Lundahl and the recording secretary was Ms. Karen Burg. The Klamath County Planning Department file and all the exhibits and other contents therein is incorporated by this reference into this matter. The applicant was represented by its attorney, Michael L. Spencer, and by its director, Quentin Breen. Numerous individuals testified in favor of the application and five individuals testified against the application. The Klamath County Department of Environmental Health and the Oregon Department of Fish and Wildlife were present and gave testimony.

FINDINGS OF FACT

1. The applicant requests a conditional use permit to replace permits previously voided by a Hearings Officer covering between 700 and 800 acres of property located West of Chiloquin, Oregon, which is part of a total parcel of approximately 2,000 acres owned by the applicant. The property is located West of U.S. Hwy 97 and lies both North and South of the South Chiloquin Road. The property is zoned EFU-CG but is primarily forest type land.

2. The applicant is developing a 1/8th scale railroad park for use by individuals invited to the property by the applicant. The development includes buildings for the storage and repair of equipment, an office type structure and related outbuildings. Included in the proposal is a campground devoted to overnight temporary use for vacation and recreational purposes. Roads have been constructed on the property. Rail track has been laid over the property with the greatest concentration in the area South of the South Chiloquin Road. The applicant has full sized antique railroad cars located throughout the property which will be utilized as warming huts and picnic areas.

3. The vast majority of the subject property is undisturbed by this project, with the actual project utilizing approximately 10% of the area. The remainder of the property will remain forested and has been harvested by the applicant to remove diseased trees and underbrush. The forestry operation has substantially reduced the risk of wildland fire by removing light fuels and also reduces potential beetle kill, thereby enhancing the health of the forest in general.

4. The area involved has a wintering Elk herd which, on occasion, utilizes portions of the area. This area has not, however, been designated a Significant Resource Overlay zone. Testimony from the representative of the Department of Fish and Wildlife establishes that this use will not seriously affect the Elk herd, although the mitigation measures set forth in the Order portion will avoid any noticeable impact.

5. An eagle nest site is located approximately $\frac{3}{4}$ of a mile from the nearest portion of the property covered by this application, but also upon land owned by the applicant. This application will not have any direct impact upon that nesting site, but a management plan will

be necessary to ensure that.

6. The application also requests approval of a communications facility for low powered television and cellular communications. Those uses will have no adverse impact upon any of the adjacent property or upon the forest use of the subject property and will have a substantial beneficial impact upon the Chiloquin community in general.

CONCLUSION

1. The applicant has established that the proposed use will not create conditions or circumstances that are contrary to the purposes or intent of the comprehensive plan, its policies or land use regulations;
2. The proposed use is in conformance with all standards and criteria of the Code;
3. Because of its large size and with the substantial buffer areas involved, this use's location, size, design and operating characteristics will not force a significant change in, or significantly increase the cost of, accepted farm or forestry practices on nearby agricultural or forest lands. No extensive agricultural operations are located near the project and the fact that the use will be limited by its nature and weather conditions to less than 10 meets per year, this use will have no noticeable impact on any other uses in the area.
4. Because of the forestry practices already undertaken by the applicant, this use will actually reduce fire hazards and thereby reduce the potential fire suppression costs and risk to fire suppression personnel.
5. The proposed use, with the conditions imposed herein, will not have a significant adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area.

ORDER

1. Based upon the findings of fact and conclusions herein, the conditional use permit is granted, subject to the following conditions:

a. The applicant shall record a written statement to the effect that the applicant recognizes the rights of adjacent and nearby land owners to conduct farm or forest operations consistent with the accepted farming practices and the Forest Practices Act, ORS 30.090 and Rules for uses authorized by this Code.

b. The applicant shall meet with and develop a site management plan with the Oregon Department of Fish and Wildlife relating to minimizing any potential impact on the eagle nest site or the elk herd.

c. The applicant shall not allow the artificial feeding of elk or deer.

d. The applicant shall, by October 1, 1995, bring his fences into compliance with the criteria established by the Oregon Department of Fish and Wildlife.

e. The applicant shall apply for and obtain all required permits from the Klamath County Department of Environmental Health which relate to the proposed use.


f. The applicant shall file with the Planning Department each year after the date of approval of this permit, a site plan map showing actual development which has occurred on the site during the previous year. If no development has occurred during that year, a letter stating so shall be sufficient.

g. This permit is limited to the area described in Exhibit "A" and, in general, as set forth in the site plan map submitted herein. The applicant shall be required to apply for and obtain site plan approval from the Planning Department for any development which

involves development exceeding 10% of the total development shown in the site plan filed herein.

h. The applicant shall obtain access permits from the Department of Transportation or the Klamath County Road Department for access to the property in accordance with the rules of those agencies.

Dated this 14 day of March, 1995.


Neal Buchanan, Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified that this decision may be appealed to the Klamath County Board of Commissioners by filing with the Planning Department a notice of appeal as set out in Article 33 of the Code, together with the required fee, within seven (7) days of the date of mailing of this decision. Appeals must be received by the Planning Department no later than 5 p.m. on the seventh day or next business day if the seventh day falls on a weekend or holiday. Failure to file a notice of appeal within the time provided will result in the loss of your right to appeal this decision.

SPECIFIC PROPERTY DESCRIPTION

for the railroad park:

Sections 4, 5, 9

Township 35

Range 7

Tax Lot Numbers:

R 3507-00400-00100
 R 3507-00400-00200
 R 3507-00400-00400
 R 3507-004A0-02600
 R 3507-00500-00900
 R 3507-009A0-01600
 R 3507-009A0-01500

R 3507-00400-00300
 R 3507-004A0-01000-0UA
 R 3507-00500-00500
 R 3507-00900-00100
 R 3507-009A0-01700

for the communications site:

SE 1/4 SE 1/4 Section 29 Township 35 S, Range 7 EWM

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 16th day
 of March A.D., 19 95 at 11:26 o'clock A M., and duly recorded in Vol. M95
 of Deeds on Page 5896

FEE NO FEE

RETURN TO:
 Commissioners Journal

By Bernetha G. Letsch County Clerk
[Signature]