

## BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request for )  
a Conditional Use Permit for )  
DAVID J. BLEHA )  
\_\_\_\_\_ )

CONDITIONAL USE PERMIT  
CASE NO. 33-94

SUPPLEMENTAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER initially came before Michael L. Brant, Hearings Officer for Klamath County, Oregon, on May 13, 1994. At the hearing, the Applicant, David J. Bleha, gave testimony and submitted evidence in favor of his Conditional Use Permit request, and the following parties appeared and testified in opposition to the request: Chris Jones, Glenda Jones, and Kenneth Olmstead. John and Betty Abbott testified via letter which was marked Exhibit E. The Applicant desires to establish a shotgun target range on 80 acres of land located north and west of LaWanda Hills, a rural, large lot, residential area west of Klamath Falls. The opponents to the Application provided testimony describing their concerns with danger from wildfire, security, noise, dust, and traffic. Following the hearing before the Hearings Officer, the Hearings Officer personally toured the LaWanda Hills area and the subject property, and on May 25, 1994, issued an Order granting the Conditional Use Permit requested by the Applicant.

Thereafter, Chris and Glenda Jones, Kenneth Olmstead, and John Abbott appealed the Hearings Officer's decision to the Klamath County Board of Commissioners. On July 26, 1994, the Board of County Commissioners held a hearing to consider the appeal.

SUPPLEMENTAL ORDER, CUP No. 33-94

Opponents, Chris and Glenda Jones, and John Abbott appeared and presented oral testimony. The Applicant, David J. Bleha, also appeared before the Board of Commissioners and presented testimony. On August 4, 1994, the Klamath County Board of Commissioners entered an Order upholding the appeal and reversing the decision of the Hearings Officer. The Board of Commissioners found that the Hearings Officer did not address the specific issues raised by the opponents. Specifically, the Board of Commissioners found that the opponents presented arguments pertinent to the case concerning:

"1. The impact of the facility on the liveability of their property was not addressed. The appellants argued this facility, as operated, created noise, generated dust, increased traffic, and interrupted the neighborhood.

2. The appellants also argued the existence of the facility had impacted the value of the property in the area and made sales of existing homes difficult."

Thereafter, the Applicant filed a Petition for Review before the Land Use Board of Appeals of the State of Oregon. Subsequent to said appeal, on October 18, 1994, the Applicant and the County stipulated to an Order of the Land Use Board of Appeals remanding this case to the Klamath County Board of Commissioners. The Applicant and the County further agreed and stipulated that upon receipt of the Order from the Land Use Board of Appeals, the Klamath County Board of Commissioners would "remand this case to the Klamath County Hearings Officer for a hearing to address the issues described in the Board of County Commissioners' Order No. CUP 33-94 dated August 4, 1994."

Based on said Stipulation, a hearing was held before Neal G. Buchanan, Land Use Hearings Officer for Klamath County, on February 17, 1995. At the supplemental hearing, the Klamath County Planning Department was represented by J. Kim Lundahl, and the Recording Secretary was Karen Burg. The Klamath County Planning Department's file and all contents thereof were incorporated into the record as evidence. The Applicant was present and was represented by William M. Ganong, attorney at law. The Applicant presented evidence addressing the issues noted by the Board of County Commissioners, including expert testimony provided by Henry J. Caldwell, Jr., M.A.R., Certified Real Estate Appraiser. Mr. Caldwell's testimony and report included a report prepared by Adkins Consulting Engineers and information provided by the Klamath County Road Department. Opponents Jones and Olmstead also appeared and provided testimony reiterating the concerns raised by them at the initial hearing before the Hearings Officer. The Hearings Officer, after reviewing the evidence presented and the transcripts of prior hearings, makes the following findings of fact, conclusions of law, and decision:

A. Findings of Fact.

1. The property which is the subject of this Conditional Use Permit request is described as the East  $\frac{1}{4}$  Northeast  $\frac{1}{4}$ , Section 15, Township 39 South, Range 8 East of the Willamette Meridian, and is described as Tax Lot Number 3908-0000-02200. The property consists of eighty (80) acres and is zoned NR,

nonresource.

2. The subject property is located within Keno Fire District No. 6. The property is undeveloped, except for the Applicant's shotgun shooting range, which encompasses an area of approximately two (2) acres. The improvements made by the Applicant include an access road which is protected at its intersection with Grace Drive by a heavy steel gate. The gate is locked when the shooting range is not in use. The range itself consists of a 1,200 square foot building which is used for the storage of clay targets and equipment used at the shooting range, and by shooting stations which are composed of a concrete pad and steel cages or guards. There are also multiple target throwers which launch targets over an area that is approximately 150 feet wide and 300 feet deep and which has been cleared of all vegetation and organic material. The targets are thrown at a rock hillside which also acts as a backstop to the shot propelled by the shotgun. The Applicant intends to construct a domestic water well on the subject property during the next 18 months, which will provide water for a restroom, water fountain, for use in landscaping the range area, and to make water more readily accessible for fire suppression.

3. The topography of the subject 80 acres is extremely rocky and hilly, mostly covered with juniper trees and low vegetation, including bitterbrush. The shooting range lies westerly of a ridge, commonly referred to as LaWanda Hills.

4. Access to the property is via State Highway 66 to



LaWanda Drive, a paved county road, and Gearhart Drive and Grace Drive, which are graveled roads not accepted for maintenance by the county. It is approximately one mile from Grace Drive over the private road constructed by the Applicant to the shooting range. Following approval of the Conditional Use Permit in May 1994, the Applicant began improvements on Grace Drive, including grading and application of gravel. Those improvements were terminated when the Board of Commissioners entered their Order reversing the Conditional Use Permit. If this permit is granted, the Applicant will improve Grace Drive from its intersection with Gearhart Drive to the driveway of the road that serves the range. The said improvements to Gearhart Drive will place it in compliance with county standards, including two inches of crushed rock, at a cost to the Applicant of approximately \$7,500.

5. Access to the shooting range will be strictly controlled. The range will not be open to the general public. Anyone using the range must sign a Range Usage Agreement, which includes strict safety rules. A Range Manager will be present any time the range is in use. The Range Manager is responsible for enforcing the rules. The range configuration and rules comply with NRA safety standards, and the Applicant will maintain liability insurance covering the use of the shooting club. The rules contain a provision which requires members using the club to drive carefully and slowly through the LaWanda Hills Subdivision, and provide for the loss of shooting privileges should the shooter violate said conditions.

6. LaWanda Hills, a large lot, rural, residential subdivision, lies approximately one mile southeast of the shotgun range. The subdivision is geographically separated from the shotgun range by the LaWanda Hills, which includes a ridge approximately 500 feet higher than the average elevation in the subdivision. The LaWanda Hills Subdivision lies in a valley which extends north to Balsam Butte, the location of several commercial gravel pits, which open in a southeasterly direction toward subdivision. The south end of the subdivision is open toward the Klamath River and the lower Klamath Valley. The Weyerhaeuser wood fiber operation, which includes a fiberboard plant, plywood plant, and other related wood products operations, lies southeasterly of LaWanda Hills and across Highway 66 from the LaWanda Hills Subdivision. The area lying across the river from Weyerhaeuser and southerly of Weyerhaeuser is composed of the Klamath Game Management Area, known as Miller Island, which provides water fowl and upland game hunting opportunities to the public.

7. The Balsam Gravel Pit, which lies approximately one mile north of the LaWanda Hills Subdivision is used frequently as a target practice area by handgun and rifle shooters. Shooting at the Balsam Pit is not regulated or controlled. The topography of the LaWanda Hills residential area is such that sound emanating from the Balsam Gravel Pit shooting area, the Weyerhaeuser Mill and Miller Island hunting area travel into the valley and create a high-ambient noise level. The study prepared by Adkins

Consulting Engineers shows an ambient noise level in the LaWanda Hills Subdivision of 65 decibels. The test showed that shooting taking place at Balsam Pit and at the Miller Island Game Management area register up to 98 decibels in the LaWanda Hills subdivision. However, shooting being conducting at the Applicant's shotgun range did not register on the decibel meter and, generally, was not audible to the engineers conducting the tests. It is apparent that the shooting noise, of which the opponents complain, is most probably originating at the Balsam Pit and along the Klamath River from hunters and uncontrolled shooting activities. The engineers' study appears conclusive that shotgun usage at the Applicant's range will have no noise impact on the LaWanda Hills Subdivision residents.

8. The opponents are concerned about potential wildfire in the area. The Applicant's shooting rules strictly control smoking at the range. The mile-long access road developed by the Applicant opens up an area that otherwise is inaccessible for fire control and prevention vehicles. Access to the property has been provided to the Oregon Department of Forestry. The establishment of a domestic water well on the subject property will provide a source of water for fire protection. The area where the shooting activity takes place, including the landing area for the shot propelled from the shotguns has been cleared of vegetation and will be maintained in that condition. There appears to be no evidence in the record to support the opponent's concern about wildfire. The evidence shows that the Applicant's

activities will have no negative fire hazard impact and may, in fact, reduce the fire hazard in the area. The area is within the Keno Fire District, and fire protection is provided by the Keno Fire Department and the Oregon Department of Forestry.

9. The opponents raised a concern with safety, particularly people trespassing at the Applicant's range and firing guns when not under the control of the Applicant. The access road to the range is blocked by a heavy, locked, steel gate at its intersection with Grace Drive. There is no other vehicular access to the shooting range. The terrain around the range is such that it is unlikely that trespassing will be a problem as the pit range is separated from the nearest road by steep, rocky terrain, which is difficult to negotiate on foot, and cannot be negotiated by motor vehicle. The relative accessibility of the Balsam Drive Gravel Pits provide a much more available shooting area. The Applicant currently has and will maintain public liability insurance for damages arising from the use of his range. He will require that each person using the range sign the range rules and abide by those rules. In addition, during times that the range is being used by members, a Range Manager will be present on site to enforce the safety rules.

10. The opponents are concerned that noise, dust, and increased traffic will adversely impact the liveability of the LaWanda Hills neighborhood. The Applicant has agreed to improve Grace Drive to recommended county standards by adding two inches of crushed rock to the surface and by providing annual



maintenance to that road. The study done by Adkins Consulting Engineers shows that even the shooting taking place at the Balsam Pit, which creates a decibel level of 98 in the subdivision, is below the Department of Environmental Quality standards found at OAR 340-35-035 which prohibits impulse sounds in excess of 100 decibels between the hours of 7 a.m. and 10 p.m. The information provided in the report from Henry J. Caldwell, Jr. shows that the current usage of the county roads which serve the LaWanda Hills residential area and the subject property are well below county standards. The records provided by the Applicant for the period of time during which the shooting range was open in June and July 1994 showed an average daily usage of 6.8 automobiles. This usage is similar to one residence as shown in Klamath County traffic standards. The range was generally open two days a week. The Applicant intends to follow a similar schedule in the future. At the first hearing, the Applicant testified that the site can be used by ten people at a time and that the maximum usage on any day would be twenty-eight shooters. If each shooter arrived in a separate automobile, thereby creating twenty-eight round trips in one day, said usage would still be well below the capacity of the road servicing the subject property. The opponents are concerned about shooters speeding on the roads. The Applicant submitted written testimony from Kurt Phillips and Jack Landers, both residents of LaWanda Hills, who state that the additional traffic of people using the shooting range caused no dust or other traffic problems. Mr. Phillips' letter states that residents of

the area tended to drive faster and more recklessly than shooters visiting the area. The report prepared by Henry J. Caldwell, Jr., M.A.R., demonstrates that the development of the shotgun range has not devalued property and that, in fact, LaWanda Hills properties have been sold at premium prices. Mr. Caldwell's report discounts any adverse impacts from fire, security, noise, dust, traffic, or other liveability factors as affecting property values.

11. The subject property is located in a deer winter use area. The Applicant has agreed to a management plan with the Oregon Department of Fish and Wildlife which controls any adverse impact on wintering deer. In addition, the Applicant's usage rules prohibit hunting on the subject property.

12. Although the opponents have voiced several concerns, there is no substantial evidence in the record to support their concerns. To the contrary, the Applicant has presented substantial evidence that the use of the subject property as a shotgun range will not cause the adverse impacts described by the opponents.

B. Klamath County Land Development Code Criteria.

This Application is subject to the following Klamath County Land Development Code Sections:

A. KCLDC Section 56.030D allows as a conditional use in the nonresource zone all conditional uses in the forestry/range zone.

B. KCLDC Section 55.230B allows as a conditional use

in the forestry/range zone "participant sport, youth types, limited to hunting and fishing preserves, firearm and archery ranges \* \* \*."

C. KCLDC Section 44.030 provides the review criteria for granting a Conditional Use Permit.

D. KCLDC Section 57.050B provides for a management plan for the subject activity which is located in a deer winter range.

C. Conclusions of Law.

1. The proposed use complies with the policies of Klamath County's Comprehensive Land Use Plan. By definition, nonresource land is land that is not generally suited for agriculture, forestry, commercial, industrial, or residential uses. Lands that are not agriculture or forest lands are designated as nonresource lands. The County has provided for low-density residential development on nonresource lands, as well as the development of nonresource lands for other low impact type activities. Under Goal 8 of the Comprehensive Plan, the County adopted several policies which encourage county approval of the development by private parties of recreational opportunities. The approval of the Conditional Use Permit requested by the Applicant will further the policies provided in the County's Comprehensive Plan.

2. The proposed use is in conformance with all other required standards and criteria of the County's Land Development Code. Generally, the criteria and standards of the Code

applicable to this use are minimal. They include adequate fire protection and inclusion of the property within a fire protection district, which criteria has been met by the Applicant. They include reasonable access. The Applicant has provided access via state highway and county roads to a well-maintained, private road developed by the Applicant, and they require a management plan which limits the activities on the property to minimize any adverse impact on wildlife. In this case, the Applicant has provided a substantial security gate to the property; is requiring all users of the property to sign and abide by strict rules of use; has obtained and will maintain appropriate liability insurance; and has provided for a Range Manager to be on duty when the property is open to use by the public. The Applicant has agreed to a management plan with ODF&W to limit any impact on wintering deer. The area of use on the property has been cleared to bare ground. The property will be improved with a water source in the near future, and appropriate sanitary facilities will be provided.

3. The location, size, design, and operating characteristics of the proposed use will not have a significant adverse impact on the liveability, value, or appropriate development of abutting properties in the surrounding area. As is discussed at length in the Findings of Fact above, the residents of the LaWanda Hills subdivision, which is located approximately one mile southeast of the proposed shooting range, raised several concerns. The Applicant has provided substantial

evidence addressing each of the concerns raised and which support the findings of the Hearings Officer set forth above. The site of the shooting range is isolated. It is shielded from adjoining uses by significant geological features, including LaWanda Hills. It has been designed to comply with nationally recognized standards. The report prepared by Henry J. Caldwell, Jr. shows that the proposed use will have no significant adverse impact on the liveability, value, or appropriate development of the abutting and surrounding area.

4. The criteria for approving a Conditional Use Permit provide that the reviewing body may impose reasonable conditions on the operation of the facility. Based on the foregoing review of the Application and proposed use, it is appropriate to require that the Applicant comply with all county ordinances and regulations, states ordinances and regulations, that he observe the standards established by the NRA for the development and operation of a shotgun shooting range, and that he comply with the management plan proposed by ODF&W.

D. Order. The Applicant's request for a Conditional Use Permit to operate a shotgun target range on the real property described above is hereby approved and granted subject to the conditions set forth in Section 4. above, and further subject to the condition that Applicant comply with Applicant's agreements

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as set forth in paragraphs numbers 2, 4, 5, 9, 10, and 11 of the Findings of Fact hereinabove.

Dated this 15 day of <sup>March</sup>~~February~~, 1995.

Neal G. Buchanan  
Neal G. Buchanan  
Hearings Officer

Klamath County Land Development Code Section 24.060 provides: "An order of the Hearings Officer may be appealed to the Board of County Commissioners within seven (7) days of its mailing as set forth in Article 33."

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 17th day  
of March A.D., 19 95 at 10:43 o'clock A M., and duly recorded in Vol. M95  
of Deeds on Page 5986.

FEE NONE

RETURN: Commissioners Journal

By Bernetha G. Letsch Bernetha G. Letsch, County Clerk