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BEFORE THE BOARD OF COMMISSIONERS
OF KLAMATH COUNTY, OREGON

IN THE MATTER OF CLUP/ZC 23-94
FOR RANDY AND SUE SCOTT

ORDER

1. NATURE OF THE APPLICATION: The applicants are requesting a Comprehensive Land Use Plan and Zone Change (CLUP/ZC) from Non-resource to Rural/R-5 on 60 acres located approximately two miles west of the Weyerhaeuser plant and one half mile north of Hwy 66 (Greensprings) as shown as lots 1-11 on Preliminary Tract 1290 (December 20, 1994).
2. NAMES OF THOSE INVOLVED: A Hearing on this application was conducted FEBRUARY 7, 1995. At the close of Hearing, Decision was deferred to FEBRUARY 28, 1995. The applicants are Randy Scott and Sue Scott. The applicants were represented by Attorney Melvin D. Ferguson. The Planning Department was represented by Kim Lundahl. Karen Burg was the Recording Secretary. Members of the Board of County Commissioners who participated in this Hearing were: C. H. McMillan, III and F. Jean Elzner. The County Planning Commission, with a quorum present, participated in an advisory manner. A Notarized list of those who participated is on file at the Planning Department.
3. LOCATION: The subject property is within Klamath County Tax Assessor Lot 3908-02200-00100. It is centrally located in portions of Section 22, T 39S R8E WM. and encompasses 60 acres m/l as depicted as lots 1-11, Preliminary Tract 1290 (December 20, 1994).

4. FINDINGS OF FACT:

A. Background Information

The 120 acre (of which the "exception area" of 60 acres is included) parcel is flat to hilly terrain with some Juniper trees, dense brush in areas and grass. Preliminary Tract 1290 - Silver Ridge Estates showing the proposed layout of fourteen residential lots with a minimum lot size of five acres (December 20, 1994).

The subject property is a convenient distance (four miles) from the Klamath Falls business district for grocery stores, health care, public and private recreational facilities, telephone and power service from public utilities and State Highway 66. It is within the Keno Fire Protection District with a fire station being located approximately 3/4 mile southeast of the subject property. Surrounding the subject property are parcels of property zoned R-1, R-5, Non-resource, Industrial, and Agriculture. Directly adjacent to most of these properties, including the subject property is property zoned Non-resource. Within Exhibit C is a color indexed map which designates the subject property in blue, R-1 zoning in pink, R-5 zoning in green and Heavy Industrial zoning in purple. These designations were approved by the Board of Commissioners when the Comprehensive Plan for Klamath County was developed and acknowledged November 25, 1981.

5. HISTORIC USE:

The subject property has not been used for any purpose for decades, and has never been used for agricultural purposes. The land surrounding the subject property has been used very occasionally to grow hay and rye. Even the surrounding land is not particularly well suited for agriculture however.

Approximately three years ago, Randy and Sue Scott invested the sum of \$4,000.00 in seed for an adjacent parcel of land to the Southeast of the subject property. Martin Kerns did the actual cultivation of the soil and planting. As testified to by Mr. Kerns, no crop was harvested and there was a financial loss of the investment.

A local farmer and rancher, Lee Hopper, has submitted two letters (Exhibit C). In his first letter dated December 20, 1994, "This property would not be feasible for farming or irrigation due to soil type, terrain, and rocks. "In a second letter dated January 5, 1995, he indicates the subject property is "...not well suited for irrigation using wheel lines, or any other type of equipment." Cultivation of the subject property is difficult due to several factors. The first factor is that the property is uneven. The property rises a total of 150 feet from its lowest point. Even if water was sufficiently plentiful to irrigate marketable crops, using conventional aluminum mainline and wheel lines would not be feasible. It would be impossible to maintain a sufficient volume of water and water pressure to the higher ground. The slope of the land would stress joints in the wheel lines and make it difficult to move the wheel lines in a straight manner across the land. Other conventional means of irrigation are similarly not well suited for the terrain of the subject property.

The second factor is water supply. As well reports (Exhibit C) for Section 22, T39S, R8E indicate, there are twenty-one total wells currently in Section 22. Zoning within Section 22 is NR, R-1, and Heavy Industrial. Well depth ranges from 51 feet to 486 feet with the average well depth being 190 feet. The average flow rate is 40 gallons per minute depending upon the depth from which the water is taken.

Testimony entered indicated a single family residence in Klamath County uses approximately 500 gallons of water per day. Klamath County Comprehensive Plan Atlas, Table X-2, whereas according to Harry Kline of Klamath Pump Center, an agricultural irrigation system for the subject property could easily consume 670 gallons per minute. The fourteen residences proposed by the applicant would use approximately 7,000 gallons of water per day, whereas an irrigation well for the subject property would consume in excess of 950,000 gallons in one day (670 gpm x 60 mins. x 24 hrs).

Based upon the flow rate from current wells, it is doubtful sufficient water would be obtained for irrigation and it is probable domestic ground water users in this area would object to an application by the applicant for an agricultural well permit. There is clearly sufficient capacity however for fourteen additional domestic water users.

Even if sufficient water capacity for agriculture could be obtained from drilling an irrigation well, it should be noted drilling a well will have several risks. First, 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 applicants chose to drill an irrigation well, it is likely their permit to use that well would not even be considered by the licensing agency for two years or more. In addition, there is no guarantee that, due to other considerations, the permit would be granted. One of those considerations is the fact the domestic water supply for the surrounding residential areas are supplied by wells.

Obtaining a surface water right for the subject property is equally unlikely. The Klamath River would be the most likely source for surface water. Currently pending before the United States Fish and Wildlife Service are applications to list as endangered species several runs of salmon

in the Lower Klamath River. If said anadromous fish are listed as endangered species, then it will be necessary to maintain minimum stream flows in the Klamath River. Parties who are pressing the listing of the salmon in the Lower Klamath River can be expected to also object to agricultural ground water wells in an effort to reduce diversions of water from the Upper Klamath River drainage basin.

6. SCS SOIL CLASSIFICATION:

Within Exhibit C are photocopies of a portion of sheets number 76 and 81 from the Soil Survey of Klamath County, Oregon, Southern Part prepared by the USDA Soil Conservation Service. The maps show that all of the soil on the subject property as 50E, Lorella, very stony loam with a slope of 2 to 35 percent. The soil is classified as Class VII at p. 60 and 61 of the Soil Survey. The soil is not well suited for agriculture or forestry. The soil is considered too stony and steep for cultivation. Growing of crops and/or trees is not practical because the soil is stony and shallow and will not readily support the root structure for necessary growth. In a letter from Steve Jones of the Oregon Department of Forestry (Exhibit C) he states this soil is not capable of commercial timber production.

In the east and adjacent Lawanda Hills Subdivision, the soils are much better suited for Agriculture and Forestry uses with Classification of 23B, 23C, 74B, 9C, 18B, 74D and 51E. With the exception of the 74D and 51E classifications, these soils maintain a subclass of II to IV and are well suited for Agriculture and Forestry according to the SCS. The Klamath County Comprehensive Plan, appropriately recognized however this area, like the subject property was more appropriately suited for rural residential use.

Environmental Health Service Division evaluation of septic suitability from properties adjacent to the subject property have been completed. Based on tests conducted, approval of on-site sewage disposal systems is expected. As required by KCLDC Sec. 46.090 E 6, a completed and approved "Evaluation Report for Methods of On-Site Sewage Disposal for a Subdivision" described in ORS 454.755 1 b is to be on file demonstrating lots sold will be sold contingent upon an on-site sewage disposal pre-approval.

Again, adjacent sites have already been approved for on-site sewage disposal systems (Exhibit C).

7. EXCEPTIONS DOCUMENTATION:

The Department of Land Conservation and Development (DLCD) responded to notification of this application via letter dated September 12, 1994. Within the text of this letter signed by Doug White is the statement "In order to designate the property "rural" the County will have to demonstrate that the standards for a committed exception (OAR 660-04-028) have been met." The Planning Department Staff questioned this requirement as within their experience an "exceptions statement" has NEVER been required to change a non-resource plan/zone designation to another non-resource plan/zone designation.

The applicant retained counsel and expended considerable effort, monies and time preparing the documentation required by the DLCD per the September 12, 1994 letter.

On January 31, 1995 Applicant Scott met with Brent Lake, DLCD Field Rep., at the Planning Department Office.

Senior Planner Kim Lundahl asked for documentation as to how an "exception statement" was required in the Scott circumstance. Mr. Lake responded "I know there is no requirement for an exception statement in this circumstance."

Planner Lundahl also questioned why the DLCD was so interested in this application when other cases such as CLUP/ZC 7-94, approved in May, 1994 were actually supported by the DLCD? CLUP/ZC 7-94 was approved by the Board on May 5, 1995 with response from the DLCD dated April 4, 1994; "based on the five acre zoning, the department does not object to this proposal."

This case involved the conversion of 125 acres of in-production Class IV Alfalfa crops to RURAL/R-5 designation.

The DLCD Field Rep. responded "you know the old squeaky wheel" alluding to the number of calls he had received concerning the Scott application vs. the one received on the Mullen/Penn application.

At the February 7, 1995 Hearing County Counsel, upon question from the Planning Commission, stated he could find no supporting documentation requiring an exceptions statement considering the circumstance.

However, in consideration of the considerable effort, monies and time spent by the applicant in response to a non-requirement the Board of County Commissioners respond as follows:

We find the subject property is irrevocably committed to Rural 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 is directly adjacent to other Non-resource zoned property. Consistent with the pattern of zoning in the area, to the east some 2,500 to 3,000 feet is the Lawanda Hillis Subdivision. Said tract is an acknowledged residential subdivision with lots ranging from 1 acre to 5 acres in size. The zoning for that area is R-1 and R-5. To the southeast is 117.6 acres which is zoned Heavy Industrial. Also to the southeast from the distance of 2,000 feet to 4,700 feet are parcels which vary in size from less than an acre to three acres. This area is zoned R-1. To the west and southwest, across Round Lake Road, are four parcels ranging in size from one acre to thirty acres which are zoned as Exclusive Farm Use. To the west are parcels which range in size from ten to forty acres zoned Non-resource, Forestry and Exclusive Farm Use. These parcels are also buffered by Round Lake Road. The R-5 zoning proposed for the subject property, in addition to Round Lake Road, provides an excellent buffer to the R-1 zoning of parts of Lawanda Hills and the heavy and light industrial zoning to the east and southeast of the subject property. The land immediately surrounding the subject property and to the north is designated Non-resource. These areas have uneven terrain and are covered with Juniper trees, sagebrush and native grasses. None of the adjoining lands are devoted exclusively to forestry practices or agriculture. There is one twenty acre parcel south of the subject property which is used as a vegetable farm and has two homes, but the zoning for said parcel is NR. The vast majority of the land in the area of the subject property has been irrevocably committed to rural residential use in a pattern which maintains the rural residential character of the area.

C. Existing Public Facilities and Services. The subject property is located in the Keno Fire Protection District and the fire station is located approximately 3/4 of a mile southeast of the subject property on Highway 66. John Ketchum, Fire Chief of the Keno Rural Fire Protection District, indicates he does not foresee any undue burden in providing services to the fourteen lots in the proposed subdivision (Exhibit C).

A road system is proposed for the subject property which will be accessed via Highway 66 and through to Round Lake Road. The road system proposed is identified on Preliminary Tract 1290. Highway 66 (Greensprings) is a paved, two lane State Highway with capacity to carry any additional traffic generated from the development of this property. In the record is a letter from John Thomasson of the Oregon Department of Transportation which grants an access to Highway 66 from the subject property (Exhibit F). Note the access location was changed to accommodate any increased traffic flows. To the extent Mr. Thomasson's letter is not clear, Randy Scott has spoken personally with Mr. Thomasson and he indicated Highway 66 can easily accommodate any increased traffic flows created by the proposed subdivision.

The subject property will be served by Pacific Power electrical facilities and U. S. West telephone facilities via underground cables. Cable television services are also planned for this area. All utilities will be installed to County specifications and in accordance with standards of that service provider. Dale Morrison, District Operations Manager for Pacific Power, indicates there is sufficient power available to serve this proposed subdivision (Exhibit C). U. S. West has verbally indicated to Randy Scott that there will be no problem providing telephone lines to the subject property, provided the Scotts prepare the necessary trenches.

Article 74 of the Klamath County Land Development Code discourages public water and sewer services in rural areas. In other residential areas near the subject property, 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. Septic systems for adjacent properties have been approved by the Klamath County Health Department.

The ground water used by private residences will be significantly less than groundwater that would be demanded from agricultural uses.

D. Parcel Size and Ownership Patterns of Exception Area and Adjacent Areas. The exception area is 60 acres. The adjacent lands provide a pattern of rural residential use ranging in size from less than one acre to thirty acres. All of the existing subdivisions and partitions were approved at the time Klamath County's Comprehensive Plan was adopted. The existence of the current subdivisions and residences thereon and the current zoning patterns demonstrates the suitability of the exception area for residential use.

E. Neighborhood and Regional Characteristics. As discussed in detail above, the subject property is located in an 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 one (1) to thirty (30) acres. The exception area is very close to an acknowledged residential subdivision (Lawanda Hills) with lots generally one to five acres in size. The area is serviced by a nearby fire station and county law enforcement. Easily accessible by prospective residents are grocery stores, medical services, county parks, private recreational facilities, churches and other 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. Attempts to grow crops have been unsuccessful. Similar agricultural land in the area has already been committed to residential use. The subject property is surrounded by land zoned as Non-resource. To the east and southeast is a large residential subdivision and an Industrial area (PMF Products). To the south and southwest are small parcels zoned as R-1 and R-5. There is one small parcel to the southwest designated as EFU. This area is however buffered by Round Lake Road. East of the subject property and adjoining the Lawanda Hills subdivision is a large area zoned R-5. The information provided by the applicant, the State Department of Forestry, soil survey maps and others demonstrate that the subject property and surrounding properties which are of a similar topography and soil type are not suited for agricultural or forestry purposes. The exception area contains a change in elevation exceeding 150 feet. These slopes prevent the use of an economic irrigation system. 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 nearby residential uses conflict with normal resource 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 area in which the exception land is located is not well suited for resource use. The area is separated from resource use in part by Highway 66, Round Lake Road, and existing residential development.

G. Physical Development of the Exception Area. The experience of the owners/applicants has also shown that it may not be viably employed for agricultural purposes. Experienced farmers and ranchers agree as verified by Martin Kerns and Lee Hopper.

H. Other Relevant Consideration. The most relevant factors in considering an exception to Goals 3 and 4 for the subject properties are:

- (1) That it is not physically suited for resource 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 subject property is in an area that has been and is continuing to be developed for rural residential use. It will have the amenities and services deemed necessary for rural residential development. The addition of this property to the inventory of residential land in the area is congruent with the development of this area in general. The private and public facilities and services available to this area can accommodate the additional demand that would be placed on them by future residences in the exception area.

Other considerations include that if the subject property is developed with five acre lots, it will provide a transition from the high density lots lying to the west and north 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.

The property is NOT within a designated big game habitat as set out on the Goal 5 mapping adopted by the Board of County Commissioners.

To the extent the proposed development would in any way impact deer and elk ranges, the applicants have agreed to:

1. Establish a formal homeowners association/covenants to address human-wildlife conflicts and interactions.
2. Adhere to "wildlife friendly" fencing specifications to allow unrestricted and safe movement of deer and other wildlife.
3. Maintain existing native vegetation for deer forage and cover.
4. Strictly enforce the County leash law to discourage dogs running at large.
5. Discourage the artificial feeding of wildlife.
6. Distribute an ODFW brochure on Cougar awareness to lot purchasers within the escrow period.

These requests were made by the ODFW and agreed to by the applicant in conversation with the Acting District Biologist December 27, 1994 and set out via letter dated January 27, 1995 (Exhibit K).

8. COMPREHENSIVE PLAN CHANGE REVIEW CRITERIA - ARTICLE 48:

Klamath County Land Development Code Section 48.030A 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. The public need of this change in the Comprehensive Plan is shown by the attached letters and testimony entered by Susan Kollman (Exhibit Y), Bob Dortch of Coldwell Banker Holman Realty, Inc. Loraine Peters, an owner of property adjacent to the subject property, Housing America (Exhibit C). Additional documentation is also included in a letter from Applicant Scott

addressed to Brent Lake, DLCD, dated February 1, 1995 (Exhibit L). The area is ideally suited 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 is located in an area that has public services that are deemed appropriate for rural residential development.

B. 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 Non-resource. The soil in the subject property is predominantly Class VII. The evidence described above demonstrated 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 exception information set forth hereinabove demonstrates that the change in land use plan for the subject property from Non-resource to rural residential will not decrease the agricultural land inventory, will not take any viable agricultural land out of production, and will not decrease forest land inventory. The development of the property for rural residential use

with a five acre density will have no impact 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. Documentation in the record demonstrated the desirability and need of this location and this type of rural residential development. The proposed development provides lots that are slightly larger than other lots in the area, thus providing a choice of density to prospective purchasers. the large lots also provide a transition or buffer from the higher density Lawanda Hills Subdivision to the lower density residential lots to the west 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 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 a road which will be constructed to County standards and which intersects with Highway 66.

The road will be maintained by an association of the lot owners 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 parcels in this general area. Documentation in the record demonstrate the suitability of the area for septic systems and sufficient availability of water for domestic purposes.

The property is located in the Keno Fire Protection District and a fire station is located 3/4 of a mile east of the subject property. The development of this property will aid in the control of wildfire by putting in a good road to County standards and by providing water sources on site.

Electrical services and telephone services will be provided by underground conduits to the eleven lots on the property. The property is served by Highway 66 which has the capacity to carry traffic which would be generated by fourteen homes on the subject property. Other services available in the general area include public parks, privately owned grocery stores, churches, recreational facilities 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 "exception" property into eleven rural residential lots with a minimum size of five acres. The Klamath County Land Development Code Section 51.2 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 one acre. The planned subdivision provides an appropriate buffer area between the relative high density lots of the Lawanda Hills subdivision and industrially zoned

areas to the east and the lower density lots to the north and west. Highway 66 and Round Lake Road provide additional buffers. Site drainage is good given the contour of the land and nature of the soil. Development of the property in five acre lots will provide housing opportunities for people who desire to keep recreational horses, 4-H animal project, and other small-scale agricultural uses so popular in our society today.

C. The proposed change is in conformance with policies of the Klamath County Comprehensive Plan. The subject application and planned use for the property is 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.

There is a definite demonstrated need for this type of rural development. 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.

9. ZONE CHANGE REVIEW CRITERIA - ARTICLE 47:

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 Non-resource to R-5 is in conformance with the comprehensive plan and all other provision 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, Articles 71, 73, 75 and 76 sets out the standards for vehicular access and circulation, site drainage, rural area water and sewer service, and utilities. 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.

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 sixty acres in size. The applicants have submitted herewith a preliminary development plan which shows the proposed layout of the lots and the roads into the property and the contours of the property. The information submitted herewith 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 and industrial development lying east and southeast of the subject property to larger lot developments and Non-resource uses lying west and 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 show the access street proposed for the property. The width and design of the street is in compliance with the code and the access will

be built to county specifications. 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 fourteen homes on the subject property.

D. The proposed change of zone will have no adverse effect on the appropriate use and development of adjacent 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 pattern of development surrounding the subject property is rural residential. The residential use to the east and southeast is significantly denser than that on the subject property and will provide a reasonable transition area between the larger lot development and Non-resource use to the west and north. The development of this property will not interfere or impact commercial agriculture and forestry uses. The property is not well suited for either purpose as outlined herein. Property surrounding the subject property is similarly not well suited for agriculture or forestry purposes.

10. OTHER CONSIDERATIONS:

The subject property does not lie within any identified fish or wildlife resource area. Nevertheless, applicants propose to mitigate any potential adverse effects on wildlife by lot restrictions which require maintaining natural vegetation, restrict dogs running loose and feeding of deer and require the erection of wildlife friendly fences. 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 disaster 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 increasing the tax base value, providing construction jobs for the citizens that are here and providing demands for the private retail and commercial interests of the Keno area and Klamath County generally.

11. PLANNING COMMISSION RECOMMENDATION:

The Planning Commission has recommended DENIAL of this application based on findings set out in motion made by Doug Everett and seconded by Ernest Palmer. The Board sincerely appreciates the Planning Commission effort and involvement with the Planning process, however, the Board has fully reconsidered Exhibits A-Z and testimony entered.

The Planning Commission findings made for DENIAL and the Board of County Commissioners findings in response are:

1. Based on concerns by the Oregon Department of Fish and Wildlife.
-The Board finds these concerns mitigated by the applicants agreement to the conditions 1-6 suggested by the Acting District Biologist in her letter dated January 27, 1995.
2. Uncertainties of septic installation.
-The Board finds this concern mitigated by the requirements of KCLDC Sec. 46.090 E 6 requiring septic suitability be demonstrated on each lot prior to filing of the final plat.
3. Non-compliance with KCLDC Section 47.010, specifically demonstrated need.

-The Board finds testimony and evidence was received indicating only 11 lots (5-10 acres) were available in the Klamath Falls/Keno area as of November 16, 1994. However, the Board finds the public may not find any or all of these available properties suitable to the individual desires and wishes to not limit selection. Testimony from Bob Dortch (Exhibit C) states significant need and demand exists for this parcel size. Testimony from Susan Kollman indicates (Exhibit Y) indicated that eight of the eleven proposed five acre lots were already spoken for prior to the Hearing date which speaks to the need for this parcel size in the project area.

4. Non-compliance with KCLDC Section 47.030 B 4, specifically, the proposed change of zone designation will have no significant adverse effect on the appropriate use and development of adjacent properties.

-The Board finds conflict with adjacent resource uses will be mitigated with the application of a restrictive covenant as described in KCLDC Sec. 54.070 C 2 requiring a written statement be recorded with the deed which recognizes the rights, without complaint from the lot owner, of adjacent and nearby land owners to conduct farm and forest practices consistent with accepted farm and forest practices.

The Board directs the Planning Commission require this covenant as a condition of approval for Preliminary Tract 1290.

Testimony was received from various citing the impact fourteen new homes within the CLUP/ZC area may have on ground water availability.

The Board finds the property could be developed to six residences without the change requested. The impact of three additional domestic wells to the level existing is found to be insignificant as explained in "5. HISTORIC USE" above. Especially when weighted against the impact of

potential agricultural well production now possible without County review.

Testimony was also entered citing nonconformity and conflict with the existing rural uses. The Board finds the area is rural and the application before the Board will result in only a slightly denser rural residential use.

5. Non-compliance with Section 48.030 B 1, specifically the proposed change has not been supported with documentation for public need.

-The Board reiterates its findings in 3., above.

Again, the Board thanks the Planning Commission for its careful review but finds its recommendation not supported by the testimony and evidence in the record.

12. CONCLUSION AND ORDER:

The Board of Commissioners finds 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 on the Klamath Falls-Keno area and Klamath County generally. Basically, if not on the subject property, then where? Development of the subject property provides for a transition area from the higher density rural residential use of the Lawanda Hills subdivision to the lower density residential and non-residential uses lying West, North and South of the subject property.

As to the "exceptions statement" the Board finds the DLCD erred in requiring this documentation and this error caused the applicant to expend monies and time beyond that required of others who have made similar applications.


However, in deference to the efforts made by the applicant, the Board finds the documentation does support a "committed exception" and finds it does comply with OAR 660-04-028.

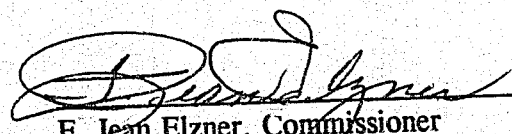
The applicants have satisfied the review criteria set out in Article 47 and 48 of the Klamath County Land Development Code.

Proper notice of the application and the hearing was given. The intent of the statewide planning goals have been met.

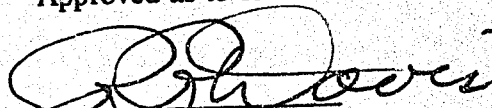
THEREFORE, it is hereby ordered that the change of Comprehensive Land Use Plan designation and zoning of the subject property from Non-resource to Rural (R-5) is approved per ORDER stated February 28, 1995.

DATED this 23 day of MARCH, 1995.


C. H. McMillan, III, Chair


F. Jean Elzner, Commissioner

Approved as to form:


Reginald R. Davis
County Counsel

NOTICE OF APPEAL RIGHTS

You are hereby notified this decision may be appealed to the Land Use Board of Appeals within 21 days following the date of mailing of this ORDER. Contact the Land Use Board of Appeals for information as how to file this appeal. Failure to do so in a timely manner may affect your right to appeal.

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 28th day
of March A.D., 19 95 at 9:46 o'clock A M., and duly recorded in Vol. M95
of Deeds on Page 7234.
FEE NONE RETURN: Commissioners Journal By Bernetha A. Letsch County Clerk