

BEFORE THE BOARD OF COMMISSIONERS
OF KLAMATH COUNTY, OREGON

In the Matter of CLUP/ZC 2-96) ORDER
for Peter M. Bourdet,)
Applicant.)

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1. Nature of Application: The applicant is requesting a Comprehensive Land Use Plan and Zone Change from Agriculture/EFU-CG to Rural/R-5 on 233 acres located immediately east of Pine Ridge Estates and Rainbow Park and approximately one mile north of the city of Chiloquin.

2. Names of Those Involved: The applicant is Peter M. Bourdet. The applicant was represented by attorney William M. Ganong. The Planning Department was represented by J. Kim Lundahl. Karen Burg was the recording secretary. Written comments concerning the application were submitted by nearby residents, the Land Conservation and Development Department, the Klamath County Department of Human Services, and others.

3. Legal Description: The subject property is composed of Klamath County Tax Assessor lots 3407-22-100 and 3407-27-100. The legal description of the property is parcels 1 and 2 of LP 7-85, located in Sections 22 and 27, Township 34 South, Range 7 East of the Willamette Meridian in the Klamath County, Oregon.

4. Findings of Fact: The subject property consists of approximately 233 acres, which are described as Parcels 1 and 2 of Land Partition 7-85. The land is located in Sections 22 and 27, Township 34 South, Range 7 East of the Willamette Meridian in Klamath County, Oregon. The southern two thirds of the subject property is the former site of the historic Pine Ridge Mill.

According to the article "The Lumbering Industry in Klamath County" authored by Eleanor Collier Ehlers and reporting the oral history of Alfred D. Collier, (*Klamath County History*, copyrighted 1984 by the Klamath County Historical Society) the Pine Ridge Mill was built in 1916 by Wilbur Knapp. The mill was typical of other rural mills in Klamath County, in that it was spread over a substantial area and was supported by its own mill town.

The town of Pine Ridge was located due west of the mill and across the Williamson River in the area that now composes Pine Ridge Estates and Rainbow Park on the Williamson River. Those two areas are now residential subdivisions of one-acre lots. The Pine Ridge Mill and the town of Pine Ridge burned to the ground

in 1939. With the onset of World War II, the scarcity of materials, and workman, the mill was not rebuilt. In addition, the mill site, or the remnants thereof, were not cleaned up.

Over the ensuing years, the various owners of the property have worked to clean it up. However, remnants of the mill are still scattered over the southern half of the property. The log yard and the lumber storage yard, including huge concrete pylons and other remnants, are still visible on the property. Photographs of the portions of the remaining mill and the remnants can be seen on the applicant's photo board as photographs 2 through 5, inclusive.

In 1956, Kenneth and Elizabeth Clarke, the then owners of the property, attempted to develop the property for agricultural use. The Clarke's obtained an Application for Permit to divert water from the Williamson River to irrigate the property and installed an irrigation system. A photocopy of the Clarkes' Water Rights Permit and a map of the major irrigation ditches are found at Tab 1 in the Appendix to the applicant's Supplement to his application (supplement). As is noted on the third page of the Permit, the punice condition of the soils where the irrigation canals are constructed and the length of those canals in relationship to the depth of the property result in a low-irrigation efficiency. The canals shown on page 4 under Tab 1 are outlined on a USDA Soil Conservation Service Map, which also shows the soil ratings for the property. The irrigation canals are highlighted in green and are located on primarily 71 B and 48 B soils. The 71 B soil is described by the SCS as Shanahan, gravelly, loamy, coarse sand. The 48 B soils are lobert loam soils.

Included in the Supplement under Tab 2 is the text from the SCS "Soil Survey of Klamath County, Oregon Southern Part" which describes the soils located on the subject property. The 71 B - Shanahan soil is described as "excessively drained containing more than 35% cinders in many places." Although the soil is well-suited to the production of Ponderosa pine because of its good drainage, wind throw, or trees blown down, are a severe hazard because of the light weight of the material which makes up most of the soil in which the tree roots anchor, and Ponderosa pine seedlings have a low rate of survival because of the cold temperatures of the soil. The SCS reports that this area typically has a frost-free season of only ten to fifty days a year, which severely limits the choice of crops which can be grown in this area. Notwithstanding the poor characteristics of these soils for crop production, the SCS reports that the 71 B - Shanahan soils are suitable for community uses as homesites, small buildings, road, and septic tank absorption fields.

The applicant has attempted to use the property as pasture land. In addition to parcels 1 and 2 of Land Partition 7-85, Mr. Bourdet also owns parcel 3, which is located immediately north of parcel 2 and contains 105 acres of land. Mr. Bourdet has found that the only potential agricultural use of the property is for pasture. The property will support approximately 60 pairs of mother cows and calves for the period of May 1 through October 15 of the average year and will return to the owner total income, computed at \$12 per pair per month, of \$3,960 per year.

During the last two regular legislative sessions, the Oregon Legislature has attempted to define high-value farm land for the purpose of protecting that land from development. The Legislature has measured high-value farm land in two ways. In ORS 214.710, land that has a class ranking of I or II, or is planted to specified perennial crops, is deemed to be high-value farm land. The soils on the subject property are rated IV to VI. Secondly, in ORS 215.213, which specifies uses of land that will be allowed on agricultural land, the Legislature has measured the value of farm land based on the amount of gross revenue it will support. Minimally, farm land, in order to obtain a permit to build a dwelling in conjunction with the farm use of the property, must generate \$20,000 in annual gross revenue. The subject property, as stated above, falls willfully short of meeting that income requirement.

Submitted with Mr. Bourdet's Application is a land use and zoning map for an area approximately two miles in radius surrounding the subject property. The map shows the subject property as pink in color; residential use in one-acre lots as orange; land zoned for exclusive farm use as yellow; and land zoned for forestry as green. In addition, the map shows as colored in solid in each area, except the R-1 zoning, areas that have been developed with parcel sizes less than twenty acres in size. Finally, the map has been marked, in black, to show the location of residences that are near the subject property.

The map shows that directly across the Williamson River to the west of the property, all of the land within a one-mile proximity is zoned R-1 and has been developed as Rainbow Park on the Williamson and Pine Ridge Estates. These subdivisions are one-acre minimum lot size subdivisions and have a number of single-family residences located in each of the subdivisions. These subdivisions contain restrictive covenants which limit or prohibit the uses of the property, including severely limiting or prohibiting farm animals, including in some cases, horses and other types of "mini-ranch" uses of the property. Therefore, common 4-H projects such as lambs, feeder hogs, and steers could not be located in the one-acre subdivisions. Copies of the Declarations for several representative subdivisions are located at Tab 4 of the Supplement.

To the south of the property, approximately 1 mile, is the boundary of the city of Chiloquin. Chiloquin has many different types of residential zones, some commercial zones, and some industrial zones. However, Chiloquin has no large-lot residential zones suitable for "mini-ranch" development. Chiloquin has recently begun an intensified development plan for the industrial land located near the Chiloquin Airport. The airport was refurbished and the runway extended last year by the state of Oregon with funding from state, local, and federal sources, and is now a first-class municipal airport. Chiloquin is typical of the rural cities in Klamath County. It has small stores, gas stations, churches, taverns, Klamath County Schools for grades kindergarten through twelfth grade, a branch of the Klamath County Library, and a medical clinic. Chiloquin and the surrounding area, including the subject property, is provided with fire and emergency services through the Chiloquin-Agency Lake Rural Fire Department, and receives law enforcement services through the Klamath County Sheriff's Office.

South of the city of Chiloquin, approximately five miles, is the Williamson River Business Park. The Williamson River Business Park originally was the site of a large Johns Mansville fiber plant. The plant closed after operating only a short time and was then vacant for many years. Approximately five years ago, the plant and surrounding land was purchased by Jeld-Wen, Inc. of Klamath Falls and has now been fully developed with subsidiaries of Jeld-Wen and outside tenants. The plant now produces door and window frames, tables, doors, and other types of building component industries. In addition, it houses the tribal offices for the Klamath Tribe.

The land to the east of the subject property is primarily zoned for forestry. However, the land immediately across Old Korral Road has been partitioned into tracts of land containing approximately six to thirty acres, which are available for or have been developed for residential use. In addition to being separated from said area by Old Korral Road, the subject property is separated from the land to the east by the wide right-of-way of Southern Pacific Railroad's north-south mainline.

The land to the north of the subject property is generally zoned EFU-CG for approximately one mile, where the zoning again changes to R-1 zoning at the Woodland Park Subdivision. Notwithstanding the EFU-CG zoning, the zoning map shows that there has been significant parcelization of the EFU land into parcels ranging in size from $2\frac{1}{2}$ acres to 20 acres. The same is true of the land zoned for forestry located north of the subject parcel.

Mr. Bourdet seeks to change the zoning on parcels 1 and 2 of Land Partition 7-85 to R-5 to allow the development of the 233

acres into five-acre parcels. Attached to the applicant's photo exhibit as photograph 1 is an aerial photograph showing the subject property. The actual configuration of a five-acre minimum lot size subdivision on the subject property cannot be determined until further engineering is completed. However, the aerial photo shows a preliminary layout of the initial twenty eight lots. The applicant will probably develop the subject property to the proximity of the north boundary of parcel 2, however, that has not been determined at this point. The aerial photograph, also, clearly shows the remaining major buildings from the Pine Ridge Mill and, upon close inspection, some of the concrete pylons are visible in the pasture land to the north and east of the northerly mill site area.

Although the subject property historically was used for the heavy industrial sawmill, the property does not have available to it the utilities necessary to use the property under current standards for typical heavy industrial uses. There is no municipal water or sewer system available to the subject property. In addition, the location of the subject property along the Williamson River makes a less intensive use, such as large-lot rural residential uses, more appropriate in order to protect the scenic and riparian values of the river.

Tab 3 to the Supplement contains information concerning the availability, or more accurately stated, the lack of available lots, five acres and larger in size and zoned for residential use. The only other available lots are those that remain in Agency Lake Ranches, a subdivision located approximately ten miles southwest of the subject property, near the Oregon Shores small-lot subdivisions. The Preliminary Plat for Agency Lake Ranches was approved in 1994 and active marketing of those lots began in 1995. It is now approximately 40 percent sold out, with the lots selling at a price range of \$45,000-\$65,000 per lot. Also in Tab 3 is information provided by realtors who specialize in land sales in the Chiloquin area attesting to the need for the residentially zoned parcels of five acres or larger as proposed by the applicant.

5. Exceptions Documentation: In order for the County to allow the subject CLUP and zone change request, the County must take an exception to State-Wide Land Use Planning Goal III - Agriculture. The Board of Commissioners finds that the subject property is irrevocably committed to uses other than agricultural use as a result of the prior heavy industrial use of the property and the development of the surrounding land for residential use, and further, that the property is poorly suited for agriculture use.

A. Characteristics of the Exception Area. The foregoing "background information" contained in this Order is incorporated

herein by this reference. The physical characteristics of the exception area are that it is relatively flat, with some slightly elevated land along the northeasterly boundary of the property and with the remnants of the Pine Ridge Lumber Mill located on the south half of the property. The property borders the Williamson River along the entire length of its western border.

B. *Characteristics of Adjacent Land.* The subject property lies immediately east and across the Williamson River from several subdivisions composed of one-acre lots. The zoning map submitted herewith shows the location of numerous single-family residences within a one-mile radius of the subject property. To the south of the subject property are small-lot developed single-family residential uses until you reach the city of Chiloquin, approximately 1 mile south of the property. The city of Chiloquin is a rural community containing many public and private services found in small cities. The land to the east of the subject property is primarily zoned for forest use. However, the land lying immediately east of the property has been partitioned into rural-residential lots and is partially developed for that use. The subject parcel is physically separated from the land to the east by the wide right-of-way of the Southern Pacific Railroad and the right-of-way of Old Korral Road, a paved, county road. The land to the north of the subject property is zoned for exclusive farm use. However, within one mile of the property boundary lies the Woodland Park Subdivision, a subdivision of one-acre residential lots. In addition, there are numerous small parcels located within the area zoned for EFU, which have been developed for rural-residential use. The applicant will not divide parcel 3 of Land Partition 7-85 in order to provide a buffer strip, approximately one-quarter mile wide, between the subject property and the EFU-CG land to the north. The surrounding rural-residential uses and the higher density subdivisions are supported by paved county roads, power, and telephone services. Access to the subject property will be provided by Pine Ridge Road and Pine Cone Drive, which are located along the southerly and easterly boundaries of the property. None of the adjoining lands are devoted to forestry practices. As is explained above, an attempt was made to develop the subject land for agricultural uses, however, due to the limiting conditions of the soils and the growing season, agricultural use of the property is not commercially viable.

C. *Existing Public Facilities and Services.* The subject property is located in the Chiloquin-Agency Lake Fire District, and a fire station is located approximately $1\frac{1}{2}$ miles south of the subject property in the town of Chiloquin. Primary access to the property will be via Pine Ridge Road and Pine Cone Drive, the roads which serve the surrounding rural-residential subdivisions and other rural-residential areas. Both roads are paved county roads with ample capacity to carry the additional traffic which

will be generated from the division of this property. The property is also served with electrical power by Pacific Power and Light Company facilities and by U. S. West Telephone facilities.

Article 74 of the Klamath County Land Development Code prohibits public water and sewer services in rural areas for land zoned R-5. Therefore, the lots created on the subject property will be served by individual wells and individual septic systems. There are two domestic wells currently located on the subject property. One well serves the residence occupied by the owner, Peter G. Bourdet, and the other house is located on Land Partition Parcel 1 and is shown near the southerly end of the property. Tab 5 of the Supplement contains the well log for the well at the southerly end of the property. The log shows that water is readily available in sufficient quantities to support the rural residences planned for this property.

The subject property is located within the Klamath County School District, with schools located in Chiloquin, Oregon, approximately two miles south of the subject property. The Chiloquin schools have sufficient existing capacity for additional students. However, based on the demographics of the Agency Lake Ranches Subdivision, the applicant anticipates that many of the lots will be sold to people who do not have school-age children and who are generally retiring to this area after having been employed in California. It is expected that the development of this property will have little impact on the school systems.

D. *Parcel Size and Ownership Patterns of the Exception Area and Adjacent Areas.* The zoning map submitted by the applicant shows the zoning and parcel sizes of the area. As is discussed extensively above and as is demonstrated on the land use and zoning map, the surrounding area has been developed primarily for small lot, rural-residential uses. The exception area is approximately 233 acres in size. However, it is composed of two legally created parcels, one of which contains approximately 104 acres and one of which contains approximately 129 acres. The existence of the numerous rural-residential subdivisions and residential partitions that have occurred in this area demonstrates the suitability of this land and this area for the proposed use.

E. *Neighborhood and 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 this area have created lots which range in size from one to thirty acres, and the exception area adjoins large, residential subdivisions which are primarily one acre in size. The property is located 1 mile from

the city of Chiliquin, which contains its own fire station, grocery store, parks, recreational facilities, schools, cemetery, churches, and other similar city-type developments, including industrial areas.

F. *Natural or Man-Made Features or Impediments Separating the Exception Area from Adjacent Resource Land.* The only land which is nearby and is currently used for resource use is the EFU-CG land located north of the subject property and forest land located east of the subject property. The subject property is physically separated from said forest land by the wide right-of-way of Southern Pacific Railroad's north-south mainline and by the right-of-way for Old Korral Road. In addition, it is separated from the forest land by the larger-lot residential partitions located east of Old Korral Road. The subject parcel will be separated from agricultural uses in other ownerships by the parcel retained by the owner in agricultural or pasture use, which is represented by Land Partition Parcel 3. Parcel 3 will provide a buffer between the subject property and the seasonal pasture lands located north of Parcel 3.

The information provided by the Soil Conservation Service included in the Supplement demonstrates that the subject property, although currently employed in an unprofitable agricultural manner, is not agricultural land and is not suited for agricultural use. The soil characteristics and very short growing season significantly restrict the agricultural use of the subject property. In addition, the development of surrounding areas for residential use also significantly impacts the use of the subject property for agriculture. The applicant is continually questioned by adjacent residential property owners concerning the existence of cattle on his property and his management practices. In order to get all of the subject property wet, it is necessary to apply large amounts of irrigation water to the land, which then results in some areas of bogging and ponding. These wet areas then produce mosquitos, which disturb the adjoining residential users. An attempt was made to control the mosquitos through a vector control district. However, some of the nearby residential users object to the application of pesticides to control the mosquitos. There is a growing concern among some members of the environmental community that agricultural drainage impacts the quality of the water in the Williamson River. The subject property is flood irrigated and drains toward and into the Williamson River. Some animal waste is carried in the drainage water into the river. There is no practical way to stop said drainage and maintain any kind of an economically feasible irrigation system on the property. Complaints about cattle being in the river and damage from cattle to the river banks lead to the fencing of the riparian area along the river, thereby restricting the availability of some of the land for pasture usage. Other types of residential-agricultural

conflict experienced by the applicant are similar to other areas, including dogs from neighboring residential areas chasing the cattle on the property, trespassing, fence cutting, and complaints about the odors, both from the cattle on the property and from the application of fertilizers such as ammonium sulfate.

Finally, the prior heavy industrial use of the property has significantly impacted the potential use of the property for agriculture. The property, especially on its southern half, is littered with the remnants of the lumber stacks and log decks, including large concrete piers. Photographs of some of the piers can be seen as photographs 2 and 5 on the applicant's photo exhibit. The decking of logs on the property and the storage of finished lumber on the property has compacted the soils in some areas so that they do not drain well or so that the root structure of crops is inhibited. Although the historic use of the property was for industry, it is not currently appropriate to apply the property to that use, nor is it physically or economically viable to use the land as resource land. Therefore, the highest and best use of the property, and the most appropriate use of the property is for larger-lot, rural-residential uses.

G. *Physical Development of the Exception Area.* The southern half of the exception area was physically developed as the Pine Ridge Mill, until it was destroyed by fire in 1939. The remnants of the mill, the log storage, and the lumber storage areas continue to exist on the property. The northern portion of the property was used for the support of the mill, including parking areas, equipment storage areas, etc. The northern area is relatively clean of debris and level, and the applicant and his predecessors in interest have attempted to use it for agricultural uses. However, due to the soil types which make it very difficult to irrigate the property and which severely limit the types of crops that can be grown on the property, the property cannot be farmed in a viable manner.

H. *Other Relevant Considerations.* The most relevant factors in considering an exception to Goal III for the subject property are:

1. That it is not physically suited for agricultural use;
2. That it lies adjacent to and is substantially surrounded by areas which have been irrevocably committed to residential use; and
3. It lies in an area that is physically separated from resource uses and is ideally suited for residential use.

The addition of the subject property to the very low inventory of five-acre, rural-residential lots will significantly contribute to the development of the Chiloquin-Agency Lake area. The private and public facilities and services already available in this area can accommodate the additional demand that will be placed on those services by the development of the exceptions area.

Other considerations include the fact that other areas in the Chiloquin-Fort Klamath-Agency Lake area which could be used for residential use lie in or adjacent to productive agricultural or forestry areas, whereas the subject property is buffeted from resource uses and is substantially surrounded by nonresource uses. In addition, as is disclosed by the Water Rights Permit included under Tab 1 of the Supplement, the water rights for the property date only to 1956. Tab 6 of the Supplement, is a copy of the United States Department of Interior, Fish and Wildlife Service Take Permit for the Klamath Reclamation Project, which discusses and details the impacts of adverse water quality and low lake levels on endangered fish located in Upper Klamath Lake and which spawn in the Williamson and Sprague Rivers. Also included is a photocopy of the January 19, 1994 U. S. Department of Interior, Bureau of Reclamation letter which discusses the problems being encountered by other agricultural areas of the community, including the prime farm land located south of Klamath Falls and which results from the lack of water in the Klamath Basin. The Oregon Department of Water Resources has recently announced that it is going forward with the adjudication of water rights in the Klamath River Basin. The lack of available water, coupled with the fact that many of the potential rights, including all of the rights for the 220,000 acres in the Klamath Reclamation Project and another approximately 300,000 acres which were on the former Klamath Indian Reservation, will receive a higher priority than the subject property, make it probable and likely that after the adjudication has been completed, in many years the subject property, under its 1956 water right, will not be able to divert water from the Williamson River because there will not be sufficient water available to higher priority rights. The lack of water, therefore, will impede the agricultural use of the property. Further, even if water were available to the subject property, there are many agricultural areas of the county where the growing season is significantly longer than the subject property and where the soils are substantially better soils. Available surface irrigation water is better developed and used on said high-value farm land, rather than on the marginal or nearly nonproductive farm lands such as the subject property.

6. Comprehensive Plan Change Review Criteria: Klamath County Land Development Code Section 49.003(a) 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. *State-Wide Planning Goals.* That the proposed change is in compliance with state-wide planning goals. The relevant state-wide planning goals are Goal 3, Agriculture; Goal 10, Housing; Goal 11, Public Facilities and Services; and Goal 14, Urbanization. The subject property was planned and zoned for agricultural use because it is predominately a Soil Class IV to VI and the industrial use had terminated as of the date the Comprehensive Plan was adopted. However, the evidence described above demonstrates that this property is not physically suitable for use as agricultural land. Because of its prior heavy industrial use, 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 arise from attempting to manage the property for agricultural 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 exceptions information set forth hereinabove demonstrates that the change in the land use plan for the subject property from agricultural to rural-residential will not decrease the agricultural land inventory and will not take any viable agricultural land out of production. The development of the property for rural residential use with a five-acre density will have no impact whatsoever 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. The fast sell-out of other residential subdivisions in this area demonstrates the desirability of this location and type of rural-residential development. The proposed development provides lots that are larger than other subdivisions in the area, thus providing choice of density to prospective purchasers. The large lots also provide a transition or buffer from the much higher-density Rainbow Park and Pine Ridge Estates to the lower-density residential lots that exist along the south and east boundaries 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 and drainage 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 plan for the subject property shows the layout of roads which will be constructed to county standards.

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 residential subdivisions and individual parcels in this general area. The existing well on the subject property demonstrates that water is readily available. The SCS report states that Shanahan soil is well-suited for septic drain fields.

The property is located in the Chiloquin-Agency Fire District, and a fire station is located approximately $1\frac{1}{2}$ miles south of the subject property.

Electrical services and telephone services are available to the property lines. The property is served by a network of state and county highways which have the capacity to carry the traffic which would be generated by 35 homes on the subject property. Other services available in the general area include public parks, privately owned grocery stores, churches, a cemetery, 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 subject property into rural-residential lots with a minimum size of five acres each. The Klamath County Land Development Code, in Section 51.003, 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 division of the subject property provides an appropriate transitional area between said small lots to the west and the larger lot development to the east of the property. Development of the property into five-acre lots will provide housing opportunities for people who desire to keep recreational horses, 4-H animal projects, and other small-scale

agricultural uses so popular in our society today.

B. Klamath County Comprehensive Plan Conformance. The proposed change is in conformance with policies of the Klamath County Comprehensive Plan. The subject application and planned use for the property are congruent with the policies for statewide planning Goals 3, 10, 11, and 14 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. The subdivisions heretofore approved and developed were done in compliance with the Klamath County Zoning and Land Use Ordinance and have sold out rapidly. There is a definite, demonstrated need for this type of rural development. The evidence of which is the speed in which the Agency Lake Ranches and other subdivisions sold out. 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.

C. Specific Studies. The proposed change is supported by specific studies or other factual information which documents the public needs for the change. As is pointed out above and is supported by the information submitted under Tab 3 of the Supplement, lots in this area have generally sold to out-of-state residents who are looking for retirement situations which remove them from the large cities of California and the resident crime and congestion associated therewith. Of the parcels of land that have heretofore been subdivided, many have been built upon, are being built upon, and there are plans to build on other parcels. The area is ideally situated 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 it is located in an area that has public services that are deemed appropriate for rural residential development.

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. The criteria and the applicant's evidence of compliance therewith is as follows:

A. **Comprehensive Plan Conformance.** The proposed change of zone from EFU/CG to R-5 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. For rural-residential use, Article 74 of the Land Development Code sets out the service standards for water and sewer service and also incorporates by reference drainage, fire protection road standards, and electrical service requirements. 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. **Property Size.** 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 233 acres in size. The applicant has submitted a preliminary development plan which shows the proposed layout of the lots and roads on the property and the contours of the property. The information submitted and the development of surrounding subdivisions 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 on the subdivisions lying westerly of the subject property to the larger-lot developments lying easterly of the subject property.

C. **Street Layout.** 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 plan submitted by the applicant shows the street layout plan for the property. Said layout may change as the final preliminary plan is developed, however, it demonstrates the viability of the parcels for residential use. The county and state roads which serve the subject property have the capacity to carry the increased traffic which will be generated by the additional homes on the subject property. The property has good access and will be properly served by the existing streets and roads and those developed on the property.

D. **Abutting Properties.** The proposed change of zone will have no adverse effect on the appropriate use and development of abutting 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 abutting properties, with the exception of the abutting property to the north, have been developed or are being held for development for rural-residential use. The residential use to the west and south is significantly denser than that on the subject property and the subject property will provide a reasonable transition area

between the larger-lot development to the east and the small lots to the west. The development of this property will not interfere or impact the commercial agriculture and forestry uses which lie to the north and one-half mile to the east. The subject property in this general area is physically separated from all commercial resource uses.

8. Other Considerations: The subject property does not lie within any identified fish or wildlife resource areas. 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 agricultural and forestry areas such as those in the Henley area south of Klamath Falls and in the Fort Klamath and Sprague River areas 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 disasters or hazards and is not required for the recreational needs of the state and its visitors. That portion of the property located next to the Williamson River is shown on county maps as a flood plain. However, photographs 6 through 8 show the Williamson River adjacent to the subject property at the height of the high runoff in February, 1996. Although the Sprague River, as shown in photograph 9 flooded adjacent land, the Williamson River did not. Photograph 8 shows the residence located immediately across the river and north of Pine Cone Drive during the period of high water. Most of the subject property is at a higher elevation than the land under said house. The existence of the river and the flood plain will be carefully considered and addressed on the final subdivision map. The development of the property will enhance economic development of Klamath County by providing construction jobs for the citizens that are here and providing demands for the private retail and commercial interests of the Chiloquin-Agency Lake residential area.

9. DLCD Comments: The Oregon Department of Land Conservation and Development filed written comments which conclude that there is a lack of substantial evidence and reasons demonstrating that it is "impractical" to use the subject property for farm and forest uses.

The Board of Commissioners disagree. The applicant has submitted compelling evidence that farm use of the property is impractical because the former heavy industrial use of the property has physically impaired the land, and because soil and weather conditions severely limit its use for farm and forest

uses. The evidence presented by the applicant is set forth in detail above. The applicant has clearly demonstrated that although farm use of the property is "possible", it is not "practical" and has significant adverse impacts on water quality and beneficial use issues.

10. Neighbor Comments: Nearby residents do not want the use of the land to change, because the view of the property in its current state enhances the enjoyment of their rural residential lifestyles. The neighbors also have concerns that the development of the subject property will not meet the requirements of the Land Development Code's subdivision requirements.

This Order does not grant any variances to the criteria and requirements of the Land Development Code. At the time the subdivision plat is reviewed, the applicant must demonstrate compliance with all code requirements or he must justify any variance thereto. Many of the issues raised by the neighbors may be valid, however, they are issues properly addressed at the time of the subdivision plat review. There is no evidence that the planned subdivision will not meet all of the code requirements. There is substantial evidence, including the location of some of the neighbors' homes on similar land, which demonstrates that the land can be developed as proposed by the applicant.

11. Conclusion and Order: The Board of Commissioners finds that 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 in the Klamath Falls-Chiloquin area. Development of the subject property provides for a transition area from the high-density rural residential use to the south and west to the lower-density residential uses lying north and east of the subject property.

The applicant has satisfied the review criteria set out in Articles 47 and 48 of the Klamath County Land Development Code. Proper notice of the application and the hearing was given. The intent of the state-wide planning goals have 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 Designation and Zoning of the subject

property from Agriculture/EFU-CG to Rural/R-5 is approved.

DATED THIS 4th day of June, 1996.

Dave Hengel
Chairperson of the Board

W.M. Kullander
Commissioner

Out of Office
Commissioner

Approved as to form:

Reginald R. Davis, County Counsel

CLUP/ZC 2-96 ORDER -17-
STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 6th day
of June A.D., 1996 at 11:04 o'clock AM., and duly recorded in Vol. M96
of Deeds on Page 16543.

FEE No Fee

By Bernetha G. Letsch, County Clerk