

## BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the matter of the request for  
a conditional use permit and land  
partition permit by Adkins Cons.  
Engrs. for GARRISON

Conditional Use Permit  
) CUP 44-96  
Land Partition  
LP 36-96

This matter came before Michael L. Brant, Hearings Officer for Klamath County, Oregon, on June 21, 1996, in the Klamath County Museum Meeting Room in Klamath Falls, Oregon. The hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related statutes and ordinances. The Klamath County Planning Department was represented by Mr. Kim Lundahl who also served as the recording secretary. The Klamath County Planning Department file and all the exhibits and other contents therein is incorporated by this reference into this matter. The Klamath County Planning Department staff report was received. This matter was continued to June 26, 1996, July 5, 1996 and to July 12, 1996 to allow the parties to provide additional evidence and arguments and to attempt to reach a settlement of their differences.

Based upon the evaluation of the staff report and consideration of the evidence received, the hearings officer makes the following findings of fact and conclusions and makes the following decision.

## FINDINGS OF FACT

The applicant requests a Non-farm Land partition Permit to divide 4883 EFU Zone acres into three parcels of 4784, 81 and 18 acres and establish non farm use on the two smaller parcels. The applicant also requests a Conditional Use Permit to establish an

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existing residence on the 81 acre parcel and a non-farm use equipment storage yard on the 18 acre parcel. The subject property is located west of Chiloquin adjacent to the Williamson River and Modoc Point Road and is commonly known as Tulana Farms, Agency Lake.

Mr. Doug Adkins, representing Garrison, and Mr. Russ Pinto, representing The Nature Conservancy, testified in favor of the application. The Nature Conservancy proposes to convert a large portion of the 4883 acres into wetland.

Ms. Alana Lang appeared in opposition to the application. Ms. Land was represented by her attorney, David Mannix. Ms. Lang is a Native American. She opposed the creation or restoration of wetlands on the subject property. Ms. Lang's property is bordered on three sides by the subject property and on the fourth side by the Williamson River. Ms. Lang expressed fear of flooding, mosquito breeding and destruction of Tribal burial sites as a result of the creation or recreation of wetlands. There is evidence that a portion of the subject property was formerly wetland.

Mr. Russ Pinto testified that the creation of the proposed wetland is very important to maintenance of the Shortnosed Sucker and other waterfowl and wildlife and to the improvement of water quality in Klamath Lake and the Klamath River.

Another concern expressed was that the course and mouth of the Williamson River would be altered.

The subject property is zoned EFU- CG and is under farm tax deferral.

ORS 215.213 (1)(s) provides that creation of wetlands is a

permitted use within an EFU zone. This Hearings Officer finds that such permitted use is not an absolute right, however there is insufficient evidence upon which to conclude that the creation of the proposed wetlands will adversely effect other properties in the area.

The proposed 18 acre parcel would be smaller than the minimum parcel size permitted in the EFU zone and is not capable of being commercially productive farm land standing alone. The 81 acre parcel would exceed the minimum parcel size by one acre but would not be capable of being commercially productive farm land standing alone. (ORS 215.263 [4]), (215.213 [3] [b]), (215.284 [2] [b]). The 4883 acre property is a commercially viable farm. ORS 215.243 (2).

#### CONCLUSION


There is no basis in law or fact upon which to prohibit the proposed creation of the wetlands.

There is no legal basis upon which to grant the requested Land Partition.

#### ORDER

It is hereby ordered that the requested Land Partition LP 36-96 is denied. Therefor the requested conditional Use Permit CUP 44-96 is also denied.

Dated this 29th day of July 1996.

  
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Michael L. Brant  
Hearings Officer

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"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 30th day  
of July A.D., 19 96 at 11:12 o'clock A M., and duly recorded in Vol. M96,  
of Deeds on Page 22960.

FEE None

By

County Clerk