

**IN THE MATTER OF CUP 74-96 AND LP 55-96 FOR
James and Rosetta HULL TO ESTABLISH USES NOT IN CONJUNCTION WITH
FARM USE AND DIVIDE THE PROPERTY PER THE *BURG AMENDMENT***

1. NATURE OF THE REQUEST:

The applicant wishes to establish uses, three homes not in conjunction with farm use on property north of Klamath Falls. Also considered was the request to partition the parent 10.6 acres into three parcels of 3.0, 3.0, and 4.6 acres. This request was heard by the Hearings Officer SEPTEMBER 6, 1996 pursuant to Ordinances 44 and 45. The request was reviewed for conformity with Land Development Code Article 54 and with O.R.S. 215.243.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Michael L. Brant. The applicant appeared and offered testimony in support of the application. The Planning Department was represented by Kim Lundahl and PW Karen Burg.

3. LOCATION:

The property under consideration is located west of Old Fort Rd., 1/4 mile north of Collman Dairy Rd., T.A. 3809-22-1000.

4. RELEVANT FACTS:

The property is within the Forestry Plan designation and has an implementing zone of FR. The parent property is 10.6 acres in size, IS NOT under farm tax deferral, is not within a Goal 5 overlay, and is rated Class VII soils. Land uses and lot sizes in the area are similar to that proposed by this application. Rural-residential land use and similar lot sizes are also found within one mile of this project. Fire protection is provided by KCFD #1.

5. FINDINGS:

All evidence submitted as the staff report, exhibits b-e, and offered testimony show that the approval criteria as set out in Code Article 54 and 45 has been satisfied.

The Hearings Officer finds this application;

1. Is compatible with farm use because:

The analysis of surrounding properties and their use indicates the size of the smaller parcels as rural-residential is compatible with the predominant adjacent land uses as the existing density of the area will not be markedly increased.

The applicant has demonstrated the small parcels under consideration here are not considered commercial agricultural parcels size due to small size.

2. Does not interfere seriously with accepted farming practices on adjacent lands devoted to farm use because:

The surrounding parcels are found to be developed to rural and non commercial farm use. The proposed non-farm uses will not interfere with the on-going use as sufficient lot area and geographic boundaries provide a buffer/setback from agricultural management practices. The permit holder has proposed as a condition of this approval to file a restrictive covenant which will prohibit the permit holder and successors in interest from filing complaint concerning valid farming practices on nearby lands. The Hearings Officer finds this will mitigate impact to farm operations.

3. Does not alter the stability of the overall land use pattern of the area because:

The overall land use of part of this area is found to be rural-residential and commercial farming. The land use pattern of the area will not be modified as the residential intensity will be marginally increased.

4. Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location, and size of the tract because:

The proposed non farm parcels are substantially smaller than the 80 acre size required by HB 3661 and are therefore thought not appropriate for commercial farm use. The proposed home is to be located on property with various soil SCS ratings. The Hearings Officer finds this non farm parcel size and soil classification unsuitable for commercial agricultural use due to its small size, and the testimony of the applicant stating a farm income suitable to support a family cannot be generated on this property.

5. Partitions creating parcels for non-farm uses are reviewed per the criteria set out in L.D.C. Article 45 and section 54.070.

The Hearings Officer finds this partition conforms to these criteria as set out below:

1. The parcels are created for proposed non-farm uses. The land is not viable for commercial agriculture since they are less than 80 acres.
2. Access to the parcel is from Old Fort Rd.. Use of the road will not interfere with farm practices.

6. ORDER:

Therefore, it is ordered the request of HULL for CUP 74-96 and LP 55-96 is approved subject to the following conditions:

1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permit holder and their successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands.
2. LP 55-96 shall not be filed nor shall a building permit for a non-farm use be issued under this order until the applicant provides the Planning Department with evidence parcels 2 & 3 have been disqualified for valuation at true cash value for farm use and that any additional tax penalty imposed by the County Assessor has been paid.
3. CUP 74-96 will not be effective until LP 55-96 is filed in the office of the County Clerk and will expire two years later unless utilized or extended.
4. LP 55-96 must comply with Code requirements, Oregon Revised Statutes and agency conditions prior to filing and will expire one year from the date below unless filed or extended.

DATED this 6th day of SEPTEMBER, 1996



Michael L. BRANT, Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified this application may be appealed to the Klamath County Board of Commissioners by filing with the Klamath County Planning Department a Notice of Appeal as set out in Section 33.004 of the Klamath County Land Development Code, together with the fee required within SEVEN DAYS following the mailing date of this order.

REQUIREMENTS FOR FINAL APPROVAL

28212

Partition No. LP 55-96/Hull

NOTE: THIS APPLICATION WILL EXPIRE ONE YEAR FROM THE PRELIMINARY APPROVAL DATE IF A TIME EXTENSION APPLICATION IS NOT MADE PRIOR TO THAT DATE.

FINAL PLAT REQUIREMENTS (Per Section 45.110 of the Land Development Code)

- A. Original Drawing - The original drawing of a partition plat shall be made in permanent black India type ink on 7 mil mylar, 18 inches by 24 inches in size with an additional 3 inch binding edge on the left side. The plat shall be of such a scale as required by the County Surveyor. The lettering of the approvals, the affidavit of the surveyor and all other information shall be of such a size or type as will be clearly legible, but no part shall come nearer any edge of the sheet than 1 inch. The original drawing shall be recorded in the County Clerk's office.
- B. Copy - One exact copy of the original plat made in permanent black India type ink or silver halide permanent photocopy on minimum 4 mil mylar, 18 inches by 24 inches in size shall be submitted to the Planning Director along with the original plat.
- C. Information shown on Plat:
 1. The partition number.
 2. The name of the person for whom the partition was made.
 3. Signature Blocks for the following:
 - a. Planning Director;
 - b. County Surveyor;
 - c. County Public Works Director (if applicable);
 - d. County Clerk;
 - e. Owner and contract purchaser of the subject property (if applicable).
 4. All requirements of ORS 92.050, 92.070(1), and ORS 209.250 where applicable.
 5. Street names adjacent to the partition.
 6. Water rights recording number. If a water right is not appurtenant to the property, a statement signed by the owner indicating such shall be shown on the plat.
- D. Supplemental Information to be filed with the Final Plat:
 1. A preliminary title report or partition guarantee issued by a title company in the name of the owner of the land and prepared within 30 days prior to submittal of the final plat showing all parties having any record title interest in the premises and what interest they have.
 2. A completed water rights statement if a water right is appurtenant to the property.

OTHER REQUIREMENTS:

1. Applicant is required to pay all advalorem taxes, any additional taxes, special assessments, fees, interest and penalties prior to partition being recorded.
2. To establish a residence or other use where domestic sewage wastes will be generated on this parcel, applicant needs to comply with OAR Chapter 340 for on-site sewage disposal.
3. The partition must be surveyed and monumented in accordance with ORS Chapter 92. A driveway permit must be obtained from the Dept. of Public Works prior to constructing the new access.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 9th day
of September A.D., 19 96 at 11:42 o'clock AM., and duly recorded in Vol. M95
of Deeds on Page 28209

Bernetha G Letsch, County Clerk

By [Signature]

FEE No Fee