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BEFORE THE PLANNING DIRECTOR KLAMATH COUNTY, OREGON

IN THE MATTER OF CONDITIONAL)
USE PERMIT 13-09 FOR GREG)
BULKLEY TO RESTORE FISH)
PASSAGE ON PROPERTY ZONED)
(EFU-CG) EXCLUSIVE FARM USE-)
CROPS & GRAZING, IDENTIFIED AS:)
R-3614-00000-01300 AND R-3613-)
00000-00200)

CUP TYPE II
ADMINISTRATIVE
FINAL ORDER

1. NATURE OF THE REQUEST:

The applicant requests a Conditional Use Permit to restore and enhance fish passage and habitat at two sites on Five Mile Creek. The Planning Director reviewed the request May 27, 2009 pursuant to KCLDC Article 22 – Administrative Review Procedure, Article 32 – Public Notice, Article 44 – Conditional Use Permit, Article 57 – Significant Resource Overlay, and Article 59-Flood Hazard Overlay. The request was reviewed for conformance with Land Development Code section 44.030.

2. NAMES OF THOSE WHO PARTICIPATED:

The Planning Director in review of this application was Leslie C. Wilson. Cindy Foster prepared the Planning Department Staff Report.

3. LEGAL DESCRIPTION:

The subject property described in Conditional Use Permit File 13-09 located in the Planning Department is described as Township 36 South, Range 14 East Willamette Meridian, Section 7, Tax Lot 1300, and Township 36 South, Range 13 East, Section 1, Tax Lot 200; otherwise known as Black Drake Ranch.

4. RELEVANT FACTS:

The applicant proposes to reconstruct 600 feet of historic channel to provide fish passage on Five Mile Creek, a tributary to the North Fork of the Sprague River. The project will allow fish to migrate around the existing diversion dam by constructing a bypass channel, thus restoring fish passage within the historic channel. At a second site on the property, the applicant proposes to replace an existing diversion weir with a series of step pools. The pools and reconstructed channel will enhance fish habitat along that stretch of Creek.

A Conditional Use Permit is required for the project because the Five Mile Creek is a

Scanned to CRW

5/28/09 ph

Class I Stream and a cold water fisheries fish habitat area, with a protection level of 1C/3C. The filling or removing of material or instream modification in aforementioned areas is considered a "Conflicting Use" that must be limited.

The subject parcel also includes wetlands and is located within flood hazard Zone A as shown on FEMA map 410109 0975B (Exhibit 10). The property is within a Low Fire Hazard zone on the Rural Wildland Fire Hazard Rating Map. The parcel was lawfully created via LP 32-04. Access to the property is off Ivory Pine Road, a county road, per the Klamath County Road Index.

Notices were sent to adjacent property owners and potentially affected agencies. The Klamath County Public Works Department responded that the applicant check with Oregon Department of Fish & Wildlife (ODFW-Exhibit 13). ODFW was notified, and responded that they are cooperators on the project and support the fish passage improvements (Exhibit 14). The US Army Corps of Engineers stated the project may require a DOA permit (Exhibit 15). No letters of remonstrance were received from potentially affected property owners.

5. FINDINGS:

All evidence submitted shows that the approval criteria as set out in the code have been satisfied. The Planning Director finds this application does conform to criteria set out as follows:

KCLDC Article 44.030(A-C)

- A. The use complies with the Klamath County Comprehensive Plan Goal 1-Citizen Involvement, Goal 2-Land Use Planning and Goal 5-Open Spaces, Scenic and Historic Areas, and Natural Resource, more specifically Policies 3, 9, 12, 16, and 21. This criterion has been met.
- B. The proposed operation can be brought into compliance with Article 57 of the Klamath County Land Development Code through conditions of approval. A Floodway Certification will be required to demonstrate compliance with Article 59. The applicant provided a letter from a Profession Engineer, intending to satisfy the Floodway Certification requirement (Exhibit 9). Completion of the Klamath County Floodway Certification form will meet this criterion.
- C. There should be minimal impact to the surrounding area because the work is being done on a 600' by 15' reach of Five Mile Creek. The portion of the creek that is being re-channeled is located on land used for agricultural purposes only and does not contain any structures. This criterion has been met.

KCLDC Article 57.060(A-D)

- A. The proposed rechanneling project will redirect the creek channel around an existing dam, thus improving fish passage and enhancing habitat. Therefore, it will not alter or impact the wetlands or flood plain to the degree it will destroy its

significance. Obtaining permits from state and federal agencies for removal and fill in wetlands further regulates the impacts to the resource. The applicant will need to apply for permits with the US Army Corp of Engineers and the Oregon Department of State Lands for any removal and fill in the wetlands. The Oregon State Watermaster will need to be contacted and, if necessary, permits will need to be obtained through that agency for water rights. This criterion can be met as a Condition of Approval.

- B. No threatened or endangered species are known to exist in that area. Oregon Department of Fish and Wildlife was notified of this project. As of the time of this staff report, comments in support of the project have been received from their agency. This criterion has been met.
- C. Other alternatives to the development have been considered, per the application. The final design was selected based on the logistical ability to implement the project, and the superior benefits realized for fish habitat. This criterion has been met.
- D. The development will minimize adverse impacts on the identified resource by limiting the level of excavation to one week, performing the site work during the driest part of the year, and limiting the initial flows through the channel. This criterion can be met as a condition of approval.
- E. These criteria can be met through conditions of approval.

6. ORDER:

Therefore, upon review of the information and exhibits, it is ordered the request of Greg Bulkley for approval of Conditional Use Permit 13-09 is **APPROVED** subject to all Federal and State law, rules, or policy; Klamath County Land Development Code and County Ordinances; Oregon Fire Codes and Appendices; Oregon Building Codes and Appendices; Klamath County Public Works Standards, Policies, and Procedures; and, subject to the following additional Conditions of Approval:

Condition # 1

Prior to project commencement, applicant must submit a copy of their US Army Corp/DSL Joint Permit to the Planning Department. The permit will need to be reviewed and signed by the Planning Department.

Condition # 2

Prior to application for site development permits, applicant must contact the Oregon State Water Master and obtain any required permits for water rights for irrigation. A copy of any water rights permits will need to be submitted to the Planning Department.

*Submitted,
6/22/09
-cf*

Condition #3

Prior to project commencement, applicant must submit a Floodway Certification, certified by a registered professional engineer or architect, to the Planning Department.

*Submitted,
7/8/09
-cf*

Condition #4

Prior to application for site development permits, this final order must be recorded to the subject property. The applicant will supply the Planning Department with the applicable County Clerk recording fees and the Planning Department will record the final order on behalf of the applicant.

Condition # 3


This approval will expire two years from the date of approval unless final Planning approval has been issued. The applicant may apply for up to three 1-year time extensions with the appropriate application and required fee.

DATED this 27 day of MAY, 2009.



Leslie C. Wilson, Planning Director

Signed & Acknowledged before me this 27th day of May, 2009.



NOTARY PUBLIC FOR OREGON

My Commission Expires:

Oct 15, 2011



NOTICE OF APPEAL RIGHTS

This decision may be appealed to the Klamath County Board of County Commissioners. Notice of intent to appeal a decision rendered under the procedures of the Klamath County Land Development Code shall be filed no later than seven (7) days following mailing of the final order. Failure to do so in a timely manner may affect your rights. Notice shall be in the form of a signed letter, shall state the name(s) of the party or parties appealing the decision, and must be received by the Planning Department before the close of business on the seventh day. The fee established by the Board of County Commissioners shall accompany the notice of appeal.

KCLDC ARTICLE 33.040 - STATEMENT OF APPEAL

No later than 7 days following the filing of a notice of appeal pursuant to Section 33.030, the appellant shall file with the Planning Department a written statement of grounds for the appeal explaining:

- A. How the Comprehensive Plan, Klamath County Land Development Code, or applicable State law was incorrectly interpreted or applied in the decision; or*
- B. What information in the record of decision was pertinent to the decision, but was not considered by the review body*

For more information, please contact:

**Klamath County Planning Department
Phone 1-541-883-5121 or mail at 305 Main Street, Klamath Falls, Oregon 97601**

Exhibits:

| | |
|-----------------------------------|------------|
| Administrative Review Application | Exhibit 1 |
| Warrenty Deed & Deed of Trust | Exhibit 2 |
| Land Partition 32-04 Maps | Exhibit 3 |
| Assessor's Maps & Information | Exhibit 4 |
| Title Report | Exhibit 5 |
| Map of Project Area | Exhibit 6 |
| DSL/USACE Application | Exhibit 7 |
| DSL Authorization Letter | Exhibit 8 |
| Floodway Certification Letter | Exhibit 9 |
| FEMA Firmette | Exhibit 10 |
| Zoning Maps | Exhibit 11 |
| Agency & Property Owners Notices | Exhibit 12 |
| KC Building Department Comment | Exhibit 13 |
| ODFW Comment | Exhibit 14 |
| USACE Comment | Exhibit 15 |