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11/25/2009 08:42:19 AM

Fee: \$57.00

BEFORE THE PLANNING DIRECTOR KLAMATH COUNTY, OREGON

IN THE MATTER OF CUP 30-09)
 KLAMATH BASIN RANGELAND TRUST)
 FOR KURT THOMAS TO BUILD A)
 WATER INTAKE STRUCTURE WITH)
 SCREENS AND ADD TWO SWALES ON)
 CROOKED CREEK TO IMPROVE)
 WETLAND CONDITIONS ON PROPERTY)
 ZONED (EFU-G) EXCLUSIVE FARM)
 USE, IDENTIFIED AS: R-3407-V1300-)
 00300, R-3407-V2500-00200, R-3407-)
 V0000-02400, R-3407-V1200-01500, & R-)
 3407-V2400-00100)

CUP TYPE II
 ADMINISTRATIVE
FINAL ORDER

1. NATURE OF THE REQUEST:

The applicant requests a Conditional Use Permit to build a water intake structure with screens and add two swales to Crooked Creek in order to provide a more fish friendly means of collecting irrigation water and restoring historic wetlands on property zoned Exclusive Farm Use. The Planning Director reviewed the request on August 26, 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.

2. NAMES OF THOSE WHO PARTICIPATED:

The Planning Director in review of this application was Leslie C. Wilson. Mark Gallagher, AICP, Planner II, prepared the Final Order.

3. LEGAL DESCRIPTION:

The subject property described in Conditional Use Permit File CUP 30-09 located in the Planning Department is described as Township 34 South, Range 07 1/2, Sections 13, 14, 23, 24, & 25 East Willamette Meridian, Tax Lots R-3407-V1300-00300, R-3407-V2500-00200, R-3407-V0000-02400, R-3407-V1200-01500 & R-3407-V2400-00100.

4. RELEVANT FACTS:

The applicant intends to replace an existing irrigation intake structure with a more fish friendly new structure that has fish screens and add two swales to Crooked Creek to enhance historic wetlands. This Conditional Use Permit is required because Crooked Creek is a Class 1 Stream with protected wetlands.

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 - Conditional Use Permit Review Criteria)

- A. *The use complies with policies of the Comprehensive Plan.*

The use complies with the Klamath County Comprehensive Plan Goal 1-Citizen Involvement, Goal 2-Land Use Planning and promotes Goal 5-Open Spaces, Scenic and Historic Areas, and Natural Resource, more specifically Policies 3, 4, and 16, protecting and enhancing riparian areas and Goal 5 resources.

B. *The use is in conformance with all other required standards and criteria of this code;*

There are several Articles of the Land Development Code that apply to the proposed wetland restoration project, as described in paragraph 1 above. The required notices have been sent to surrounding property owners per Article 32 (Public Notice) and no written comments were received. Three "No comment" responses were returned by potentially affected agencies, those being the Bureau of Reclamation, Klamath County Public Works and the Oregon Department of Transportation. Other code sections that apply are reviewed below.

C. *The location, size, design, and operating characteristics of the proposed use will not have a significant adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area.*

The project will be contained within the applicant's ownership and will not have a significant adverse impact on the livability, value or development of the abutting properties or the surrounding areas.

D. *Conditions – The review body may grant a Conditional Use Permit subject to such reasonable conditions....*

Appropriate conditions of approval have been added.

KCLDC Article 57.060(A-D)

This review criterion ensures that potential conflicting uses do not degrade the resource to an unacceptable degree. Since the intent of this project is to enhance the wetlands and return the lake-fringe closer to its previous natural state, all of the criteria are readily met. The filling of several portions of irrigation ditches and the creation of two swales will improve water flow across the pasture.

KCLDC Article 59.0

The purpose of this development review section is to regulate the development of areas that are subject to flooding, erosion or similar hazards, in order to avoid or reduce losses to life and property.

The Article 59 (Flood Hazard Overlay) requirements are met because the intent of the project is to "restore wetland conditions to a historic lake-fringe that has been converted to cattle pasture. The project will fill portions of existing irrigation ditches and excavate swales to direct water to remain within the project area rather than being diverted away." The "project will change hydrology in two ways. First, irrigation tail water currently being collected in the ditch and carried off the property will now be diverted throughout the created wetland with the intent of improving water quality prior to entering Agency Lake. Secondly, there is a change in water management. During high stage, water from Agency Lake will be allowed to flood the property rather than being intentionally pumped

off as in the past." The improvement will thus allow for flooding in this area, and thus reducing the potential for flooding in other areas.

6. ORDER:

Therefore, upon review of the information and exhibits, it is ordered the request of Klamath Basin Rangeland Trust for Kurt Thomas for approval of CUP 30-09 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

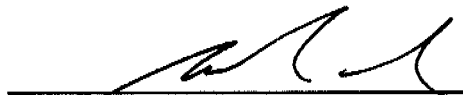
Prior to approval of the Land Use Compatibility Statement (LUCS), the applicant must supply copies of all final State and Federal permits to the Planning Department.

Condition #3

Prior to approval of the Land Use Compatibility Statement (LUCS), the applicant must submit applicable County Clerk recording fees to the Planning Department who will record the final order on behalf of the applicant.

Approval Expiration: 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 fee.

DATED this 26 day of August, 2009.



Leslie C. Wilson, Planning Director

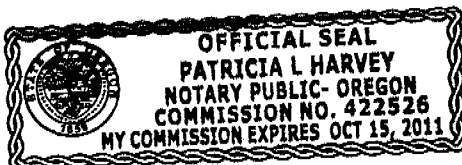
Signed & Acknowledged before me this 26th day of August, 2009.



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 12 days following mailing of the final order (ORS 215.427). 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 12 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:

Conditional Use Permit Application	Exhibit 1
Site Aerials	Exhibit 2
Joint Permit Application US Army Corps of Engineers	Exhibit 3
Ownership Deeds	Exhibit 4
Site Map	Exhibit 5
Zoning Map	Exhibit 6