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Fee: \$62.00

**BEFORE THE PLANNING DIRECTOR
KLAMATH COUNTY, OREGON**

IN THE MATTER OF CUP 31-09)
KLAMATH BASIN RANGELAND)
TRUST FOR OWNER KURT THOMAS)
TO BUILD WOOD HABITAT)
STRUCTURES AND ADD FISH)
SPAWNING GRAVEL IN CROOKED)
CREEK ON PROPERTY ZONED)
(EFU-G) EXCLUSIVE FARM USE,)
IDENTIFIED AS: R-3407-V2400-00100,
& R-3407-V1300-00300

**CUP TYPE II
ADMINISTRATIVE
FINAL ORDER**

1. NATURE OF THE REQUEST:

The applicant requests a Conditional Use Permit to build 15-25 wood habitat structures and add 115 cubic yards of gravel spawning bed to Crooked Creek in order to restore and enhance fish habitat on property zoned Exclusive Farm Use. The Planning Director reviewed the request on August 3, 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. Bill Adams, AICP, Planner III/Project Manager, prepared the Final Order.

3. LEGAL DESCRIPTION:

The subject property described in Conditional Use Permit File CUP 31-09 located in the Planning Department is described as Township 34 South, Range 07 1/2 EWM, Section 24, tax lot 100 and Section 13, tax lot 300.

4. RELEVANT FACTS:

The applicant intends to restore and enhance Crooked Creek, its riparian zone, and associated wetlands by building 15 to 25 wood habitat structures and adding 115 cubic yards of gravel spawning bed into Crooked Creek. The project will involve work along a 4 mile stretch of Crooked Creek. The work will not involve any structure or fill; therefore, no impact on the floodplain is expected. This Conditional Use Permit is required because Crooked Creek is designated with Goal 5 resources including a Class 1 Stream and protected wetlands. The applicant received a letter of support for the project from the Oregon Department of Fish & Wildlife. The property is also partially within flood zone A according to FEMA FIRM map 410109 0750 B. The subject parcel is lawfully created per deed recorded in volume 77, page 13489, dated June 6, 1977. No adverse comments were received from resource agencies or the public.

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 complies with 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. There are several Articles of the Land Development Code that apply to the proposed habitat enhancement project, as described in paragraph 1 above. The required notices have been sent to surrounding property owners per Article 32 and no written comments were received. Article 57 requirements are met based on the findings below in paragraph C and the proposed conditions. Article 59 Flood Hazard Overlay requires that new development is subject to permit reviews per Article 59.040 and 59.050. Although development includes uses other than structures, Article 59.050 Permit Review suggests a structural permit; and Article 59.100 Unavailable Elevation Data allow the County to reasonably interpret Article 59 requirements. In this case, the property is located in flood hazard zone A of Crooked Creek, which is an undetermined base flood elevation area. Where a structure is proposed, it may be reasonable to require an analysis to determine the base flood elevation and an engineer's assessment that the proposal would not impact the base flood elevation. However, in this case, no structure is proposed, and no significant fill is proposed; therefore, no impact is expected to the floodplain and no base flood elevation certificate is required.
- C. There should be minimal impact to the surrounding area because the project is entirely contained on property of the owner. Adjacent property owners will not be able to see the proposed project, except in an indirect way through viewing additional fish & wildfowl in the area. Flood waters will not be increased. The project will have no impact on the value, livability or appropriate development on adjacent properties.

KCLDC Article 57.060(A-D)

- A. The restoration and enhancement of degraded fish habitat and wetlands would not alter the significance of the resource because restoring the project will bring a Goal 5 protected stream and wetland back to a functional habitat state. The added riparian vegetation, streambank stabilization, log placement and gravel placement will provide enhanced fish and wildlife habitat to this stretch of the Crooked Creek. Obtaining permits from State and Federal agencies for removal and fill in wetlands further regulates the impacts to the resource. The applicant has applied for permits with the applicable permitting agencies. The applicant will need to provide the Planning Department with copies of all final permits

issued by State or Federal agencies.

- B. No threatened or endangered species are known to exist in that area. The Oregon Department of Fish and Wildlife was notified of this project and submitted a letter supporting the proposed habitat project (Exhibit 9).
- C. There is no feasible alternative to the proposed project, except for levels of habitat enhancement. This project will met its intended objective with no substantial adverse impact on the stream or wetland.
- D. There will be some temporary impacts to the resource, such excavators moving around the site on wood mats. The applicant states the impacts will be limited by working during late summer to early fall months, when evapo-transpiration rates are highest and the site conditions are driest. Impacts would be temporary and not have a permanent adverse impact on the river or its wetland. The US Fish & Wildlife have in-water work period restrictions which apply to this project.
- E. The applicant will be required to submit copies of applicable state and federal permits for the proposed work.

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 31-09 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


Applicant must supply copies of all applicable final State and Federal permits to the Planning Department.

Condition #2

Prior to application for site development permits, 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 the work authorized by this permit has commenced. The applicant may apply for up to three 1-year time extensions with the appropriate application and fee.

DATED this 3 day of August, 2009.



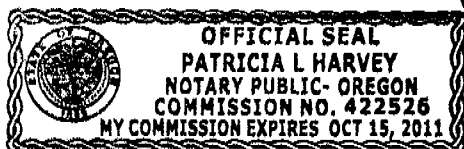
Leslie C. Wilson, Planning Director

Signed & Acknowledged before me this 3rd day of August,
2009.



NOTARY PUBLIC FOR OREGON

My Commission Expires:



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 Map/Aerial	Exhibit 2
Joint Permit Application US Army Corps/DSL	Exhibit 3
Lawful Creation Deed (1977)	Exhibit 4
Parcel Assessor Map	Exhibit 5
Zoning Map	Exhibit 6
Wood River Marsh Wetland (Goal 5 designation)	Exhibit 7
FEMA FIRM Map	Exhibit 8
ODFW Comments	Exhibit 9
Chiloquin-Agency Lake Fire District Comments	Exhibit 10
KC Public Works Comments	Exhibit 11
Central KC Community Action Team Comments	Exhibit 12