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LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS, DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18 *
the Deschutes County Code, the *
Deschutes County Zoning Ordinance, *
Amending Section 18.36.030 (Y) of *
Title 18 to Clarify *
"Grandfathering" Provision, and *
Declaring an Emergency. *

0120-0040

92 DEC -8 AM 9:10
MARY SUE PENNIE
COUNTY CLERK

92-41795
ORDINANCE NO. 92-068

WHEREAS, Wallace and Francis Chang proposed a Text Amendment to Section 18.36.030 (y) of Title 18, to amend the language of that section to apply to all parcels for which preliminary approval was received prior to April 15, 1992.

WHEREAS, the Deschutes County Planning Commission, after review conducted in accordance with applicable law, has recommended approval of the proposed Text Amendment to Title 18.

WHEREAS, after notice was given and hearing conducted in accordance with applicable law, the Board of County Commissioners have considered the recommendations of the Planning Commissioners recommendation; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. Section 18.36.030 of Title 18 is amended as follows (with deletions bracketed and additions bolded and underlined):

Section 18.36.030 Conditional Uses Permitted.

The following uses and their accessory uses may be allowed in the Forest Use zone, subject to applicable provisions of the Comprehensive Plan, Section 18.36.040 of this title and other applicable sections of this title.

- A. Private hunting and fishing operations without any lodging accommodations.
- B. Caretaker residences for public parks and fish hatcheries.
- C. Temporary forest labor camps limited to the duration of the forest operation requiring its use.
- D. Exploration for and production of geothermal, gas, oil and other associated hydrocarbons, including the

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placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head.

- E. Log scaling and weigh stations.
- F. Disposal site for solid waste for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation.
- G. Parks and campgrounds. For the purpose of this section, a campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer or recreational vehicle. Campgrounds shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.
- H. Mining and processing of oil, gas or other subsurface resources, as defined in ORS Chapter 520.005, and not otherwise permitted under subsection (D) of this section.
- I. Television, microwave and radio communication facilities and transmission towers.
- J. Fire stations for rural fire protection necessary to serve existing development.
- K. Utility facilities for the purpose of generating five (5) megawatts or less of power.
- L. Aids to navigation and aviation.
- M. Water intake facilities, related treatment facilities, pumping stations and distribution lines.
- N. Reservoirs and water impoundments.
- O. Cemeteries.
- P. New distribution lines (e.g. electrical, gas oil, geothermal) with rights-of-way 50 feet or less in width.
- Q. Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.
- R. Home occupations as defined in Section 18.04.030 and subject to Section 18.128.040 (G) of this title.
- S. Expansion of existing airports.

- T. Public road and highway projects as described as ORS 215.283 (2) (p) through (r).
- U. Private accommodations for fishing occupied on a temporary basis subject to other applicable sections of this title and the following requirements:
- a. Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
 - b. Only minor incidental and accessory retail sales are permitted;
 - c. Accommodations are occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife commission; and
 - d. Accommodations must be located within one-quarter mile of fish-bearing Class I waters as defined in OAR 629-24-101 (7).
- V. Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations.
- W. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland, subject to Sections 18.120.050 and 18.128.040 (W) of this title.
- X. A manufactured home in conjunction with an existing dwelling as temporary use for the term of a hardship suffered by the existing resident or a relative as defined in ORS 215.283. The use shall be subject to the review criteria in Section 18.116.090 of this title, as well as those in this chapter. The manufactured home shall use the same sub-surface sewage disposal system used by the existing dwellings if that disposal system is adequate to accommodate the additional dwelling.
- Y. Forest management dwellings on parcels [lawfully created] for which preliminary approval was received prior to April 15, 1992 and where the dwelling is found to be necessary for and accessory to forest operations, including cultured Christmas trees as defined in ORS 215.203 (3).

Section 2. This Ordinance is supported by the staff report attached hereto as Exhibit "A" and by this reference incorporated herein.

Section 3. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its effective date.

DATED this 7th day of December, 1992.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON



TOM THROOP, Commissioner

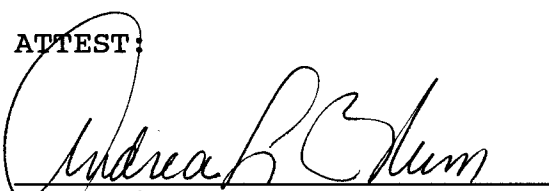


NANCY POPE SCHLANGEN, Commissioner



DICK MAUDLIN, Chairman

ATTEST:



Recording Secretary

EXHIBIT A

0120-0044

STAFF REPORT

The applicant, Wallace and Francis Chang, is requesting a Text Amendment to change the words of Section 18.36.030 (Y) of Title 18 from "lawfully created" prior to April 15, 1992 to "for which preliminary approval was received" prior to April 15, 1992.

The applicant received approval for a Major Partition, pursuant to Hearings Officer's decision dated March 25, 1992, to create two 320-acre forest parcels, a Variance to Section 17.28.030 of Title 17, for access to the parcels from a road not dedicated to the public, and approval for one forest management dwelling (FM-91-7), V-91-30 and MJP-91-22).

On April 15, 1992, Deschutes County adopted Ordinance 92-025 which set forth the guidelines for the Forest Use Zones. Section 18.36.030 (Y) of Title 18 permits as a Conditional Use, "Forest Management dwellings on parcels lawfully created prior to April 15, 1992, and where the dwelling is found to be necessary for and accessory to forest operations, including cultured Christmas trees as defined in ORS 215.203 (3).

The issue is whether the language "lawfully created" does not include parcels that have received preliminary plat approval only, and not final plat recordation. If those preliminarily approved parcels are considered not lawfully created parcels, they are not "grandfathered" for consideration for forest dwellings as a conditional use pursuant to Section 18.36.030 (Y) of Title 18. Staff finds the intent in using "lawfully created" was to remove the incentive for further land divisions for residential development. In drafting the current ordinance language staff does not believe that any consideration was given to parcels that have received only preliminary plat approval.

Within the Forest Zone, there are two land division applications that have received preliminary approval, with final approval pending that could specifically be effected by this ordinance language. These include the applicant's land partition MJP-91-22 as well as MP-91-55, Crown Pacific, Ltd., a request for the creation of two parcels from a parcel approximately 42,000 acres in size.

Therefore, a request is submitted to change the language of Section 18.36.030 (Y) of Title 18 to read, "Forest management dwellings on parcels for which preliminary approval was received prior to April 15, 1992, and where the dwelling is found to be necessary for and accessory to forest operations, including cultured Christmas trees as defined in ORS 215.203 (3)".