



Oregon

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Department of Land Conservation and Development

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May 8, 2014

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Jon Jinings, Community Services Specialist

SUBJECT: **Agenda Item 6, May 22-23, 2014, LCDC Meeting**

**REVIEW OF A DIRECTOR'S DECISION TO APPEAL TO THE
LAND USE BOARD OF APPEALS
KLAMATH COUNTY**

I. AGENDA ITEM SUMMARY

The director has approved an appeal of a recent decision by Klamath County to allow 50 single family dwellings on individual lots at a private park. The department finds that the adopted amendments to the local program do not comply with the provisions of OAR Chapter 660, Divisions 4 and 14 requirements because the decision misconstrues "economic activity" as that term is used in the applicable rules, there is not sufficient evidence in the record to document a need for additional housing at this location, and the decision does not demonstrate that the use cannot reasonably be accommodated within areas not requiring an exception (there is over 4,000 acres of land zoned for rural residential development and an urban growth boundary within 10 miles of the subject property).

If you have questions regarding this case, please contact Jon Jinings, Community Services Specialist, at 541-325-6928 or jon.jinings@state.or.us.

A. Type of Action

The director requests that the commission authorize the department to proceed with the appeal of the Klamath County decision to the Land Use Board of Appeals (LUBA). The department filed a Notice of Intent to Appeal with LUBA on April 22, 2014. It was necessary for the department to file the notice because the 21-day filing period expired prior to the commission's next scheduled meeting.

II. CASE SUMMARY

A. Background

This case involves a private park in northern Klamath County commonly referred to as “Train Mountain.” The subject property consists of about 2,200 acres protected under Goal 4, Forest Lands, located about two miles southwest of the Chiloquin city limits. Miniature railroading activity has taken place on the subject property for well over 20 years and multiple private park approvals have been issued by Klamath County. The property currently contains a variety of miniature railroad support structures and about 36 linear miles of 7.5” gauge railroad track. According to the Train Mountain website, it is the largest facility of its kind in the world.

Train Mountain principally operates spring through fall. Activities are not generally conducted during the winter when snow on the tracks and other adverse weather conditions makes miniature railroading a challenge. Members are welcome to operate their miniature trains whenever conditions allow and many store their trains on site. Multiple events are hosted at Train Mountain each year drawing local, regional, national and even international participation. Once every three years the “Triennial,” the largest of Train Mountain events, is held. The 2012 Triennial included nearly 300 miniature trains, participants from at least seven countries and an estimated attendance of around 1,400.

Train Mountain’s original owner passed away in 2008 and the property is now managed by the Train Mountain Institute, a 501(c)(3) public benefit nonprofit. Oregon’s amusement park statutes inhibit Train Mountain’s ability to offer fee-based services to the public so despite national and international recognition Train Mountain generates no direct revenues. Consequently, the operation’s modest budget is generated by membership fees and donations. Management and labor to run the operation is entirely dependent on volunteers. In simple terms, Train Mountain makes no money and pays no wages.

During the summer of 2013 the department was contacted by Klamath County and the Train Mountain Institute to discuss future uses on the property. In early 2014 an application was filed with Klamath County to, among other things, designate about 130 acres to allow for 50 single family dwellings on individual lots. Each lot would be connected by miniature rail line to the primary Train Mountain miniature rail line facilities. The lots would be sold to Train Mountain members who would presumably drive their miniature trails from their homes to volunteer at the main operation. The applicant contends that the 50 units of rail-connected housing are necessary to maintain an adequate supply of volunteer labor to sustain the operation because no other housing choice is acceptable to miniature railroad enthusiasts.

B. The Exceptions Process

The opportunities to justify an exception to statewide planning goals are set forth at ORS 197.732 and Goal 2, Land Use Planning. The policy established in state statute and Goal 2 for most goal exceptions, including exceptions to Goals 3 and 4, are interpreted and carried out in administrative rule at OAR chapter 660, division 4, which offers three distinct exception opportunities.

The first opportunity is included at OAR 660-004-0020 and -0022. This allows a county to consider whether there are “reasons” to justify why the state policy embodied by the applicable statewide planning goals should not apply. In the case of rural residential development very limited options are available:

(2) Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned that require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.

The second opportunity is included at OAR 660-004-0025 and allows a county to consider whether lands are “physically developed” by other uses to the extent that it is no longer available for uses allowed under the applicable goal. This opportunity is reasonably self-explanatory. A 10-acre parcel entirely occupied by an auto salvage yard could be an example of a candidate for a “physically developed” exception. The level of development on the subject property, in particular the selected location, is not nearly extensive enough to justify such an exception.

The final exception opportunity is included at OAR 660-004-0028 and allows a county to consider whether lands are “irrevocably committed” to uses not allowed by the applicable goals because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable. Areas characterized by high levels of parcelization occurring prior to the establishment of local comprehensive plans and zoning ordinances with an existing residential settlement pattern are possible candidates for an “irrevocably committed” exception. This is not the case here.

Instead, the applicant is pursuing a “reasons” exception to Goal 4, which applies the provisions of OAR 660-004-0020 and -0022(2). Because the proposed residential density exceeds one unit per 10 acres, an exception to Goal 14 (Urbanization) is also necessary. OAR 660-004-0040(7)(i)(B).

The provisions for a reasons exception to Goal 14 are found at OAR 660-014-0040 and are substantially similar to those found at OAR 660-004-0020. The foundational criteria for a Goal 14 exception are set forth in OAR 660-014-0040(2) and (3)(a), which read as follows:

(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an

urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

- (3) To approve an exception under section (2) of this rule, a county must also show:
- (a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities. . .

As indicated by the relevant criteria, reasons exceptions for residential activities involve a very narrow and special set of circumstances. The department does not find those circumstances are present at Train Mountain.

C. Department Participation

The department has been provided the opportunity to be involved in this discussion since summer 2013. A site visit to Train Mountain was conducted by department staff on August 14, 2013 and additional communications occurred between that time and submittal of the applicant's proposal to Klamath County in early 2014.

The department provided a brief e-mail followed by more detailed comments prior to the first evidentiary hearing (Attachments B and C). These comments were based on the department's research and expressed several concerns about this size and scope of the proposal. Although no one from the department was able to attend the first hearing, we were able to meet with representatives from the Train Mountain Institute and Klamath County the following day. During this meeting possible development alternatives were discussed and an alternative proposal was carried back by department staff to be discussed by the department's Policy Team. The department was unable to agree with this alternative proposal and offered a different possible solution prior to the second hearing.

The department's proposal was rejected by the Train Mountain Institute. The second and final local hearing was held on March 25, 2014. The department attended and offered additional oral testimony at the second hearing. The department was unable to convince the local decision makers to consider a different approach and the applicant's proposal was approved as submitted. This appeal followed.

D. Department Concerns

As explained in the attached comments, the department concludes the county has misconstrued the term "economic activity" as the term is used in OAR 660-004-0022(2) and OAR 660-014-0040(2). In the context of these rules the department understands "economic activity" to mean employment-generating uses that produce goods or services offered to the public. The department also found the county did not demonstrate that housing is necessary or adequately consider alternative locations. The department is also concerned that alternative locations that do not require a new exception have not been adequately considered for the proposed residential use. OAR 660-004-0020(2)(a)(b).

III. APPEAL FACTORS AND ANALYSIS

To proceed with an appeal, the commission must base its decision on one or more of the following factors from OAR 660-001-0230(3):

- (a) Whether the case will require interpretation of a statewide planning statute, goal or rule;
- (b) Whether a ruling in the case will serve to clarify state planning law;
- (c) Whether the case has important enforcement value;
- (d) Whether the case concerns a significant natural, cultural or economic resource;
- (e) Whether the case advances the objectives of the agency's Strategic Plan;
- (f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings or technical assistance.

For the reasons stated below, the department finds that the facts of this case lead to a conclusion that consideration of factors (a), (b), (c), and (d) support a decision to appeal Klamath County's decision to LUBA, and that consideration of factor (f) does not present a viable alternative to the appeal.

(a) Whether the case will require interpretation of a statewide planning statute, goal or rule

This case involves the interpretation of Goal 2 and OAR chapter 660, divisions 4 and 14, because exceptions to Goals 4 and 14 were adopted.

(b) Whether a ruling in the case will serve to clarify state planning law

A ruling in this case will help clarify the term "economic activity" as used in OAR chapter 660, divisions 4 and 14 and continue (and perhaps expand) existing case law that a preference for a particular manner of use is does not constitute a need.

(c) Whether the case has important enforcement value

This case has important enforcement value because the department is concerned that if allowed to stand, other similar proposals in Klamath County and other counties would be encouraged to come forward. That is, the expansive definition of "economic activity" employed by Klamath County, if used elsewhere, would inappropriately allow a wide range of permitted non-resource activities in farm and forest zones to use the activity as a basis for approving new areas for rural residential development.

(d) Whether the case concerns a significant natural, cultural or economic resource

The department finds that the case concerns a significant natural resource because the subject property is identified as forest land protected under Goal 4 in the county plan. The approved exception to Goal 4 will result in permanent conversion of forest land to non-resource use. Part of the subject property is mapped as Roosevelt Elk Winter Range in the county plan, but no inventoried habitat is present at the location proposed for residential development.

(e) Whether the case advances the objectives of the agency's strategic plan

While the case does not advance and particular part of the department's strategic plan, it is consistent with department objectives to limit sprawl and to direct urban development inside urban growth boundaries. .

(f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings or technical assistance

The department finds that the appeal is the most practical option. The department has offered the applicant a compromise position, which has been rejected. The parties to the appeal may identify or propose an alternative method of accomplishing the objective of the appeal, such as mediation, prior to the hearing or during testimony to the commission, but no alternative method of resolving the issues has been identified at the time of this report. The existing goal and rules provide an appropriate policy framework such that amendments to those provisions are not necessary.

V. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends that the commission support the director's recommendation and proceed with a department appeal of the Klamath County land use decision.

Proposed Motion: I move that the commission authorize the department to appeal the subject decision from Klamath County to the Land Use Board of Appeals based on the information included in the staff report and its demonstration that OAR 660-001-0230(3) (a), (b), (d) and (e) apply.

Alternative motion: I move the commission not authorize the department to appeal the subject decision from Klamath County for the following reason(s): _____.

VI. ATTACHMENTS

- A. Klamath County final decision
- B. DLCDC e-mail dated February 6, 2014
- C. DLCDC comment letter dated February 23, 2014
- D. Notice of LCDC hearing to Klamath County

**BEFORE THE KLAMATH COUNTY
BOARD OF COMMISSIONERS**

IN THE MATTER OF FILE NUMBER CLUP/ZC 1-14

FINAL ORDER

WHEREAS, Train Mountain Institute, applicant, requested approval of an amendment for the following actions:

1. Amend the Comprehensive Plan to create a new Train Park land use designation.
2. Amend the Land Development Code by adding a new Train Park Zone.
3. Amend the Land Development Code Article 83.030 to allow Planned Unit Developments in the Train Park Zone.
4. Amend Comprehensive Plan, Goal 2, Policy 10 as to allow a PUD in a Train Park Zone.
5. Adopt an Exception to Goal 4 (Forestry) and Goal 14 (Urbanization) to change the Plan Map designation on 129.14 acres from Forestry to Train Park to allow a miniature railroad connected rural residential community.
6. Adopt an Exception to Goal 4 (Forestry) to change the Plan Map designation on 39.29 acres from Forestry to Train Park for the Train Park Support Area; and

WHEREAS, the subject properties are currently described as the following Map/tax lot numbers:

R-3507-006A0-00100
R-3507-00500-00300 (part), 00400 & 00900 (part)
R-3507-00400-01700 & 01800
R-3507-009A0-01600, 01700, 01800 & 01900; and

WHEREAS, the Klamath County Planning Department provided proper notice of a public hearing held on February 25, 2014, and the Planning Commission voted to continue the public meeting until March 25, 2014 for continued deliberations before the Klamath County Planning Commission and Board of County Commissioners; and

WHEREAS, the applicant submitted said request for the Comprehensive Plan amendment and associated Land Development Code text amendment in due form for consideration; and

WHEREAS, based on testimony entered and consideration of the whole record, and making the proposed findings of fact in the application submittal and Revised Staff Report their own, and adding the additional findings of fact:

That Train Mountain park is unique and different than public parks; and

That sustainability of Train Mountain park requires a core of dedicated and experienced volunteers to maintain an institutional memory, oversee its operations, and provide leadership and supervision of facility maintenance. Public parks of similar size typically have paid personnel to carry out these functions.

The Klamath County Board of County Commissioners concluded the application was in conformance with State Law, Klamath County Land Development Code and Comprehensive Plan, and acting within their authority unanimously APPROVED the requests of Planning File CLUP/ZC 1-14.

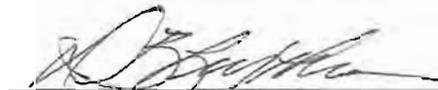
NOW, THEREFORE, THE KLAMATH COUNTY BOARD OF COMMISSIONERS ORDER AS FOLLOWS:

The Klamath County Planning Director shall prepare for adoption by the Board of County Commissioners an ordinance amending the Klamath County Comprehensive Plan text and Land Development Code text and General Land Use Plan Map to reflect the proposed revision to the plan designation as shown on attached Exhibit A.

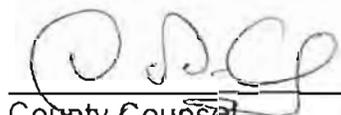
Dated this 1st day of April, 2014

FOR THE BOARD OF COMMISSIONERS


Chairman


Commissioner


Commissioner

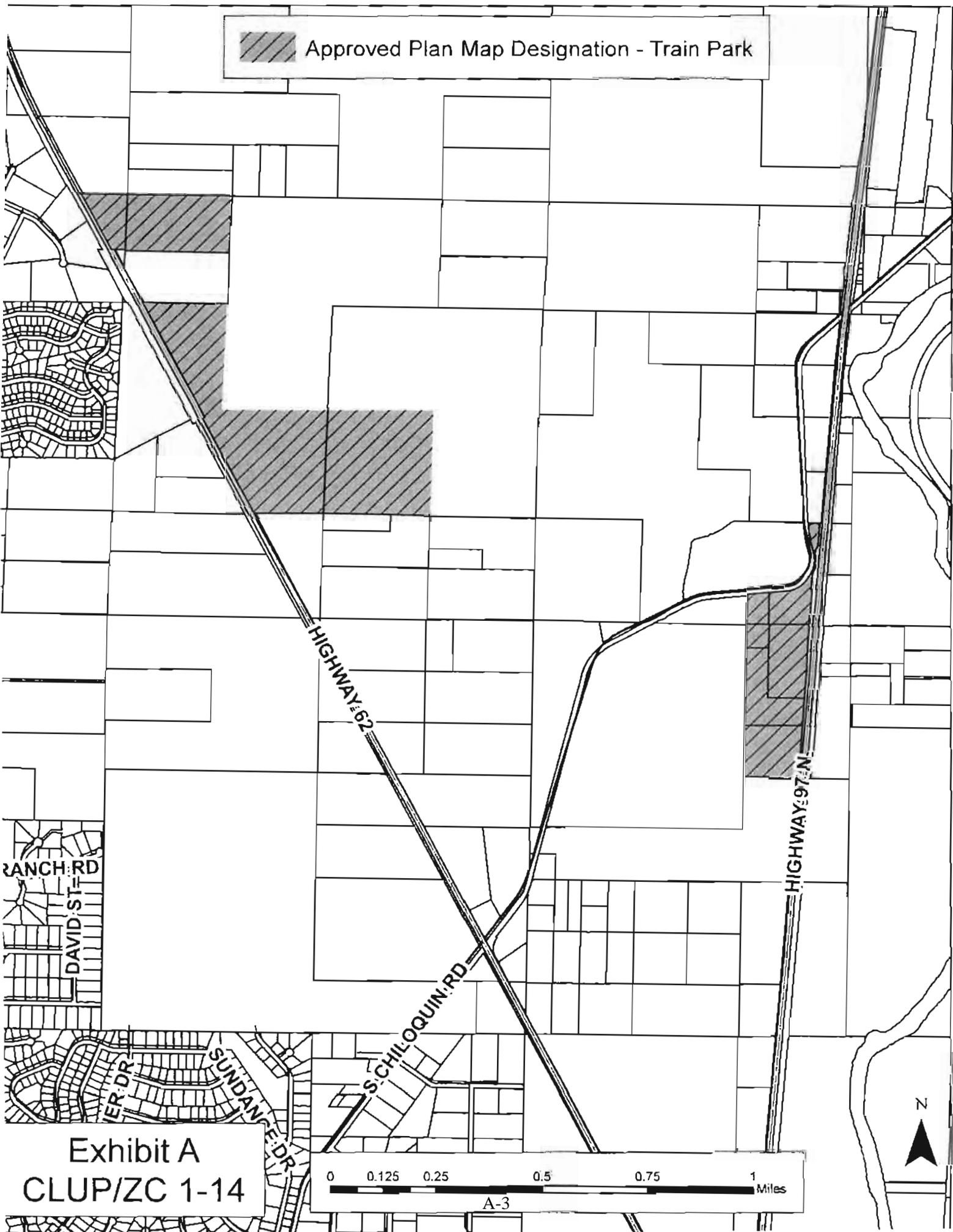
 3/31/2014
County Counsel
Approved as to form

NOTICE OF APPEAL RIGHTS

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) within 21 days following the date of the mailing of this order. Contact LUBA for information as how to file this appeal (LUBA by phone 1-503-373-1265 or mail at 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552). Failure to do so in a timely manner may affect your rights.



Approved Plan Map Designation - Train Park



RANCH RD

DAVID ST

IER DR

SUNDANCE DR

S. CHILOQUIN RD

HIGHWAY 97 N

HIGHWAY 62

Exhibit A
CLUP/ZC 1-14

0 0.125 0.25 0.5 0.75 1 Miles

A-3



BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY, OREGON

IN THE MATTER OF AMENDING)
THE COMPREHENSIVE PLAN)
TEXT, GENERAL LAND USE)
PLAN MAP, AND LAND)
DEVELOPMENT CODE TEXT TO)
MAKE CHANGES 1-6 AS)
FOLLOWS:)

ORDINANCE 44.98

1. AMEND THE COMPREHENSIVE PLAN TO CREATE A NEW TRAIN PARK LAND USE DESIGNATION.
2. AMEND THE LAND DEVELOPMENT CODE BY ADDING A NEW TRAIN PARK ZONE.
3. AMEND THE LAND DEVELOPMENT CODE ARTICLE 83.030 TO ALLOW PLANNED UNIT DEVELOPMENTS IN THE TRAIN PARK ZONE.
4. AMEND COMPREHENSIVE PLAN, GOAL 2, POLICY 10 AS TO ALLOW A PUD IN A TRAIN PARK ZONE.
5. ADOPT AN EXCEPTION TO GOAL 4 (FORESTRY) AND GOAL 14 (URBANIZATION) TO CHANGE THE PLAN MAP DESIGNATION ON 129.14 ACRES FROM FORESTRY TO TRAIN PARK TO ALLOW A MINIATURE RAILROAD CONNECTED RURAL RESIDENTIAL COMMUNITY.
6. ADOPT AN EXCEPTION TO GOAL 4 (FORESTRY) TO CHANGE THE PLAN MAP DESIGNATION ON 39.29 ACRES FROM FORESTRY TO TRAIN PARK FOR THE TRAIN PARK SUPPORT AREA;

WHEREAS, the Klamath County Board of Commissioners has the authority and desires to amend the Comprehensive Plan, General Land Use Plan Map, and Land Development Code text; and

WHEREAS, the Klamath County Planning Department provided written notice of the public hearing as required in KC Land Development Code Article 31; and

WHEREAS, a public hearing was held on February 25, 2014, and public testimony was considered before the Klamath County Planning Commission and Board of County Commissioners; and

WHEREAS the Klamath County Planning Commission recommended that the meeting be continued until March 25, 2014, and

WHEREAS, the Klamath County Board of Commissioners voted to continue the meeting until March 25, 2014; and

WHEREAS, on March 25, 2014, based on testimony entered and in consideration of the whole record, the Klamath County Board of Commissioners voted unanimously to approve the request; and

NOW, THEREFORE, the Klamath County Board of Commissioners ordains that the amendments to the adopted Klamath County Comprehensive text and General Land Use Plan Map and Land Development Code text, as included in Applicant's Application - Exhibit "1," and incorporated herein by reference are hereby adopted.

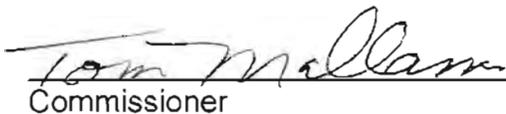
1. *The Klamath County Comprehensive Plan - General Land Use Plan Map is amended as shown on attached Exhibit A.*

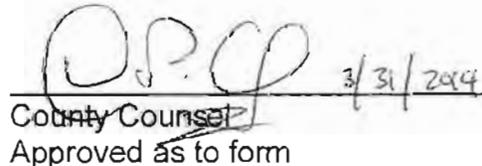
DATED this 1st day of April, 2014.

FOR THE BOARD OF COMMISSIONERS


Chairman


Commissioner


Commissioner

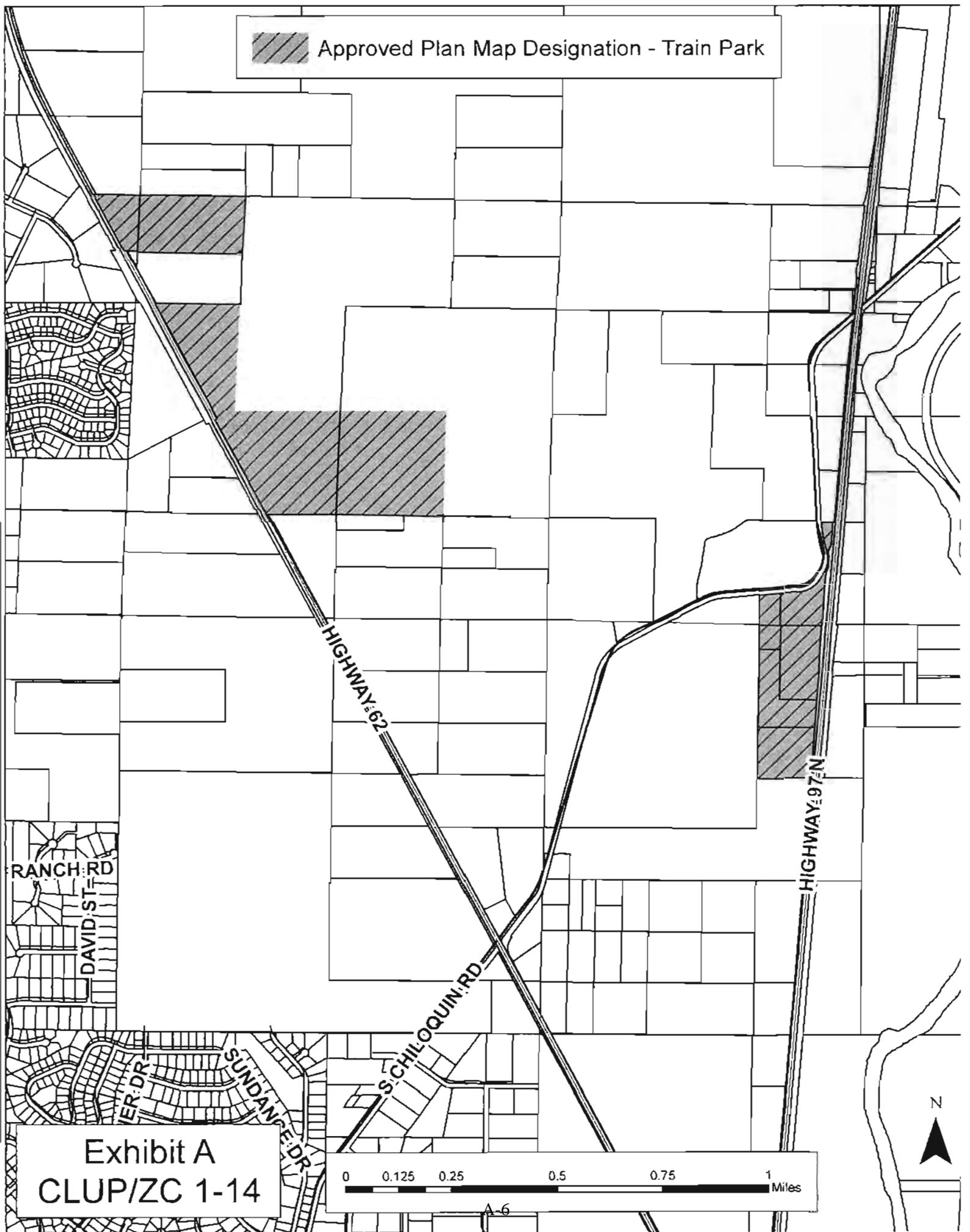
 3/31/2014
County Counsel
Approved as to form

NOTICE OF APPEAL RIGHTS

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Approved Plan Map Designation - Train Park



RANCH RD

DAVID ST

ER DR

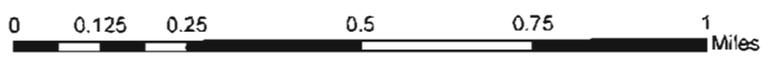
SUNDANCE DR

S. CHILOQUIN RD

HIGHWAY 62

HIGHWAY 97N

Exhibit A
CLUP/ZC 1-14





Klamath County Planning Department

Klamath County Government Center
305 Main Street, Klamath Falls, Oregon 97601

Hearing Date: February 25, 2014 &
March 25, 2014

Application File No: CLUP/ZC 1-14

Staff Contact: Mark Gallagher

REVISED STAFF REPORT

Applicants/Owners: Train Mountain Institute

Application: Request to do the following actions:

1. Amend the Comprehensive Plan to create a new Train Park land use designation.
2. Amend the Land Development Code by adding a new Train Park Zone.
3. Amend the Land Development Code Article 83.030 to allow Planned Unit Developments in the Train Park Zone.
4. Amend Comprehensive Plan, Goal 2, Policy 10 as to allow a PUD in a Train Park Zone.
5. Adopt an Exception to Goal 4 (Forestry) and Goal 14 (Urbanization) to change the Plan Map designation on 129.14 acres from Forestry to Train Park to allow a miniature railroad connected rural residential community.
6. Adopt an Exception to Goal 4 (Forestry) to change the Plan Map designation on 39.29 acres from Forestry to Train Park for the Train Park Support Area.

Site Location: Map/tax lot numbers:
R-3507-006A0-00100
R-3507-00500-00300 (part), 00400 & 00900 (part)
R-3507-00400-01700 & 01800
R-3507-009A0-01600, 01700, 01800 & 01900

Plan Designations: Existing: Forestry
Proposed: Train Park

Zone: Existing: Forestry
Proposed: Train Park

Acreage: 168.43 acres

BACKGROUND

The Train Mountain 7.5" gauge railroad has been at its current location in Klamath County for approximately 30 years. As explained in the applicant's presentation, numerous County land use approvals have been granted over time as the facilities have expanded. The majority of the Train Mountain property is located within the Forestry Zone and has been "developed" under the "Private Parks and Campgrounds" provisions of that zone as a conditional use. The total property encompasses over 2000 acres and includes over 35 miles of track. The facility has gained worldwide recognition from scale model train enthusiasts and has become a significant asset to Klamath County as a tourist destination. The site has also become a multi-user facility for a number of other organizations as described in the application materials.

With the passing of Quentin Breen, who was the original founder of Train Mountain, the users of the facility have re-organized and were recently successful in removing a long-standing IRS debt and are now a 501c3 entity officially entitled Train Mountain Institute. The organization is seeking the proposed amendments to solidify their base of volunteers to support the day-to-day operation of the park and to make it clearer to everybody exactly what is allowed.

The model railroad facility consists of mostly open space with the low impact 7.5" gauge track. The organization has been environmentally friendly by maintaining the existing forest canopy over much of the area and has previously developed a wildlife plan for the Roosevelt Elk Winter Range area that has been reviewed and accepted by the Oregon Dept. of Fish and Wildlife. A significant amount of the acreage is under a conservation easement.

Because of the need for volunteers to maintain and further develop the facility, the applicant has passed along the following information regarding non-profits and their use of volunteers. *"There are 2.3 million non-profits in the US.... 1.6 million registered with IRS. The top 7% have budgets of \$100,000 a year or more. 94% of non-profits with annual revenues below \$200,000 are run exclusively by volunteers."*

PROCESS

The applicant has clearly stated the steps necessary for them to move forward with their plans. This includes creating a zone specific to their unique needs and obtaining an "exception" to the Statewide Planning Goals to allow the proposed miniature railroad connected residential planned community to house people interested in this life style that will volunteer at the facility. The total amount of land subject to these amendments is 168.43 acres.

The 129-acre area chosen for the residential use is located outside of the High Density Roosevelt Elk Winter Range and is not an area of significant timber growth. Other rural residential uses are located nearby.

If approved, the proposed language changes in the Comprehensive Plan and Land Development Code would enable Train Mountain Institute to apply for a zone change and subsequent Planned Unit Development approval for the residential area. Other land uses, either permitted or conditional, would be reviewed as required by the Land Development Code.

APPLICABLE CRITERIA

Articles 47 – Change of Zone Designation and Article 48 – Change of Comprehensive Plan Designation of the Klamath County Land Development Code.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The applicant has addressed all of the applicable criteria from the Land Development Code and Oregon Administrative Rules in the Burden of Proof Statements contained in the binder (application) that was submitted. After each criterion listed, there will be a reference to the lettered section of the binder where that criterion is addressed.

Land Development Code Article 48.030 Review Criteria

- A. A request for a change of Comprehensive Plan designation may only be approved if it meets all applicable review criteria;***
- B. A request for a change of Comprehensive Plan designation shall be reviewed against the following criteria:***
 - 1. The proposed change is supported by specific studies or other factual information, which documents the public need for the change;***

Applicant's Response

Factual information is contained in Applicant's Binder Tab J.

Finding

Klamath County contributes money to support tourism in the County. It is found that there is a public need for the proposed amendments because Train Mountain is a significant tourism asset to Klamath County economically and as a recreational area and a substantial pool of volunteers is necessary to continue and improve Train Mountain as a tourist destination and multi-use site. The proposed amendment is found to meet this criterion.

- 2. The proposed change complies with policies of the Comprehensive Plan;***

Applicant's Response

Contained in Applicant's Binder Tab K.

Finding

The applicant has addressed the policies of the County Comprehensive Plan that are applicable which, at the same time, address the broader Statewide Planning Goals. The application is found to be consistent with the applicable goals and policies of the County Comprehensive Plan and the Statewide Planning Goals.

- 3. The proposed change complies with the Oregon Statewide Planning Goals and Administrative Rules.***

Statewide Planning Goals

Applicant's Response

Contained in Applicant's Binder Tabs K, L & M.

Finding

It is found that the proposed amendments are consistent with the Statewide Planning Goals as addressed in Binder Tab K.

Oregon Administrative Rules

Because the Oregon Administrative Rules regarding Exceptions are based on Statewide Planning Goal 2: Land Use Planning, a copy of Goal 2 has been included (Exhibit 3) for reference purposes. Part II of the Goal, dealing with Exceptions, contains many of the decisional factors that were incorporated into the following Administrative Rules.

Finding

It is found that a "Reasons Exception" is justified as follows for 129.14 acres of Forestry Zoned property, to be utilized for needed volunteer housing to support Train Mountain, which is a significant economic and recreational asset to Klamath County:

(Each section below references a specific location - Tab letter and Page # - in the Binder where the Administrative Rule has been addressed. In most cases, the page reference is the beginning point of the Applicant's response to the requirement. The Tab and Page locations are intended to be a helpful reference, but should not be construed to contain all of the Applicant's response to a particular OAR requirement.)

OAR 660-014-0020 (2) General Exception Requirements - from Statewide Planning Goal 2, Part II(c).

- (a) The applicant has set forth the facts and assumptions, in Binder Tab B & M, that were used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situation, including the amount of land for the use being planned and why the use requires a location on resource land.
- (b) The applicant has demonstrated, in Binder Tab M (Page 8), why possible alternative areas, including inside the Chiloquin urban growth boundary, will not satisfy the need,
- (c) The applicant has demonstrated, in Binder Tabs B (Page 21) & M (Page 21), that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site are not significantly more adverse than would typically result from the same proposal being located in alternative areas that would also require a goal exception.
- (d) The applicant has demonstrated, in Binder Tab M (Page 23), that the proposed uses are situated in such a location as to be compatible with adjacent uses and to be compatible with natural resources and resource management or production practices.

OAR 660-014-0022 Reasons to Justify an Exception - from Statewide Planning Goal 2, Part II(c)

This OAR section states that "*Reasons that may justify the establishment of **new urban development** on undeveloped rural land are provided on OAR 660-014-0040.*"

Finding

Since the new train connected community is proposed to have a minimum lot size of 2 acres, it does not have a density high enough to qualify as "urban development." Urban development is typically lots that are less than 2 acres in size, therefore, OAR 660-004-0040 does not apply, however, an exception is required to allow a use not otherwise allowed in the Forestry Zone (OAR 660-004-0020). The applicant has addressed all the requirements necessary for such an exception.

IF it is determined that OAR 660-014-0040 does apply, the following finding can be made with regard to OAR 660-014-0040.

OAR 660-014-0040 – Establishment of New Urban Development on Undeveloped Rural Lands states the following:

*“(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include **but are not limited to** finding that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.”*

Finding

While many exceptions are taken according to the standard example provided in the OAR language above, the applicant has demonstrated that an exception is justified to allow urban development on undeveloped rural land, **under an alternative reasons argument**, as allowed by the “*but are not limited to*” language.

The applicant has demonstrated that an exception is justified in order to allow the train connected community to support the operation of Train Mountain.

OAR 660-014-0040(3)

- (a) The applicant has shown, in Binder Tab M (Pages 8 & 28), that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities.
- (b) The applicant has demonstrated, in Binder Tabs B (Page 21) & M (Pages 21 & 29), that Goal 2, Part II (c)(3) of OAR 660-004-0020 is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands considering:
 - (A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and
 - (B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.
- (c) The applicant has demonstrated, in Binder Tab M (Pages 23 & 31), that Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:
 - (A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and
 - (B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.
- (d) The applicant has shown, in Binder Tab M (Page 20 & 30), that an appropriate level of public facilities and services will provided in a timely and efficient manner.

- (e) The applicant has demonstrated, in Binder Tabs C & M (Page 33) that establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.

Train Mountain Support Area – Physically Developed Exception

Finding

It is found that the 39.29 acres, where the support area for Train Mountain currently exists, has been physically developed to the extent that it is no longer available for uses allowed in the Forestry Zone, as demonstrated in Binder Tab M (Pages 24 & 40). The area, therefore, qualifies for an exception to Statewide Planning Goal 4.

CONCLUSION

The proposed Comprehensive Plan amendments, Land Development Code amendments, and Exceptions to the Statewide Planning Goals to support this application are found to meet the required criteria of Klamath County, the Statewide Planning Goals, and applicable Administrative Rules [OAR 660-004-20 (Exception Requirements), 660-004-0022 (Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)), 660-012 (Transportation), 660-014-0040 (Establishment of New Urban Development on Undeveloped Rural Lands) and OAR 660-018 (Procedure)]. The application can, therefore, be approved.

AGENCY COMMENTS:

Two separate agency comments were received from the Department of Land Conservation and Development (Jon Jinings) (Exhibits 4 & 5). In the comments received on February 6, 2014, Mr. Jinings stated a concern that *“The prevailing understanding regarding OAR 660-004-0022(2) is that it speaks to a residential market demand generated by the employees of an economic activity. In other words, people want and need to live there because they earn their living at that location. This isn’t the case with the subject proposal.”*

Several other concerns were expressed that are addressed below.

Staff Response:

While the “prevailing understanding” regarding OAR 660-004-0022(2) might be that it speaks to a residential market demand generated by the employees of an economic activity, the exact language simply states that *“...the location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.”*

The applicant is not seeking employment, which the language does not directly refer to, but rather housing for volunteers that support an economic activity, which it does speak directly to.

As has been stated, Train Mountain is unique, and while most or all of the other examples where this OAR provision has been applied have to do with employment for an industrial or commercial activity, the language is broad enough to consider its application here for volunteers that are an essential part of this economic activity. An estimate of the economic activity of Train Mountain starts on Page 21 of Binder Tab B.

Also, from anecdotal evidence, it is not necessarily accurate to assume that volunteers *“...would work far less than full time.”* As Mr. Jinings supposes. While many will work less than full time, it sounds like there are many who spend long days there similar to employment, particularly those

who live immediately adjacent to Train Mountain, so such a blanket statement may not be an accurate characterization.

The applicant does address the requirements of OAR 660-014-0040 beginning in Binder Tab M (Page 28) and as demonstrated above starting on Page 4 of this report.

DLCD submitted a second comment dated February 23, 2014 stating that they do not agree that the application meets some of the OAR requirements.

Staff Response:

Staff concludes that the applicant has demonstrated that the application does meet the relevant OAR requirements and findings for those were previously included herein and remain so.

RECOMMENDED ACTION

Staff recommends that the Planning Commission adopt Staff's proposed Findings that demonstrate compliance with State of Oregon and Klamath County requirements, and forward a recommendation of approval to the Klamath County Board of Commissioners for the following amendments as proposed:

1. Amend of the Comprehensive Plan to create a Train Park land use designation.
2. Amend the Land Development Code to add a Train Park Zone.
3. Amend the Land Development Code to allow Planned Unit Developments (PUD) in the Train Park Zone.
4. Amend Goal 2, Policy 10 of the Comprehensive Plan to allow a PUD in the Train Park Zone.
5. Adopt an Exception to Goal 4 (Forestry) and Goal 14 (Urbanization) to change the Plan Map designation on 129.14 acres from Forestry to Train Park to allow a miniature railroad connected rural residential community.
6. Adopt an Exception to Goal 4 (Forestry) to change the Plan Map designation on 39.29 acres from Forestry to Train Park for the Train Park Support Area.



Mark Gallagher, Interim Planning Director
Klamath County Planning Department

Exhibits:

Application for CLUP and Land Dev. Code Amendments (Binder)	Exhibit 1
Exceptions Area Map	Exhibit 2
Goal 2: Land Use Planning	Exhibit 3
Email from DLCD (Jon Jinings) received February 6, 2014	Exhibit 4
Letter from DLCD (Jon Jinings) dated February 23, 2014	Exhibit 5

Text of February 6, 2014 E-mail from DLCD Staff to Klamath County

Good Afternoon. Mark

The department appreciates the opportunity to review the plan amendment proposal referenced above. We are still working our way through the submitted materials but thought we might offer a few comments and observations at this time.

Train Mountain is a unique and interesting project, which creates both unusual possibilities and unusual questions. The department's understanding, based on our conversations and the submitted materials, is that the motivation for the proposal is to establish a base of volunteer employees adequate to staff the facility and carry out the goals and mission of the organization. It is also our understanding that Train Mountain's economic importance to the area rests with status and potential as an attraction for visitors rather than an employment generator and that most of this benefit is experienced by Klamath Falls.

A "reasons" exception is proposed for the residential component of the project. The application addresses both OAR 660-004-0020 & 0022. The prevailing understanding regarding OAR 660-004-0022(2) is that it speaks to a residential market demand generated by the employees of an economic activity. In other words, people want and need to live there because they earn their living at that location. This isn't the case with the subject proposal. The emphasis here seems to be offering opportunities for volunteers who may or may not reside on site and would work far less than full time. In addition, these volunteers would not simply require lodging - they would, evidently, require the opportunity to privately construct single-family dwellings on new, privately owned lots that have access to the facilities network of rail lines so they can drive their miniature trains to and from their volunteer positions. Furthermore, we are not sure that a private park constitutes "...existing or planned rural industrial, commercial, or other economic activity in the area." as those terms are used in the rule. We appreciate that this scenario could be appealing to some train enthusiasts; however, we are not sure that it is necessary.

The application also proposes an exception to Goal 14 based on the proposed residential densities exceeding those identified in OAR 660-004-0040. So far in our review we have not found that the applicable provisions of OAR Chapter 660, Division 14 have been addressed, although there is a lot to look at and it could be that we have just not seen it yet. OAR 660-014-0040 substantial reflects the provisions of OAR 660-004-0020 & 0022. An important addition is a test "... that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities." OAR 660-014-0040(3)(a). In our experience this is a very challenging test to satisfy, especially when an urban growth boundary is near by as is the case with the city of Chiloquin.

In conclusion, we are concerned that the manner of proposed residential development may not be available under the existing administrative rule provisions. At the end of the day, it seems like the question revolves around how to adequately staff the Train Mountain facility. We are unaware of other facilities that use a model similar to what is being proposed but we welcome examples. We would also be willing to further discuss how to turn the corner on this issue.

Please enter this message into the record of these proceedings. We hope to attend the public hearing and may submitted more detailed comments on or before that date. Please feel free to contact me if you have any questions.

Respectfully,

Jon Jinings



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

Regional Solutions Center
1011 SW Emkay Drive, Ste 108
Bend, OR 97702
www.oregon.gov/LCD



February 23, 2014

Mark Gallagher, Interim Planning Director
Klamath County Planning Department
305 Main Street
Klamath Falls, OR 97601

Local File CLUP/ZC 1-14
DLCD File Number 001-14

Dear Mr. Gallagher:

Thank you for the opportunity to comment on the proposal reference above. We regret that previous commitments do not allow us to attend the hearing scheduled for February 25, 2014. Please accept this letter as a supplement to our earlier e-mail comments submitted on February 6, 2014.

It is our understanding that the subject property is known as "Train Mountain", includes about 2,200 acres and is located west of Chiloquin, Oregon. The property has received approval as a private park and has many miles of miniature railroad line and supporting infrastructure. It is also our understanding that the subject property has operated as a private miniature railroad facility for nearly 30 years and that it may be the only facility of its size in the world. Finally, the Train Mountain facility operates with volunteer assistance who contribute time on a part time or seasonal basis and has no paid employees.

The applicant's proposal includes two basic components. First, the applicant seeks to rezone about 40 acres to provide for continued use of railroad support activities. This area appears to include the majority of the existing structures and all of the park's most important buildings. Second, the applicant seeks to rezone about 130 acres to provide for a 50-lot residential development that would be connected by miniature rail to the existing Train Mountain rail lines. Individual lots would be sold to members of the Friends of Train Mountain in order to secure adequate amounts of volunteer labor.

We appreciate Train Mountain's willingness to discuss their project with us. We have been fortunate enough to visit the subject property and found it to be remarkably well managed by a group of positive, enthusiastic individuals. However, after a great deal of consideration we remain concerned by the proposed residential component.

Our understanding of the applicant's position on residential homesites is summarized in the following points:

- Train Mountain is an economic asset to Klamath County.
- Train Mountain is dependent on volunteer labor.
- Train Mountain volunteers often travel long distances and need overnight accommodations.

- Train Mountain volunteerism will fall below necessary levels unless there is an opportunity for volunteers to purchase property and build a home to stay in while they donate part-time, seasonal labor.
- Train Mountain volunteers who are able to purchase property and build a new home will find anything besides a location that allows them to be on the Train Mountain property and connected by a miniature rail line to the rest of the Train Mountain facilities unacceptable.

In other words, our understanding of the applicant’s position is that the only acceptable form of overnight accommodations for many Train Mountain volunteers is a personal home on a private lot connected by miniature rail lines on which to run their miniature trains to Train Mountain proper. If this demand is not met, Train Mountain will not be able to sustain an adequate amount of volunteers and may fail. If Train Mountain fails Klamath County business owners will miss out on opportunities created by Train Mountain visitors. While we agree with the first three bullet points above we are finding the second two more challenging to accept.

The Nature of Parks

As mentioned above, Train Mountain has been approved as a private park by Klamath County. Parks are important parts of our communities and furnish open space and needed locations for many types of outdoor recreation. All levels of government provide park services and in some case parks are privately owned and managed.

The following mission statements help describe the role that parks play and identify the philosophy of park managers:

The National Park Service

“The National Park Service preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. The Park Service cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.”

Oregon Parks & Recreation Department

“The mission of the Parks and Recreation Department is to provide and protect outstanding natural, scenic, cultural, historic and recreational sites for the enjoyment and education of present and future generations.”

Klamath County Community Development – Parks Division

“To provide and maintain public facilities for outdoor recreation, and to provide access to other public lands which offer opportunities for dispersed outdoor recreation.”

Friends of Train Mountain

“To preserve and promote miniature train railroading as a hobby.”

These statements serve to establish that the foremost purpose of parks is to provide recreation benefits to their respective constituents. Parks can and do generate economic benefits. However, such benefits are most often indirect and are certainly secondary to their primary purpose.

Volunteering in Parks

Our research has shown that volunteers in parks of all levels is not only usual and customary but is also critical to allowing them to carry out many functions. Volunteers provide capacity to do everything from simple administrative tasks to strenuous physical labor and virtually everything in between.

In Oregon, OPRD utilizes volunteers at over 90 state parks. According to the Yellowstone National Park website the National Parks Service received over 3,000,000 hours of assistance contributed by more than 85,000 volunteers in 2013. Some sources place the federal figures even higher. Without volunteers core park services such as interpretive and educational programs, maintenance, facility improvement and seasonal upkeep may not be possible. Some non-publicly owned parks operate entirely with volunteer assistance.

Accommodations for Park Volunteers

In our efforts to understand this issue better we have had discussions with various employees of OPRD and conducted much on-line research. We have found that in many cases volunteers do travel long distances to work at their favorite parks and some individuals use volunteer opportunities as a way to see new places and travel the country.

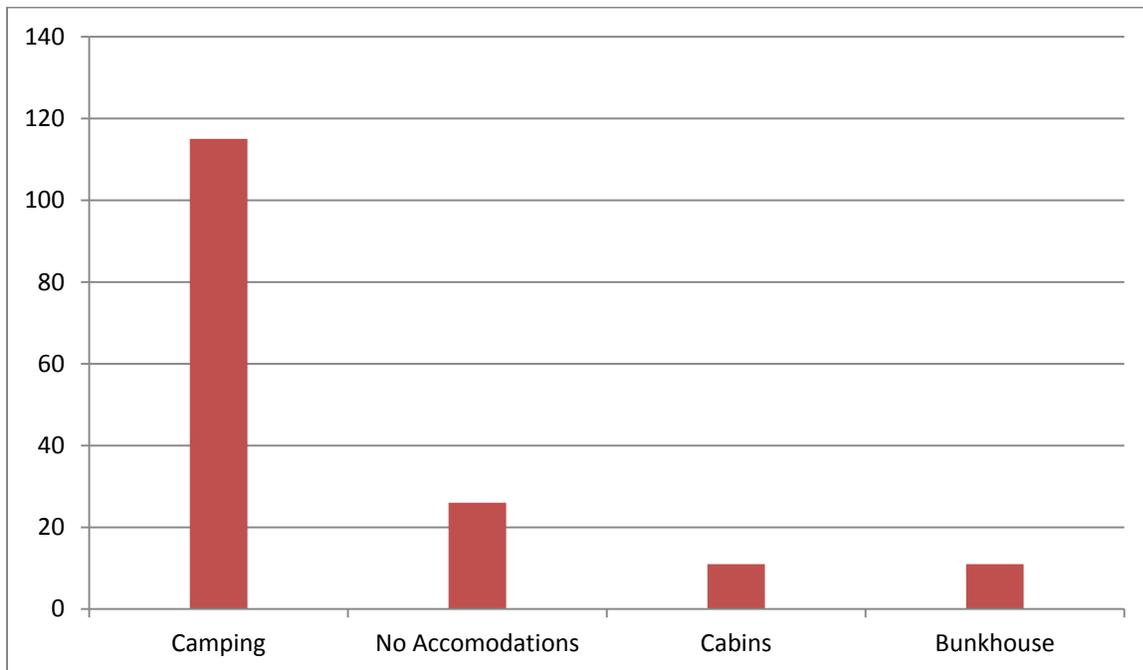
Based on our conversations with OPRD we understand that volunteers at state parks often commute from their homes or stay in the park campground. A few state parks have cabins that may be offered to volunteers but these situations appear rare.

The following passages from the Sumpter Valley Railroad website helps describe how that non-publicly owned facility operates and accommodates volunteers:

“The Sumpter Valley Railroad Restoration, Inc. is comprised almost entirely of volunteers. These volunteers have given their valuable time to rebuild and support the railroad. They bring their unique skills and knowledge with them to assist in the preservation and interpretation of not only the historic artifacts, but of the our national railroad heritage. Incorporated by a handful of dedicated locals on January 4, 1971, the membership has since grown to be over 400 members strong. Our members come from all over the United States and Canada, and there are also members and supporters around the world. Since incorporation, the backbone of the Sumpter Valley Railroad has been its membership and volunteers.”

“Because over sixty-percent of our operating crew live more than 100 miles away from the railroad, many members bring their families with them and spend entire weekends on site. Members may camp out on the railroad property in tents or self contained trailers or enjoy the hotels and accommodations in nearby Sumpter or Baker City.”

The website www.volunteer.gov currently lists 163 volunteer opportunities available in the states of Oregon, Washington, Idaho and Montana. These positions are offered by six federal agencies, one state parks service and one nonprofit organization. Housing or overnight accommodations associated with these positions are depicted in the table below and include camping (115), cabins (11), bunkhouse (11) or none at all (26). A small portion, probably around 5%, involve work that can be done at home on the internet or involve just a single day event. Camping accommodations tend to run from tent camping with no services to fully served RV pads. Cabins and bunkhouses are uniformly small with limited, often shared facilities.



The evidence we have found shows that camping is far and away the most common form of overnight accommodations for park volunteers. We have been unable to find any examples of parks requiring a residential community comprised of private lots and dwellings to satisfy their needs for volunteer assistance.

Nearby Facilities

In addition to the camping facilities offered at Train Mountain nearby facilities include campgrounds, cabins, motel rooms and bed & breakfast operations. Over 30 lodging, RV and camping operations in the Chiloquin, Ft Klamath and Rocky Point areas are described on the website

www.thingstodonearc craterlake.com. A map included on this site identifies the locations of visitor accommodations in that portion of northern Klamath County. Please see Attachment A.

For example, Collier Memorial State Park is located to the north and includes what OPRD describes as “the state’s finest logging museum”, as well as a maintained campground with about 50 full hookup sites and more than 15 tent sites. Other camping opportunities can be found at several local such as Walt’s RV, Water Wheel Campground or the Williamson River Campground. Cabins and associated facilities, including RV and camp sites can be found at local businesses like Sportsman’s River Retreat, Agency Lake Resort and the Williamson River Resort and Store. Motel accommodations are present at Melita’s Motel & RV Park, Jo’s Motel & Campground and The Rapids Motel.

Judging by this information it appears that there is a robust amount of overnight accommodations within the immediate vicinity of Train Mountain.

Surrounding Residential Zoning

Although we have been unable to find any examples of park volunteer recruitment being dependent upon furnishing a private residential development opportunity we do appreciate that recreational enthusiast may appreciate a chance to live or own property near where they play. We have found this to be true of many outdoor activities and we do not doubt that it could apply to miniature rail roaders as well.

Our review of the surrounding development pattern shows that not only is the City of Chiloquin in close proximity to Train Mountain but that an abundance of rural residential zoning also exists. The attached zoning maps show that rural residential districts are present immediately to the west of the subject property near Agency Lake. A closer evaluation of these lands and use of the area measuring tool available on the Klamath County on-line maps feature we were able to estimate that over 2,100 acres, including several existing platted subdivisions are zoned for rural residential activities are present here. The Oregon Shores Tracts represent two areas of subdivision activity and include about 1,500 +/- lots at two locations. Using aerial viewing provided by Google Earth and www.ormaps.net, we estimate the Oregon Shores lots to be about 20-30% built out.

Our review of the attached zoning maps and use of the Klamath County on-line mapping feature we were also able to identify areas of rural residential zoning within 10 miles to the north, south and east of the subject property. Please see Attachments B & C. Our calculations show that residentially zoned property at these locations add up to another 2,100 +/- acres. We did not attempt to analyze lot numbers or development patterns in these areas in the way we did for rural residential lands directly west of the subject property.

Based on the information gathered from our zoning assessment, Train Mountain is surrounded by well over 4,000 acres planned and zoned for rural residential development within a 10 mile radius. Furthermore, it is safe to say that these lands include hundreds, possibly thousands of undeveloped lots and do not account for any residential opportunities within the city of Chiloquin. To put things another

way, there is an absolute abundance of residential opportunities in the immediate vicinity of the subject property.

Criteria

The applicant is proposing exceptions to Goals 4 and 14 to allow for residential development on the subject property. The applicable state law is found at OAR 660-004-0020 & 0022 and OAR 660-014-0040. There is little difference in the criteria identified in these two divisions of administrative rules. We have chosen to focus our comments on the division 14 requirements but consider them also applicable to similar provisions in division 4.

660-014-0040

Establishment of New Urban Development on Undeveloped Rural Lands

(1) As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.

Department Response:

We agree that the subject property is undeveloped rural land.

(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

Department Response:

We do not agree that an exception to Goal 14 can be justified to allow new residential development as a means to secure volunteer labor at a public or private park. We do not believe parks constitute an "economic activity" as that term is used in administrative rule. We say this because we understand this term to describe an employee generating economic enterprise that produces tangible goods and services to be bought and sold based on market forces. Parks are different. The primary purpose of a park is to provide recreation and associated activities such as education and preservation. We have studied the mission statements of park providers at the local, state, federal and non-public levels and can find no mention of profitability, sales, manufacturing, employment or any other key items associated with economic enterprise. For these reasons, and perhaps others, parks are best considered a recreational activity because they emphasize no facet of economic principles.

Even if parks could be considered an economic activity under the applicable rules we do not believe residential opportunities of the type proposed by the applicant are necessary. We say

this because our research has indicated that park management agencies almost always use some level of camping to accommodate volunteers that are unable to commute from their homes. Small cabin or bunkhouse facilities are sometimes available but appear uncommon. As mentioned earlier, over 85,000 individuals contributed over 3,000,000 hours of volunteer assistance to the National Parks Service last year. OPRD enjoys volunteer assistance in over 90 state parks and some non-publically owned parks such as the Sumpter Valley Rail Road are almost entirely reliant on volunteers. The model of providing camping locations, minimally augmented with cabins or bunkhouses has proven to work well across all styles of park management. To put it another way, we do not believe it is necessary to provide numerous single family dwellings, especially privately owned dwelling on private lots as a means to secure volunteer labor.

Even if parks were an economic activity and providing single family dwellings to accommodate volunteers was found to be a necessary item we must still question that applicant's assertion that the need could only be satisfied by a community of privately owned homes on privately owned lots with a miniature rail road line connecting each residence. We say this because 1) We can find no evidence of any similar requirement being necessary at any other local, state, federal or non-publically owned park; and 2) We simply find it surprising that reasonable people would decline to volunteer at a park they are passionate about because they are not allowed an opportunity to purchase a lot and build a private home in an on-site community connected to the rest of the facility by a miniature rail road line.

We do not doubt that if such an opportunity became available some individuals would be interested in taking advantage of it. However, an interest or desire does not constitute a need. Should miniature train enthusiasts want to purchase property and build a home from which to donate part time or seasonal volunteer labor there are over 4,000 acres of residentially zoned property including hundreds if not thousands of lots within a radius of 10 miles of the subject property. Additional residential opportunities exist within the city of Chiloquin. There is no need to provide any additional residential construction opportunities in the area because so much land planned and zoned for residential activities currently exists.

(3) To approve an exception under section (2) of this rule, a county must also show:

(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

Department Response:

As mentioned above, we do not agree that there is a need to provide urban residential development (or much of any residential development) on the subject property because parks are not an economic activity as that term is used in administrative rule, volunteers can and are accommodated through other means, an abundance of land planned and zoned for residential purposes exists within a 10 mile radius of the subject property and we can find no evidence to support the assertion that housing opportunities must be provided as private homes on private lots connected to Train Mountain by a miniature rail road line.

However, if a need did exist it could easily be satisfied within the existing urban growth boundary of either Chiloquin or Klamath Falls because both communities enjoy a surplus of land supply. Furthermore, any residential market appetite can be easily satisfied by the more than 4,000 acres of lands planned and zoned for residential purposes within a 10 mile radius of the subject property.

Because the proposal clearly fails these two criteria we have not chosen to respond to the remaining items.

Conclusion and Recommendation

Once again we would like to thank Klamath County and the Friends of Train Mountain for their willingness to discuss this project and work together towards a mutually satisfactory resolution. Although we are unable to support the proposal in its current form we are hopeful that additional consideration could yield positive results. We recommend that the applicant reconsider the proposed residential aspect in favor of enhanced on-site camping opportunities combined with modest levels of cabins or bunkhouse facilities supplemented by a very narrow number of residences modeled after the manager and assistant manager arrangement found at many state and national parks.

Please enter this letter and attachments into the record of these proceedings. We respectfully request that the Planning Commission accept evidence and testimony on Tuesday evening and then leave the record open and continue the hearing until their regular March meeting. We are scheduled to meet with Klamath County and Friends of Train Mountain on Wednesday, February 26. Please feel free to contact me at 541-325-6928 or by e-mail at jon.jinings@state.or.us if you have any questions or would like to discuss this matter further.

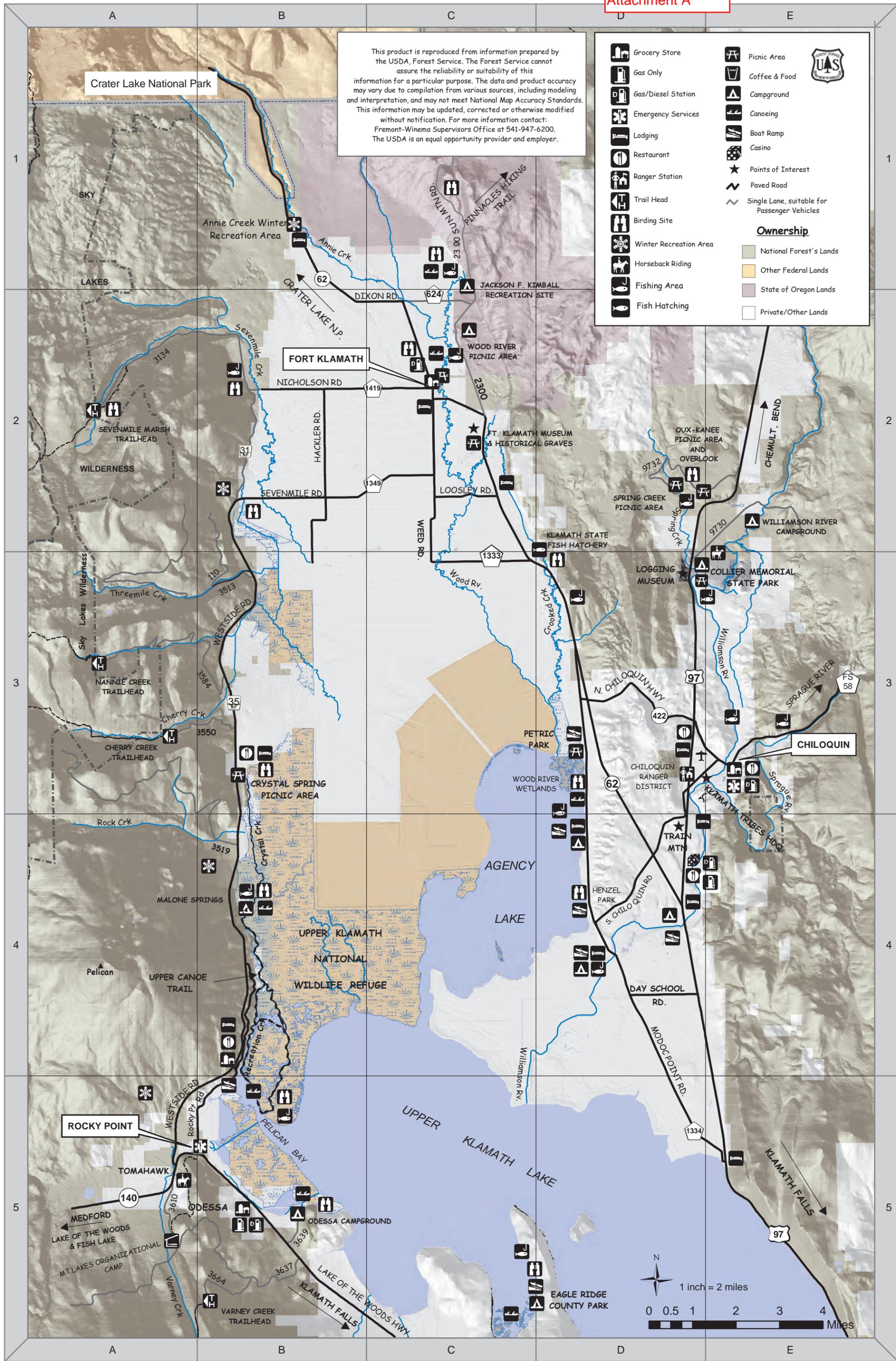
Respectfully,



Jon Jinings
Community Services Specialist

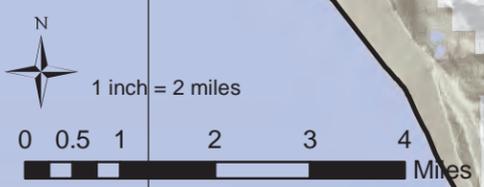
Attachment A - Train Mountain Area Lodging
Attachment B – Train Mountain Area Zoning – 1
Attachment C – Train Mountain Area Zoning – 2

Cc: John Black, Friends of Train Mountain – *via e-mail*



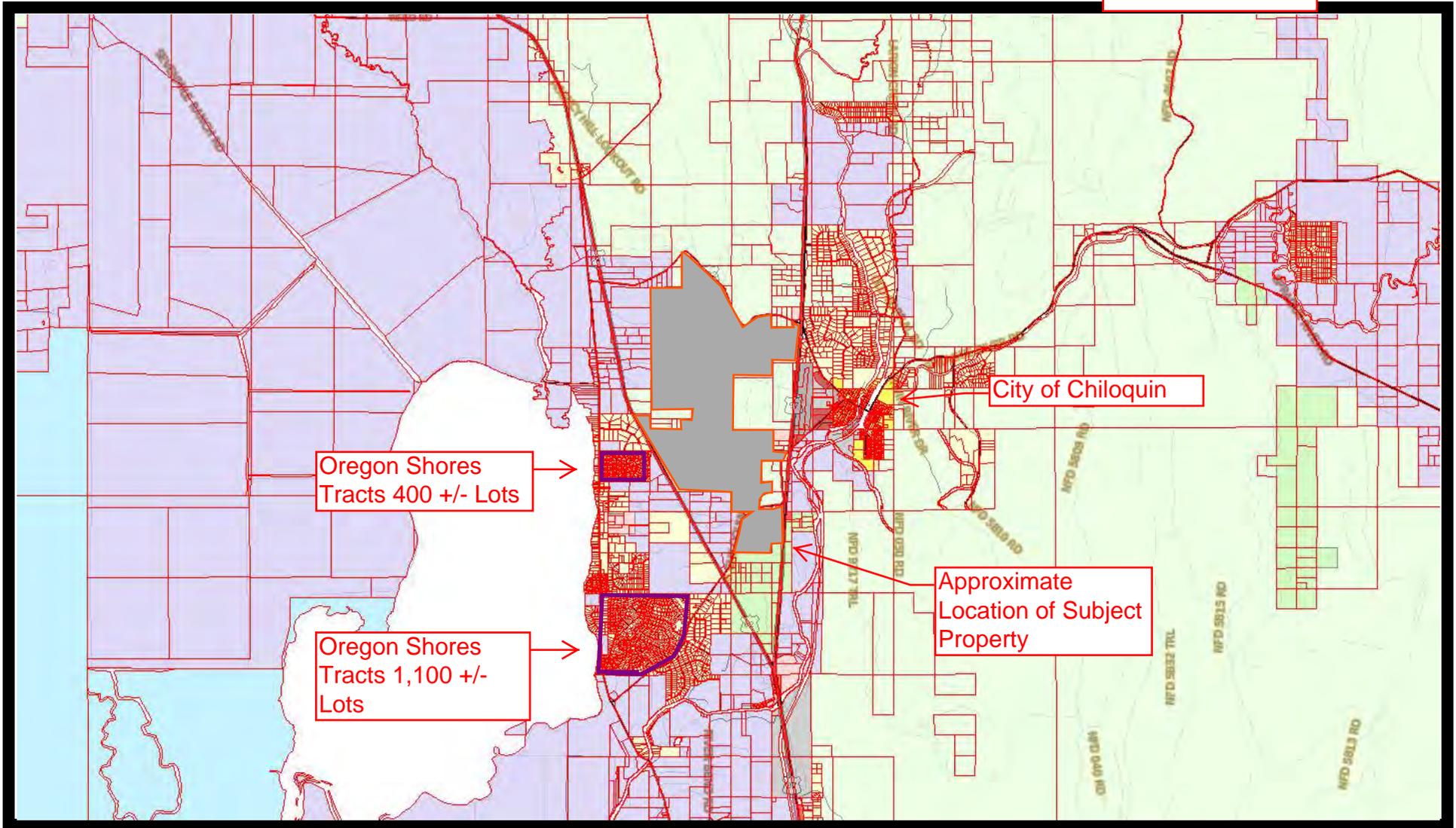
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	Grocery Store		Picnic Area	
	Gas Only		Coffee & Food	
	Gas/Diesel Station		Campground	
	Emergency Services		Canoeing	
	Lodging		Boat Ramp	
	Restaurant		Casino	
	Ranger Station		Points of Interest	
	Trail Head		Paved Road	
	Birding Site		Single Lane, suitable for Passenger Vehicles	
	Winter Recreation Area	Ownership		
	Horseback Riding		National Forest's Lands	
	Fishing Area		Other Federal Lands	
	Fish Hatching		State of Oregon Lands	
			Private/Other Lands	



Train Mountain Area Zoning - 2

Attachment C



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Disclaimer: Klamath County, Oregon does not warrant or guarantee the accuracy of the data. The data is meant for reference purposes only and should not be used for official decisions. If you have questions regarding the data presented in this map, please contact Klamath County IT.





Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



May 1, 2014

Jim Bellet, Chair
Klamath County Board of Commissioners
305 Main St.
Klamath Falls, OR 97601

RE: Appeal of Amendments to the Klamath County Comprehensive Plan and Zoning Ordinance; Ordinance No. 44.98 (DLCD file 001-14)

This letter is to inform you that the Department of Land Conservation and Development will seek approval from the Land Conservation and Development Commission to file an appeal regarding Klamath County's approval of the above-referenced amendment to the county's comprehensive plan and zoning ordinance.

The department will appear before the commission during its next regular meeting on May 22, 2014 in the Basement Hearing Room of the Agriculture Building, 635 Capitol Street NE, Salem. The commission will accept testimony from the county. If written testimony is submitted by May 15, 2013, it will be distributed to the commissioners prior to the meeting. By commission rule, written testimony is limited to not more than five pages, including attachments. Written testimony should be sent to:

Amie Abbott
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
amie.abbott@state.or.us

If written testimony is submitted at the meeting, 20 copies should be provided for distribution to the commission, staff and members of the public.

OAR 660-001-0230(3) establishes factors that the commission shall consider when deciding whether to authorize the department's participation in an appeal. Written and oral testimony and the commission's decision to approve or deny the director's request must be based on one or more of the following factors:

- (a) Whether the case will require interpretation of a statewide planning statute, goal or rule;
- (b) Whether a ruling in the case will serve to clarify stat planning law;
- (c) Whether the case has important enforcement value;
- (d) Whether the case concerns a significant natural, cultural or economic resource;

- (e) Whether the case advances the objectives of the agency's Strategic Plan; and
- (f) Whether there is a better way to accomplish the objectives of the appeal, such as a dispute resolution, enforcement proceedings or technical assistance.

Additional procedures for the commission hearing are set forth in OAR 660-001-0130, as follows:

- (1) Only the director, or department staff on the director's behalf, the applicant and the affected local government may submit written or oral testimony concerning whether the commission should approve the director's request to file or pursue an appeal, or an intervention in an appeal, of a land use decision, expedited land division or limited land use decision.
* * *
- (4) The Chair shall limit the amount of time each speaker may testify, and shall exclude written or oral testimony not relevant to the factors in OAR 660-001-0230(3).
- (5) Unless the Chair establishes a different order, oral testimony will be presented in the following sequence:
 - (a) Director, and/or department staff;
 - (b) Applicant;
 - (c) Affected local government; and
 - (d) Director, and/or department staff
- (6) No rebuttal or response is permitted, although the commissioners may question the director, department staff, the applicant, and the affected local government regarding the factors during the commission's deliberations.

A copy of the department's report to the commission addressing these factors will be provided in advance of the hearing.

If you have any question about the report or about the proceedings on this matter, please contact me at 503-934-0018 or rob.hallyburton@state.or.us or Jon Jinings, DLCDC Community Services Specialist, at 541-325-6928 or jon.jinings@state.or.us.

Yours truly,



Rob Hallyburton
Community Services Division Manager

J:\...\Klamath\PAPAs\Proposals\2014\Klamath County 001-14\Appeal\KlamathCo_001-14_Appeal_Notification

cc (e-mail): Mark Gallagher, Klamath County Interim Planning Director
John Black, Train Mountain Institute
DLCDC (Rue, MacLaren, Abbott, Jinings, Edelman)
Steve Shipsey, DOJ