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BEFORE THE HEARINGS OFFICER

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KLAMATH COUNTY, OREGON

In the Matter of Request for)
Conditional Use Permit 9-86 for)
Frederick D. Ehlers)
Klamath County Planning
Findings of Fact and Order

A hearing was held on this matter on March 13, 1986, pursuant to notice given in conformity with Ordinance No. 45.2, Klamath County, before the Klamath County Hearings Officer, Brad Aspell. The applicant was represented by Steven Zamsky, P.C.. The Klamath County Planning Department was represented by Kim Lundahl. The Hearings Reporter was Janet Libercajt. Evidence was presented on behalf of the Department and on behalf of the applicant. There were no adjacent property owners present.

The following exhibits were offered, received, and made a part of the record:

Klamath County Exhibit A, Staff Report
Klamath County Exhibit B, Assessor's Map
Klamath County Exhibit C, Project Plan
Klamath County Exhibit D, Corps of Engineers Notice
Klamath County Exhibit E, D.E.Q. Notice
Klamath County Exhibit F, Weyerhaeuser Letter
Klamath County Exhibit G, Water Resources Dept. Letter
Klamath County Exhibit H, Application for Preliminary Permit
Klamath County Exhibit I, Preliminary Permit, Water Resources
Klamath County Exhibit J, Agreement with Fish & Wildlife
Klamath County Exhibit K, Letter from Parks & Recreation

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1 Klamath County Exhibit L, Picture

2 Klamath County Exhibit M, Letter from Applicant 10-26-84

3 Klamath County Exhibit N, Letter from Allan J. Cook 8-31-83

4 Klamath County Exhibit O, Letter from John E. Lilly 9-20-82

5 Klamath County Exhibit Q, Letter from Allan J. Cook 12-4-84

6 Klamath County Exhibit R, Letter from Water Resources Dept.

7 The hearing was then closed, and based upon the evidence
8 submitted at the hearing, the Hearings Officer made the following
9 Findings of Fact:

10 FINDINGS OF FACT:

11 1. Applicant, Frederick D. Ehlers, was previously before
12 the Hearings Officer, James J. Spindor, on November 15, 1984,
13 under Conditional Use Permit 51-84. On the 9th Day of January,
14 1985, an order was entered granting a Conditional Use Permit to
15 construct a power generating facility on land designated Forestry
16 in the Klamath County Comprehensive Plan and zoned F (Forestry).
17 Applicant seeks to amend condition 5C requiring that "The power
18 line from the project shall be buried, and, to the extent feasible,
19 shall follow the existing road rights-of-way . . . ", and to
20 amend Finding of Fact 2, which reads in applicable part: "The
21 rated power capacity of the project would be 600 kilowatts . . .".

22 The applicant does not challenge the Conditional Use Permit
23 Order in any other respect.

24 2. Testimony from applicant's representative, Steven Zamsky,
25 was that:

26 A. The intention of the parties at the hearing below
27 was that the power transmission lines would be buried in the
28 canyon so as to minimize impact there, but once out of the

1 canyon it would be placed above ground on power poles in
2 existing road rights-of-way, and

3 B. That the change from 600 kilowatts to 1100 kilowatts
4 would not affect a change in stream flow, fisheries habitat,
5 minimum drawdown, water temperature, turbidity or stream
6 levels, but instead represents improved technology and power
7 generating capabilities.

8 3. The Hearings Officer finds that a hydroelectric power
9 generating facility is permitted as a conditional use under Land
10 Development Code 51.020(D)(2). Land Development Code Section
11 44.003(a) criteria has been met.

12 4. The increase in output allowed by the Federal Energy
13 Regulatory Commission above the 600 kilowatts allowed in the
14 prior Conditional Use Permit occurs as a result of more efficient
15 generation systems. The Hearings Officer finds that the actual
16 output of the power generating facility is not subject to land
17 review criteria; however, any increase in the physical size of
18 the exterior structures, beyond those previously presented in the
19 November 15, 1984, hearing or any additional diversion of water,
20 drawdown, modification of stream flow, or other use of the
21 resources in the canyon which would adversely affect fish or
22 wildlife, would be subject to further review.

23 5. Based upon the fact that the effects upon the river,
24 stream banks and canyon will not be changed, the Hearings Officer
25 specifically orders that the applicant shall not be constrained
26 to the amount of power which he may generate under the above
27 conditions. As the Klamath County Hearings Officer previously
28 concluded that the location, size, design and operating

1 characteristics of the proposed development will be compatible
2 with and will not have significant adverse effects upon the
3 appropriate development and use of abutting properties and the
4 surrounding area, review criteria 44.003(c) has been met.

5 6. The Hearings Officer specifically finds that it was the
6 intention of the applicant at the prior hearing to bury the power
7 lines within the canyon but to permit power to be transmitted
8 above ground parallel to existing logging roads out of the canyon.
9 The Hearings Officer specifically finds that notice was given of
10 this hearing and of the purposes set for this request and that no
11 other person appeared to testify in opposition to the request.
12 The Hearings Officer therefore concludes permitting transmission
13 above ground outside the canyon meets the six Conditional Use
14 Permit review criteria found in Land Development Code Section
15 51.020(E).

16 7. The Hearings Officer specifically reviews this appli-
17 cation to ascertain any additional land use impacts and the
18 application to the Klamath County goals based upon the requested
19 amendments to the Conditional Use Permit. The Hearings Officer
20 finds the following Klamath County goals to apply,

21 Goal 1 (Citizen Involvement) has been met as notice has
22 been given to adjacent property owners, interested public agencies,
23 and published in the Herald and News. An opportunity for public
24 input has been given.

25 Goal 2 (Land Use Planning) has been met. The intended use is
26 conditionally permitted.

27 The Hearings Officer finds that the present application has
28 no impact upon Goals 3, 5, 6, 7, 8, 10, 11, 12 and 14.

1 The Hearings Officer finds that the application is in
2 compliance with Goal 4 (Forest Lands) in that Policy 6 is to
3 encourage optimum utilization of rights-of-way so as not to pre-
4 clude forest growth. Above ground transmission as opposed to
5 under ground transmission will result in less disruption to the
6 forest floor.

7 Goal 9 (Economy of the State) will be met in the increase in
8 power generating capabilities will increase the self sufficiency
9 of the County and shall provide greater portions of its power
10 demand.

11 Goal 13 (Energy Conservation) will be met. Increased power
12 generating capability resulting from greater technological
13 efficiency will result in greater cost effective energy
14 development.

15 Land Development Code Review Criteria 43.003(b) has been met.

16 Based upon the foregoing Findings of Fact, the Hearings
17 Officer makes the following Conclusions of Law:

18 CONCLUSIONS OF LAW:

19 1. That the use is conditionally permitted in the zone in
20 which it is proposed to be located.

21 2. That the location, size, design and operating charac-
22 teristics of the proposed use are in conformance with the Klamath
23 County Comprehensive Plan.

24 3. That the location, size, design, and operating charac-
25 teristics of the proposed development will be compatible with
26 and will not have significant adverse effects on the appropriate
27 development and use of abutting properties and the surrounding
28 neighborhood.

1 4. That the location, size, and operating characteristics
2 of the proposed development will be compatible with and not have
3 significant adverse effects upon the appropriate development and
4 use of abutting properties provided that the following amended
5 conditions are met:

6 A. The applicant shall obtain all necessary State and
7 Federal permits and shall follow all conditions which are
8 part of said permit. The applicant shall provide the Klamath
9 County Planning Department with copies of all State and
10 Federal permits which are obtained.

11 B. The diversion pipeline and penstock shall be buried
12 to minimize visual and physical effects on the area.

13 C. The power line from the project through the canyon
14 shall be buried. Outside the canyon the power line may be
15 above ground provided, to the extent feasible, all power
16 lines shall follow within the existing road rights-of-way
17 and any variance therefrom shall be subject to administrative
18 review by the Director of the Klamath County Planning
19 Department.

20 D. Nothing contained within this permit shall limit the
21 applicant's ability to increase power generating capabilities
22 provided, however, that no changes from those plans submitted
23 at hearing for C.U.P. 51-84 which might affect the size of
24 the diversion pipeline, penstock, generating building and
25 support structures or in the diversion of water, stream flow,
26 draw down, turbidity or water temperature shall occur.

27 E. The existing roads shall be used to reach the site
28 and no new route road shall be constructed because of the

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1 applicant's use.

2 The Hearings Officer, based on the foregoing, accordingly
3 orders as follows:

4 That real property described as

5 "Being generally located on the North Fork of Sprague
6 River, about nine miles northeast of Bly, and more
7 particularly described as the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ of
8 Section 29, N $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, Township 35,
9 Range 15, Klamath County, Oregon,"

10 is hereby conditionally granted a Conditional Use Permit (9-86)
11 in accordance with the terms of the Klamath County Zoning Ordinance
12 No. 45.2, and, henceforth, Conditional Use Permit 51-84 will be
13 amended.

14 Entered at Klamath Falls, Oregon, this 28 Day of
15 May, 1986.

16 KLAMATH COUNTY HEARINGS DIVISION

17 Bradford J. Aspell
18 Hearings Officer

19 STATE OF OREGON: COUNTY OF KLAMATH: ss.

20 Filed for record at request of _____ the 30th day
21 of May A.D., 19 86 at 8:32 o'clock A M., and duly recorded in Vol. M86
22 of _____ Deeds _____ on Page 9314

FEE NONE

Evelyn Biehn, County Clerk
By Sam Smith

Return: Commissioners' Journal

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