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BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of Request for
Conditional Use Permit No. 5-87)
for Jespersen Edgewood, Inc.)

Klamath County Planning
Findings of Fact & Order

A hearing was held on this matter Thursday, April 2, 1987, pursuant to notice given in conformity with Section 24.003 of the Klamath County Land Development Code before Klamath County Hearings Officer, Bradford J. Aspell. Applicant was present and appeared by and through Lawrence Jespersen. Klamath County Planning Department appeared through Kim Lundahl, and the hearing was reported by Janet Libercajt. Evidence was presented on behalf of the Department, the applicant by interested persons and adjacent property owners.

The following exhibits were offered, received and are made a part of the record in this proceeding:

Klamath County Exhibit A, Staff Report

Klamath County Exhibit B, Plot Plan - As Amended

Klamath County Exhibit C, Assessor's Map

Klamath County Exhibit D, Letter of Klamath County Department
of Solid Waste Management

Klamath County Exhibit E, Letter Dept. of Environmental
Quality

Klamath County Exhibit F, Photos of Property

Klamath County Exhibit H, Product Brochure Submitted
by Applicant

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1 Klamath County Exhibit I, Report, State of Oregon, Department
2 of Environmental Quality

3 Klamath County Exhibit J, Letter, Klamath County Economic
4 Development Association

5 Klamath County Exhibit K, Newsclipping Central Oregonian
6 March 19, 1987

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8 Following testimony, and questioning of the applicant and
9 those in attendance, the hearing was closed. Based upon the
10 evidence presented at the hearing, the hearings officer makes the
11 following findings of fact:

12 FINDINGS OF FACT

13 1. Applicant Jespersen Edgewood, Inc., is the owner of the
14 subject real property located in the NE 1/4 of Section 20,
15 Township 37 South, Range 10 East Willamette Meridian, Klamath
16 County, Oregon, bearing tax account number 3710-0000-4000, located
17 adjacent to the 90° turn at Swan Lake Road, between Edgewood Lane
18 and White Line Road as more fully shown by Klamath County Exhibit
19 C, Assessor's map. Access to the property is obtained from Swan
20 Lake Road, a paved road improved to County road standards. The
21 subject lot is 393.64 acres of which a portion, nearest Swan Lake
22 Road contains farm support facilities including a potato packing
23 shed, grain storage bins, and 64 foot by 110 foot grain storage
24 building. Also located on the subject property are numerous other
25 outbuildings and residences. The subject real property in fact is
26 but a portion of applicant's larger holdings within the immediate

1 area. Access to the property is obtained by Swan Lake Road off of
 2 U.S. Highway 66. The subject property is located in the northern
 3 portion of the Swan Lane basin. The hearings officer notes that
 4 the Swan Lake Basin consists of a large number of relatively flat
 5 low lying acres of old lake bottom, generally farmed in barley,
 6 alfalfa and potatoes, with a significant amount dedicated to
 7 pasturage and wildlife habitat. In times of precipitation during
 8 winter, the old lake bed refills. All soils in the area are quite
 9 good, although grain and potato production is often hampered by
 10 heavy frost during the optimum growing season. The Swan Lake
 11 Basin is generally surrounded by hills on which there is a mix of
 12 merchantable timber consisting primarily of pine and fir trees.
 13 The entire lake bottom is dedicated to exclusive farm use with the
 14 predominant parcel size averaging more than 160 acres surrounding
 15 the lake bottom, with the foothill lots generally between 40 and
 16 200 acres. Other than residences owned by the applicant, the
 17 nearest residence is a ranch house owned by Thomas Lumber Company
 18 approximately 5/8 of a mile distant.

19 2. The real property is designated agriculture (A) in the
 20 Klamath County Comprehensive Plan and carries a zone designation
 21 of EFU-CG (Exclusive Farm Use-Crop Land, Grazing). The subject
 22 property is L shaped comprising 393.64 acres of which the existing
 23 application is on but a small portion of the property. The
 24 topography of the property is generally level with generally
 25 drainage through surface run off. Within the specific area on
 26 which this application is committed to farm support services and

1 the storage and processing of farm products. Water on the subject
 2 property is by individual well, with sewer service by individual
 3 subsurface sewage disposal systems. The Planning Staff fails to
 4 report SCS soils classification of type II. As the Planning Staff
 5 accurately points out, the existing area is committed to
 6 non-agricultural use. There is no timbersite productivity rating
 7 for the subject property. The property is located within the
 8 attendance area of the Klamath County School District, electricity
 9 is provided by Pacific Power & Light Company, fire protection by
 10 Klamath County Fire Protection District #1.

11 3. Applicant seeks a Conditional Use Permit to install a
 12 tire burning machine for generation of steam and electricity to
 13 assist in packing and processing of agricultural products owned by
 14 applicant and others in the immediate area and to permit sale of
 15 surplus power generated through the co-generation of discarded
 16 tires.

17 4. Applicable provisions of the Klamath County Land
 18 Development Code, include LDC Section 51.018(C)(15), Conditional
 19 Use Permit-Packing & Processing of Agricultural Products, LDC
 20 Section 51.018(C)(6), Extensive Impact Services-Power Generation.

21 5. In order to sustain approval, provisions of LDC Section
 22 51.018(C) (a-e) must be met; the uses therein must comply with
 23 Sections 95.001, 95.004, and 95.008, of the Land Development Code
 24 relating to permitted agricultural use types; the conditions and
 25 criteria found in LDC Section 44.001-44.006, and applicable
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provisions of the Klamath County Comprehensive Land Use Plan must all be met.

6. LDC Section 51.018(c)(a-e) requires 5 specific findings as additional conditions for granting of conditional use permit in the EFU-CG zone.

The hearings officer finds:

a. Subject to certain enumerated conditions which the hearings officer imposes below, the hearings officer finds that the use will not interfere seriously with accepted farming practices on adjacent lands. LDC Section 51.018(c)(a) has been met.

b. The intended tire storage area, conveyor assembly, burner and filtration system described by applicant and shown in applicant's Exhibit H (Sales Brochure) will be located in an existing area dedicated to the processing and storage of farm products, equipment and support machinery. Clustering support activities minimizes removal of productive farm land from potential agricultural production. Development of the farm support facilities nearest to Swan Lake Road and along an existing private driveway make the location the best possible one. Land previously committed for farm support services upon which improvements are directed are generally unsuited for farm use. Condition 51.018(c)(b) has been met.

c. While the soil which underlies the existing equipment, farm product packaging and storing areas is a Class II soil, the need to install the equipment in close proximity to the existing

1 potato processing shed and grain bins, coupled with the fact that
2 all of the applicant's subject real property on which farm
3 processing occurs is located on Class II soils makes LDC Section
4 51.018(c)(c) inapplicable.
5

6 d. The subject area to be utilized by this application is
7 immediately off of Swan Lake Road and is bisected by a private
8 drive which the applicant uses to gain access to other of its farm
9 and ranch properties. As access and egress will not cross the
10 property of another and in that access and egress is from a paved
11 County Road, no additional dust or crossing of the land of others
12 will be involved to as to minimize any potential interference with
13 accepted farm practices on surrounding land. LDC Section
14 51.018(c)(d) has been met.

15 e. That the conditional uses fall within one of 7 enumerated
16 categories of which the hearings officer finds that, subject to
17 conditions, the tire burning steam and electric generating
18 facility proposed constitutes a lawfully permissible extensive
19 impact service under LDC Section 51.018(c)(e)(6) and that
20 packaging and processing of agricultural products under LDC
21 Section 51.018(c)(e)(15).

22 Accordingly the provisions of LDC Section 51.018 have been
23 met.

24 7. Additionally LDC Section 44.003 establishes the following
25 review criteria:

26 A. That the use be conditionally permitted in the zone in
which it is proposed to be located. Applying the definition of

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1 agricultural uses, most notably LDC Section 95.008 and Section
2 51.018(c)(d)(6 & 15) to the application the hearings officer
3 concludes that LDC Section 44.003(a) has been met.

4 B. The hearings officer further finds that location, size,
5 design and operating characteristics of the proposed use must be
6 in conformance with the Klamath County comprehensive plan. In
7 this regard the hearings officer finds as follows:

8 (i) Goal 1 (Citizen Involvement) has been met. Notice was
9 given to adjacent property owners, affected public agencies, and
10 Notice of hearing was published in the Herald & News. The
11 hearings officer received public input from Maxine Worth of Meadow
12 Lake Inc. and Glenn Lorenz, both of whom generally supported the
13 application; letters in support from Klamath County Department of
14 Solid Waste Management, Exhibit D; letter from the Department of
15 Environmental Quality, Exhibit E; letter from the Klamath County
16 Economic Development Association, Exhibit J.

17 (ii) Goal 2 (Land Use Planning) has been met in that the use
18 qualifies under LDC Section 51.018(c), as set forth above, and
19 other provisions of the Klamath County Land Development Code.

20 (iii) Goal 3 (Agricultural Lands), requires preservation of
21 land of predominately Class I - VI soils on lands suitable for
22 farm use in order to economically stabilize the agricultural
23 community in Klamath County.

24 The proposed use herein is on a very small portion (.16 acre)
25 of a larger parcel of 396 of which the intended use is within an
26 area already developed for agricultural support services. Further

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1 development by allowing the installation and operation of a
2 machine to burn tires generates steam and electricity is
3 consistent with improving the economic viability of the farm by
4 allowing development of new technologies. As the land is already
5 committed to non-producing accessory agricultural uses, the use
6 will not adversely affect or take any existing land out of
7 exclusive farm use CG designation or use. Goal 3 has been met.

8 (iv) Goal 6 (Air, Water and Land Resource Quality) is a
9 matter of significant concern to the hearings officer. While
10 acknowledging that the hearings officer does not have the
11 technical expertise to extensively review the evidence submitted,
12 the hearings officer makes the following specific findings:

13 1. The applicant owns significant acreage surrounding the
14 site in which the tire burning generator is proposed to be located
15 including the residence for the principal shareholders and owners
16 of Jespersen-Edgewood Inc.. The owners and their agricultural
17 pursuits would be most adversely impacted from pollution which
18 might be generated through the combustion of used tires, or the
19 disposal of the resulting wastes.

20 2. Representative's applicant, Larry Jespersen testifies
21 that the only noise generated from the facility is a fan noise
22 that would not be audible on the nearest residence located on
23 Thomas Lumber Company property some 5/8ths of a mile away.

24 3. A newspaper clipping from the Central Oregonian dated
25 March 19, 1987, Exhibit K, quotes Department of Environmental
26 Quality studies showing an extremely limited amount of particulate

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1 emission from an existing machine in operation at a Les Schwab
2 Tire Plant located near Prineville, Oregon.

3 4. A letter dated March 23, 1987, from John Hector, Regional
4 Manager of the Department of Environmental Quality (Exhibit E)
5 which reports in part:

6 ". . . it appears that no significant environmental impacts
7 (sic) should result . . ."

8 5. Test results from the Department of Environmental Quality
9 dated November 28, 1986, demonstrate source test results of a
10 similar piece of equipment with 4 replications (Exhibit I),
11 reporting the stack particulate emissions and gas emissions
12 resulting from the plant operation. Based upon legislative
13 directive, the responsibility of the Department of Environmental
14 Quality is to actively preserve and protect the Air, Water and
15 Resource Quality within the State of Oregon. The Department
16 appears to concur with the conclusions that the technologies
17 utilized by the incineration system result in exceptionally low
18 quantities of particulate matter and harmful gases being emitted.

19 6. The hearings officer concludes, subject to conditions
20 which follow that air, water and resource qualities within the
21 immediate area will not be adversely affected, and indeed finds
22 ample supporting evidence to suggest that accumulation and
23 disposal of discarded rubber tires imposes the problem of solid
24 waste management and disposal (See Exhibit D) such that resource
25 quality in the county in general will be improved. The hearings
26 officer further takes notice of land use violation through the
impound and improper in storage of used tires and acknowledges

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1 that proper storage and disposal constitutes a hazard to health
2 and safety (See violation 9-86, Thad Chestnut). The hearings
3 officer concludes that Goal 6 has been met.

4 (v) Goal 7 (Natural Disasters and Hazards) has been met.
5 The proposed incinerator is located in a low fire hazard area,
6 established by the Klamath County Land Use Planning Maps.
7 Additionally no testimony or comments have been received from the
8 Klamath County Fire District #1 with fire fighting
9 responsibilities in this area, nor from the Department of State
10 Forestry, Forest Service or other interested agencies. The
11 hearings officer concludes that application complies with this
12 requirement.

13 (vi) Goal 11 (Public Facilities and Services). Public
14 facilities and services required for this application are limited
15 to electrical service and available potable water. The hearings
16 officer finds that the property is served with electricity, water
17 is available to the subject site. The area of proposed
18 development lies immediately off of an improved County Road. Goal
19 11 has been met.

20 (vii) Goal 12 (Transportation) has been met. The applicant
21 testified that the proposed optimum use of the facility might
22 require 200 truck loads per year and that the applicant would
23 primarily be using his own trucks during back haul to bring in the
24 waste tires. Based upon conditions which hearings officer
25 imposes, the hearings officer concludes that Swan Lake Road is
26 adequate in size, shape, pavement width and surface to carry the

1 traffic proposed to be generated by the conditional use permit.
2 Goal 12 has been met.

3 (viii) Goal 13 (Energy Conservation). The applicant has
4 testified that the equipment can generate through co-generation
5 2400 kilowatts per day with the burning of waste rubber tires.
6 Such co-generation, together with applicant's intended use of its
7 trucks which would otherwise be empty constitutes appropriate use
8 of developing technologies and results in resource conservation.
9 Goal 13 has therefore been met.

10 (ix) The hearings officer finds the specific following goals
11 to be inapplicable to this application: Goal 4 (Forestry Lands);
12 Goal 5 (Open Spaces, Scenic, Historic & Natural Resources Areas);
13 Goal 8 (Recreation Needs); Goal 9 (Economy of the State); Goal 10
14 (Housing); and Goal 14 (Urbanization). Based upon the above,
15 hearings officer concludes that LDC Section 44.003(b) have been
16 met.

17 7. The location, size, design and operating characteristics
18 of the proposed development must be compatible with and not have
19 significant adverse effects upon appropriate development and use
20 of abutting properties and surrounding neighborhoods.

21 "Consideration shall be given . . . to harmful effects, if
22 any, upon desirable neighborhood characteristics and
23 livability; to the generation of traffic and the capacity of
24 surrounding streets and any other relevant impact of the
25 development."

26 The hearings officer concludes that with the imposition of
conditions, Section 44.003(c) will be met. In this regard the
hearings officer makes the following findings.

(i) The technology to be invoked by the applicant in installing a system to burn tires and generate steam and electricity is relatively new, and but there is only one operating system within the State of Oregon from which to obtain data.

(ii) Based upon the data as provided to the hearings officer and as represented the applicant, the amount of noise, steam, soot, gases and odors emitted from the system are so negligible so as to be undetectable to the senses so limited as to not adversely affect the environment.

(iii) The hearings officer finds however that the Swan Lake basin can trap and hold pollution, and weather conditions can cause an inversion from which the harmful effects of gases could cause serious and harmful result to air quality, water quality and the growing of crops not unlike the "acid rain" phenomena of the northeast and Canada.

(iv) The hearings officer does not have the technical expertise nor did the applicant provide such testimony at the hearing that the hearings officer can categorically conclude that an adverse effect could not result from the installation of the proposed equipment.

(v) In this regard the hearings officer concludes that the improper use, loading, maintenance or operation of the tire burner could cause substantial adverse impact upon adjacent properties or that the cumulative effect of an inversion might under certain circumstances be unacceptable even when operated in a correct manner.

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1 (vi) Keeping in mind the serious adverse consequences which
2 could result, the hearings officer therefore makes as a condition
3 to approval the following:

4 1. That the applicant apply for and obtain the necessary
5 discharge permits from the Department of Environmental Quality
6 and/or Environmental Protection Agency prior to commencement of
7 operation, and that as a condition to the term of this conditional
8 use permit, the said discharge permit remain in force and effect.

9 2. That applicant conduct, no less frequently than annually,
10 independent monitoring of the waste discharge and report the same
11 to Klamath County Planning Department and the Department of
12 Environmental Quality.

13 3. That the applicant comply with all requirements of the
14 State of Oregon Department of Environmental Quality, all the
15 requirements of the United States Environmental Protection Agency,
16 during the term of this permit.

17 4. That applicant shall exclusively utilize rubber tires in
18 the combustion process (except fuel oil or other substances needed
19 to initially ignite the system) and that the applicant is
20 specifically prohibited from accepting for combustion or disposal
21 any waste or wastes for combustion within the system including any
22 tires which might be contaminated by any types of waste deemed to
23 be hazardous by either the Environmental Protection Agency,
24 Department of Environmental Quality or any other branch of
25 federal, state or local government upon which such rule making
26 authority exists.

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1 5. That the capacity of the facility not be expanded beyond
2 600 tires in any 24 hour period.

3 6. That the system be maintained in good working order and
4 repair at all times, and not operated any time when the system
5 does not meet Department of Environmental Quality Standards.

6 7. That the wastes generated from the combustion of tires
7 (steel and carbon) be appropriately stored on the premises prior
8 to recycling or disposal.

9 8. Applicant shall be prohibited from discharging to any
10 waters on the subject property, any acids, chemicals, pollutants
11 and that it apply for and obtain a waste water discharge permit if
12 required as such would adversely effect water quality.

13 9. That the applicant shall not advertise or otherwise
14 accept the delivery of tires except from primary collection points
15 located elsewhere, being the specific intention and objective of
16 the hearings officer to minimize any additional traffic generated
17 on Swan Lake Road to the amount minimally necessary.

18 Based upon the foregoing findings of fact the hearings
19 officer makes the following Conclusions of Law.

20 CONCLUSIONS OF LAW

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

23 2. That the location, size, design and operating
24 characteristics of the proposes use are in conformance with the
25 Klamath County Comprehensive Plan.

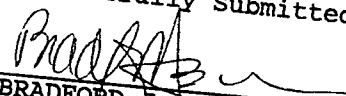
3. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not have significant adverse effects on the appropriate development and use of abutting properties and the surrounding neighborhood.

4. Based on the location, size, design and operating characteristics of the proposed development will be compatible with and not have significant adverse effects upon appropriate development and use of abutting properties in the surrounding neighborhood, subject to the conditions imposed above.

Now, therefore, it is hereby ordered that Conditional Use NE 1/4 of Section 20, Township 37 South, Range 10 East Willamette Meridian, Klamath County, Oregon, bearing tax account number 3710-0000-4000, located adjacent to the 90° turn at Swan Lake Road, between Edgewood Lane and White Line Road, be and is hereby approved with conditions.

DATED this 21 day of April, 1987.

Respectfully Submitted,


BRADFORD J. ASPELL
Hearings Officer

JESPERSEN EDGEWOOD INC./CUP 5-87
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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Dept. the 24th day of April A.D., 19 87 at 12:24 o'clock P M., and duly recorded in Vol. 1187 of Deeds on Page 6957.

FEE NO FEE
Return: Commissioners' Journal

Evelyn Biehn, County Clerk
By 