

10-17-95A11:25 RCVD

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BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the matter of the violation/  
citation of

# KLAMATH BLUE GREEN ALGAE

**VIOLATION/CITATION**  
**NO. VC 52-95**

This matter came before Michael L. Brant, Hearings Officer for Klamath County, Oregon on September 1, 1995, in the Klamath County Museum Meeting Room, Klamath Falls, Oregon. The hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related statutes and ordinances. The Klamath County Planning Department was represented by Mr. Kim Lundahl and the recording secretary was Ms. Karen Burg. The Klamath County Planning Department staff report was received. Respondent was represented by Attorney Bruce Huffman. Neighbors objecting to Respondent's use of the subject property were represented by Attorney Brad Aspell.

## FINDINGS OF FACT

In 1987 the Klamath County Planning Director told Respondent that they could operate algae harvesting on property located at Modoc Point. The Director apparently interpreted that portion of the Klamath County Land Use Code which provided for "seasonal sale of agricultural products grown or raised on the premises" to include algae harvesting. The subject property is zoned R1. In 1990 the provision for "seasonal sale..." was deleted from the Code.

Respondent contends that they have continually operated since 1989 and therefore are allowed to continue and that the county should be estopped from denying their continued operation.

Respondent harvests the algae across the Lake and transports the product to a freezer facility in Chiloquin. From Chiloquin the product is transported to the Bay Area where it is subjected to further processing and sale.

#### CONCLUSION OF LAW

Respondent is in violation. The Klamath County Land Development Code provision allowing "seasonal sale of agricultural products grown or raised on the premises" did not include aquacultural products. Furthermore the Respondent neither grows, raises nor sells the product on the premises. The claim of estoppel does not aid the Respondent. The general rule is that estoppel cannot be invoked to prevent local government from enforcing its land use regulations. Clackamas County v. Emmert, 14 Or App 493, 501, 503, 513 P2d 532 (1973).

#### ORDER

Respondent shall discontinue its algae harvesting operation at its present location in the R1 zone by December 1, 1995.

DATED THIS 6th day of October, 1995.

Michael L. Brant  
Michael L. Brant, Hearings Officer

KLAMATH COUNTY LAND DEVELOPMENT CODE SECTION 24.060 PROVIDES:

"An Order of the Hearings Officer may be appealed to the Board of County Commissioners within seven (7) days of its mailing as set forth in Article 33."

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 17th day  
of October A.D., 19 95 at 11:25 o'clock A M., and duly recorded in Vol. M95  
of Deeds on Page 28253.

FEE No Fee

By Bernetha G. Letsch, County Clerk  
Annette Mueller

Return: Commissioners Journal