

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of Application for)
 Conditional Use Permit for the Electric) CUP 54-97
 Transmission Line and Water Supply)
 and Wastewater Discharge Pipeline for Klamath) FINDINGS AND CONCLUSIONS
 Cogeneration Project, CUP 54-97, submitted)
 by Pacific Klamath Energy, Inc., for the)
 City of Klamath Falls.)

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I. APPLICANT

Pacific Klamath Energy, Inc., for the City of Klamath Falls.

II. ADDRESSES

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III. ACTION REQUESTED

Pacific Klamath Energy, Inc. ("PKE"), on behalf of the City of Klamath Falls, requests a conditional use permit for the electric transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline for the Klamath Cogeneration Project ("Project"). Klamath County previously issued land use approval for the Project in Conditional Use Permit ("CUP") 29-95, June 7, 1995. These four facilities will be ancillary facilities for the Project, which is a natural gas-fired cogeneration facility owned by the City of Klamath Falls, and located on property leased from Collins Products L.L.C. ("Collins").

The City requests a conditional use permit for the parts of these four facilities that are to be located within Klamath County's land use planning jurisdiction but outside the Collins' property. The parts of these four facilities that are within the Collins' property were previously approved by Klamath County CUP 29-95.

The City's application and supporting materials are contained in the Application for Conditional Use Permit for Electric Transmission Line and Water Supply and Wastewater Discharge Pipelines for Klamath Cogeneration Project, dated May 30, 1997 ("Application" or "App."). PKE submitted the City's Application with consent of the property owners of the land on which the electric transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline will be located.

This request was heard by the Hearings Officer at a public hearing on August 1, 1997 and reviewed for conformity with Klamath County Land Development Code ("LDC") Article 44, and the Comprehensive Land Use Plan, Policies for Klamath County, Oregon ("Comprehensive Plan"). The Hearings Officer in review of the Application was Neal G. Buchanan. The applicant appeared and offered testimony through Peter van Alderwerelt of PKE, Donald Haagensen of Cable Huston Benedict & Haagensen LLP and Howard Ferris, Pacific Power & Light Company. Others who appeared and offered testimony were interested citizens, Bill Sheridan, Lynn Hesko and Ron Morris. The Planning Department was represented by Kim Lundahl, Senior Planner and the Recording Secretary was Karen Burg, Planning Assistant. Written comment was received from the following: Oregon Department of Transportation ("ODOT"), two letters dated June 30 and July 28, 1997 with the second letter indicating all ODOT issues would be resolved through the ODOT permitting process.

IV. LEGAL DESCRIPTION OF AFFECTED LAND

A. Electric Transmission Line

The route of the 230-kilovolt electric transmission line will be north from the Collins property, where the line will cross into the Klamath Falls urban growth boundary. The route will proceed approximately one-half mile through property under the jurisdiction of the City of Klamath Falls. The transmission line will then cross Highway 66 to the east of the Stewart Lennox Subdivision. The transmission line will then cross Highway 140, travel northwest along Highway 140 in the highway right of way, and then travel north until it meets an existing Pacific Power & Light ("PP&L") right-of-way. The transmission line then will turn and follow PP&L's right-of-way east to PP&L's Klamath Falls substation.

This transmission line route is shown in the Application, Exhibit 7. The route for the transmission line may have to be adjusted to a minor degree as a result of easement or right-of-way negotiations. The route may also have to be adjusted to a minor degree based on conditions observed in the field.

The transmission line will pass through the following parcels of land located within Klamath County land use jurisdiction: Section 8, Township 39 South, Range 9 East, Willamette Meridian, Tax Lot 100; Section 8BA, Township 39 South, Range 9 East, Willamette Meridian, Tax Lots 100, 400, 500, 600, and 800; Section 8BB, Township 39 South, Range 9 East, Willamette Meridian, Tax Lot 100; Section 7, Township 39 South, Range 9 East, Willamette

Meridian, Tax Lots 100, 200, 300, 700, 701, 2500; and Section 18, Township 39 South, Range 9 East, Willamette Meridian, Tax Lots 400 and 800.

B. Cooling Water Supply Pipeline

The general route for the treated effluent cooling water supply pipeline will start at the Spring Street Wastewater Treatment Plant ("SSWTP") in the City of Klamath Falls, cross City limits within the urban growth boundary, enter a part of Klamath County within the urban growth boundary, and eventually cross into part of Klamath County not within the urban growth boundary before reaching the Collins property. The pipeline, after entering Klamath County and leaving the City limits, will follow an existing City sewer force main easement to Highway 97. In the vicinity of the junction of Highway 97 and Route 66, the pipeline will leave the City sewer easement and run south along Highway 97 to the north fence line of the Collins property. Along Highway 97 the pipeline will be located within the right-of-way of ODOT. The general route of the pipeline is shown in the Application, Exhibit 1, Figure C-1.

The pipeline will pass through the following parcels of land located within Klamath County land use jurisdiction: Section 5, Township 39 South, Range 9 East, Willamette Meridian, Tax Lot 1500 and rights-of-way of Riverside Street, Greensprings Drive and Mallard Lane; Section 7, Township 39 South, Range 9 East, Willamette Meridian, Highway 97 right-of-way; Section 18, Township 39 South, Range 9 East, Willamette Meridian, Highway 97 right-of-way.

C. Potable Water Pipeline

The potable water pipeline will follow existing Klamath County street rights-of-way along Weyerhaeuser Road until it reaches the Collins property. The pipeline will be located entirely within the land use planning jurisdiction of Klamath County. The general route of the potable water pipeline is shown in the Application, Exhibit 1, Figure C-1.

The potable water pipeline will pass through: Section 13, Township 39 South, Range 8 East, Willamette Meridian, rights-of-way of Greensprings Highway 66, Weyerhaeuser Road, 3rd Street and Topper Avenue.

D. Wastewater Discharge Pipeline

The wastewater discharge pipeline will be constructed along the same route as the cooling water supply pipeline. The route will be from the Collins property to Highway 97 then north adjacent to Highway 97 within the ODOT right-of-way to the vicinity of the intersection of Highway 97 with Highway 66. The wastewater discharge pipeline will connect with the existing sewer force main of the City of Klamath Falls near the intersection of Route 66 and Highway 97. The wastewater discharge pipeline will be located entirely within the land use planning jurisdiction of Klamath County. The general route of the wastewater discharge pipeline is shown in the Application, Exhibit 1, Figure C-1.

The wastewater discharge pipeline will pass through Section 18, Township 39 South, Range 8 East, Willamette Meridian, right-of-way of Highway 97.

V. RELEVANT FACTS

A. General Background

Klamath County issued land use approval for the Klamath Cogeneration Project ("Project") in CUP 29-95, June 7, 1995. The Project will be a 300 to 450 megawatt natural gas-fired cogeneration facility. The Project will generate electricity for sale, and will also generate steam for use by Collins and potentially other industries using one or two high efficiency combustion turbine generators, one or two exhaust gas heat recovery steam generators, and a steam turbine generator.

The cogeneration facility will be located on a 15 to 17 acre industrial site currently owned by Collins just outside the City of Klamath Falls limits and the Urban Growth Boundary. The site is approximately 1,200 feet north of the Klamath River and about one-half mile west of Highway 97. The site is part of Collins wood products plant, a large plywood, hardboard, and particle board manufacturing facility.

The Project will have related ancillary facilities including a natural gas delivery pipeline, export steam supply and return steam condensate pipelines, electrical transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline. The locations of parts of certain of the ancillary facilities will involve properties not currently owned by Collins including the electric transmission line, the cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline. App., Ex. 1, Sec. C. The parts of these ancillary facilities that will be located within the land use jurisdiction of Klamath County but will not be located on the Collins property are the subject of the Application.

The City submitted the Application with consent of the property owners of the land on which the ancillary facilities will be located. Right-of-way options, right-of-way easements and earnest money agreements for these property owners including the property owners' consents are attached in the Application, Exhibit 2.

1. Description of the Proposed Use

A new 230-kilovolt electric transmission line will be constructed from the Project's switchyard at the cogeneration facility on Collins property to the existing Klamath Falls substation of PP&L. The PP&L substation is approximately three miles northeast of the proposed cogeneration facility. The transmission line will be located on easements within a 500-foot wide surveyed corridor and will be located entirely within Klamath County, except for approximately one-half mile passing through the City of Klamath Falls. App., Ex. 1, Sec. B.

All transmission poles are expected to be wooden double poles and wood or steel single poles. Any new transmission structures will incorporate raptor-mitigation design features. Depictions of typical pole design are shown in the Application, Exhibit 1, Figure B-6.

The SSWTP of the City of Klamath Falls will provide treated effluent water as the primary makeup water for use by the cogeneration facility in its cooling tower. The SSWTP is approximately four and one-half miles northeast of the cogeneration facility. A treated effluent cooling water supply pipeline will be constructed between the SSWTP and the cogeneration facility. The pipeline will be approximately fourteen to sixteen inches in diameter and about five and one-half miles long. App., Ex. 1, Sec. B.

Wastewater from the cogeneration facility will be returned to the City's existing sewer system for delivery to the SSWTP. A wastewater discharge pipeline will be constructed between the cogeneration facility for the Project and the City sewer system. The pipeline will be approximately eight to ten inches in diameter and about two miles long.

On an annual average basis, the total wastewater flow may be up to approximately 676 gallons per minute. The wastewater will include sanitary wastewater and cooling tower blowdown. The sanitary wastewater will be made up of wastewater primarily from Project domestic services, demineralizer wastes and equipment drain wastes.

The City of Klamath Falls will provide potable quality water for the makeup, service and domestic use requirements of the Project from an existing water main near the intersection of Route 66 and Weyerhaeuser Road. A pipeline will be constructed for this water supply. The pipeline will be approximately six to eight inches in diameter and about two miles long. App., Ex. 1, Sec. B.

The Applicant will comply with applicable federal, Oregon, and local safety codes and standards for construction of the transmission line and the other ancillary facilities, normally used in the design and construction of these types of facilities. The codes and standards used will include the National Electric Safety Code (NESC), Uniform Building Code (UBC), the Federal Department of Transportation (DOT) Pipeline Safety Regulations, and specialty codes administered through the American Society of Mechanical Engineers (ASME) and the American National Standards Institute (ANSI). Where the applicable Oregon codes specify added conditions or more stringent requirements, these requirements will be incorporated into the facility design during the detailed design phase of the ancillary facilities. Structural, wind and seismic design will be in accordance with the current version of the UBC and the State of Oregon Amendments "Structural Specialty Code" 1993 Edition. App., Ex. 1, Sec. B.

Construction of the electric transmission line will result in the temporary disturbance of approximately 8.8 acres, and construction of the water supply and wastewater discharge pipelines will result in the temporary disturbance of 28.2 acres. After construction is completed and revegetation has taken place, the transmission line (mainly the footings of the transmission

structures and access roads) will permanently impact 0.8 acres and the other ancillary facilities will have no permanent impact. App., Ex. 1, Table N-3.

2. Land Use Zones

The electric transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline will be located in the following land use zones: Suburban Residential (RS); Low Density Residential (RL), Medium Density Residential (RM), General Commercial (CG), Transportation Commercial (CT), Heavy Industrial (IH), and Non-Resource (NR).

B. Nature of Site

The nature of the site of the electric transmission line, cooling water supply pipeline, potable water pipeline and wastewater discharge pipeline is extensively discussed in the Application, Exhibit 1. Exhibit 1 describes the nature of the site according to the following categories: Description of Facilities, Facilities Location, Geologic and Soil Information, Wetlands, Land Use, Protected Areas, Ecological Communities and Soil Types, Water Resources, Fish and Wildlife Species, Recreation, Threatened or Endangered Species, Scenic/Aesthetic, Cultural and Historical, Socio-Economic, and Environmental Noise Impact Assessment. The Hearings Officer relies upon and incorporates the description of the nature of the site provided in the Application, Exhibit 1.

C. Nature of Surrounding Area

The nature of the surrounding area of the electric transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline is provided in the Application, Exhibit 1, under the categories listed above, as well as in the Application, Exhibits 8 through 11. Exhibit 1 describes the nature of the surrounding area in terms of the categories listed above. Exhibits 8 through 11 describe the properties on both sides of the transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline, including buildings, land uses, and, approximate distances from the property lines of the properties on which the transmission line will be located. The Hearings Officer relies upon and incorporates the description of the nature of the surrounding area provided in the Application, Exhibit 1 and Exhibits 8 through 11.

VI. APPLICABLE STANDARDS AND REVIEW CRITERIA

The electric transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline are Extensive Impact Services and Utilities under LDC Article 11. Extensive Impact Services and Utilities are recognized as conditionally permitted uses under the LDC in the various land use zones where these ancillary facilities will be located: Suburban Residential (RS), LDC, Section 51.530.C; Low Density Residential (RL), LDC Section 51.630.E;

Medium Density Residential (RM), LDC Section 51.730.F; General Commercial (CG), LDC Section 52.430.D; Transportation Commercial (CT), LDC Section 52.830.A; Heavy Industrial (IH), LDC Section 53.430.A; and Non-Resource (NR), LDC Section 56.030.D. For each of these zones, these facilities may be permitted as a conditional use if the provisions of LDC Article 44 are satisfied.

Under LDC Article 44, the review criteria in LDC Section 44.030.A through C must be met. The review criteria in LDC Section 44.030.A through C are specifically stated below in the Findings and Conclusions. The Hearings Officer heard Klamath's application for a conditional use on August 1, 1997. In considering the application, supporting materials, and the Planning Department's Staff Report and Recommendation, the Hearings Officer evaluated whether the application was consistent with and complies with the applicable review criteria in LDC Section 44.030.A through C.

Based on this evaluation, the Hearings Officer finds and concludes that the application for conditional use is consistent with and complies with the review criteria in LDC Section 44.030.A through C. The Hearings Officer approves the proposed conditional use and grants the application for conditional use permit, CUP 54-97. In support of the Hearings Officer's approval and grant of CUP 54-97, the Hearings Officer makes the following findings and conclusions.

VII. FINDINGS AND CONCLUSIONS

The Hearings Officer concludes that the electric transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline for the Project are Extensive Impact Services and Utilities under LDC Article 11. Extensive Impact Services and Utilities are recognized as conditionally permitted uses under the LDC in the various land use zones where these facilities will be located: Suburban Residential (RS), LDC Section 51.530.C; Low Density Residential (RL), LDC Section 51.630.E; Medium Density Residential (RM), LDC Section 51.730.F; General Commercial (CG), LDC Section 52.430.D; Transportation Commercial (CT), LDC Section 52.830.A; Heavy Industrial (IH), LDC Section 53.430.A; and Non-Resource (NR), LDC Section 56.030.D. For each of these zones, these facilities may be permitted as a conditional use if the provisions of LDC Article 44, Section 44.030A through C are met.

The Hearings Officer concludes that the following criteria under LDC Article 44, Section 44.030.A through C are met. The following discussion shows the Hearings Officer's findings and conclusions with respect to each of the review criteria.

A. LDC Article 44 Review Criteria

1. **Criterion** - Section 44.030.A. "The use complies with policies of the Comprehensive Plan."

Klamath County prepared the Comprehensive Plan for Klamath County, Oregon, which has received Land Conservation and Development Commission acknowledgement. The Comprehensive Plan contains a statement of the land use planning goals for the County and specific objectives, policies and implementation programs for these goals. The Hearings Officer's findings and conclusions that the proposed conditional use is consistent with the Comprehensive Plan are provided below. The applicable goals and policies are set forth in bold.

a. **Goal 1: Citizen Involvement**

Goal 1 calls for citizen involvement in the planning process and includes allowing public input on all land use proposals. Klamath County has adopted one policy under Goal 1.

1. **Policy:** "The County shall provide for continued citizen involvement opportunities after plan acknowledgement."

The County has adopted procedures in the LDC providing for relevant public input on all land use proposals and for organization of the planning process. The Hearings Officer finds that the actions requested in this application were subject to public comment through a hearing. The Hearings Officer finds that notification of the hearing was given to the public as required by Oregon statutes and the LDC.

b. **Goal 2: Land Use Planning**

Goal 2 requires the creation of the land use planning process and policy framework as the basis for all decisions and actions related to the use of land and to ensure an adequate factual basis for such decisions. Klamath County has adopted thirteen policies under Goal 2.

1-8. **Policy:** The Hearings Officer finds and concludes that policy numbers 1 through 8 do not apply to the proposed use.

9. **Policy:** "Klamath County is expected to experience population increases as arrived at based on Cohort Survival Population Projections. The County shall provide support for this population increase by providing sufficient land, community facilities and other community resources."

The Hearings Officer finds that the Project will assist the County in providing support for any population increases in Klamath County. Power generated from the Project will be sold to public and private utilities. The Project will have a construction value of approximately \$150 million, will create up to 250 temporary jobs during about a twenty-month period of construction, and will provide approximately 20 permanent positions. App., Ex. 1, pps. U-1 to U-3.

The Hearings Officer finds that the Project will return substantial revenues to the City of Klamath Falls and will provide economically priced steam for future economic development in the community while assisting existing mill operations. Steam produced by the Project will be available to Collins and to other potential industrial users to reduce reliance on natural gas, fuel oil and waste wood-fired boilers. App., Ex. 1, p. A-1.

The Hearings Officer finds that during construction of the Project, activities will disturb approximately 8.8 acres for the transmission line and 28.2 acres for the water supply and wastewater discharge pipelines. During operation of the Project, 0.8 acres of land will be permanently impacted by the transmission line. No land will be permanently impacted by the pipelines because the pipelines will be constructed underground. The majority of the land for the transmission line and the pipelines is existing rights-of-way so the amount of new land occupied by the transmission line and pipelines will be insignificant. App., Ex. 1, pps. N-11 to N-12, Table N-3.

The Hearings Officer finds that the transmission line and the water supply and wastewater discharge pipelines will not independently create a need for community facilities or governmental services. The proposed use will not create a development potential outside the urban growth boundary. The Project as a whole will not have an adverse impact on governmental sewage treatment capacity, water supplies, solid waste disposal, law enforcement, fire protection, and public schools. App., Ex. 1, pps. U-3 to U-4, U-7 to U-8, U-9. The Hearings Officer finds that the Project as a whole will also not have an adverse impact on housing, traffic safety and health care. App., Ex. 1, pps. U-4 to U-7, U-8 to U-9.

10-11. Policy: The Hearings Officer finds and concludes that Policy numbers 10 and 11 do not apply to the proposed use.

12. Policy: "Lands which are not agricultural or forest lands as defined in Statewide Planning Goals 3 and 4 shall be designated Non-Resource (NR) and subject to the regulations of the Non-Resource (NR) zone contained in the Land Development Code."

The Hearings Officer finds that certain lands to be occupied by the transmission lines will be located in a Non-Resource (NR) zone. Transmission lines are recognized conditional uses in a Non-Resource zone under Section 56.03.D of the LDC. That section recognizes as conditional uses: "All conditional uses in exclusive farm use, forestry and forestry-range zones." Section

54.030 recognizes as conditional uses in exclusive farm use zone transmission towers over 200 feet in height and utility facilities necessary for public service. Section 55.040 of the LDC recognizes as conditional use in any forestry zone, water intake facilities and related treatment facilities. Further, Section 56.030 of the LDC applicable to Non-Resource zone provides that the conditional uses may be permitted if the provisions of Article 44 are satisfied. The Hearings Officer finds that this CUP application provides the demonstration that the provisions of Article 44 are satisfied.

13. Policy: The Hearings Officer finds and concludes that Policy number 13 do not apply to the proposed use.

c. Goal 3: Agricultural Lands

Goal 3 is premised on a need to preserve and to maintain agricultural lands. Agricultural lands are to be inventoried and preserved by the adoption of exclusive farm use zones. Klamath County has adopted five policies under Goal 3.

1-5. Policy: The Hearings Officer finds and concludes that because the proposed use does not involve any Goal 3 agricultural lands or lands zoned exclusive farm use (see Application, Exhibit 1, page I-2, Figure I-2), policy numbers 1 through 5 do not apply to the proposed use.

d. Goal 4: Forest Lands

Goal 4 is directed toward encouraging the preservation of forest lands for forest uses. Klamath County has adopted nine policies under Goal 4.

1-9. Policy: The Hearings Officer finds and concludes that because the proposed use will not occupy any land zoned Forestry or Forestry/Range (see Application, Exhibit 1, page I-2, Figure I-2), policy numbers 1 through 9 do not apply to the proposed use.

e. Goal 5: Open Space, Scenic and Historic Areas, and Natural Resources

Goal 5 aims at conserving open spaces and protecting natural, historic and scenic resources. Klamath County has adopted thirty-nine policies under Goal 5.

1-5. Policy: The Hearings Officer finds and concludes that Policy numbers 1 through 5 do not apply to this proposed use.

6. Policy: "Cultural areas, historic sites, and archaeological resources shall be considered when proposing a change in land use."

An archaeological inventory survey and Native American consultation were undertaken for the proposed electric transmission line and proposed water supply and wastewater discharge pipelines. App., Ex. 1, pps. T-5 to T-6.

The Hearings Officer finds that three historic trash dumps were encountered and recorded during the survey. One, which is located along the electrical transmission line route, is considered potentially eligible for inclusion on the National Register of Historic Places (NRHP) under Criterion (d), although it was not formally evaluated for eligibility. A second trash dump site, also located along the electrical transmission line route, was not considered eligible for the NRHP. The Hearings Officer finds that these two sites can be spanned by the transmission line. The Hearings Officer thus finds that neither one of these sites would be directly affected by the transmission line. The third trash dump site is located along the cooling water pipeline route. This site does not contain a subsurface component and was evaluated for eligibility to the NRHP on the basis of surface observations. The Hearings Officer finds that the site is not considered eligible for inclusion on the NRHP under any of the eligibility criteria. App., Ex. 1, pps. T-6 to T-7.

The Hearings Officer finds that no other historic resources or prehistoric cultural resources were found during the survey. App., Ex. 1, pps. T-6 to T-7.

7. Policy: "The County shall encourage the preservation and restoration of historic sites and structures whenever possible."

The Hearings Officer makes the same findings and conclusions as Policy 6 above.

8-13. Policy: The Hearings Officer finds and concludes that Policy numbers 8 through 13 do not apply to the proposed use.

14. Policy: "The County shall protect Bald Eagle nest sites."

The Hearings Officer finds that there are no Bald Eagle nest sites located in the areas where the proposed transmission line and water supply and wastewater discharge pipelines will be constructed. The nearest known nest site is several miles distant from the nearest ancillary facility. The Hearings Officer finds that construction of the ancillary facilities will have no adverse direct impacts on the Bald Eagle or its habitat. App., Ex. 1, p. R-5.

15. Policy: "The County shall require that the private property owner take no action that would damage existing Bald Eagle nest sites."

The Hearings Officer makes the same findings and conclusions as Policy 14 above.

16. Policy: "The County shall protect significant big game winter ranges and other significant wildlife habitat."

The Hearings Officer finds that there are no significant big game winter ranges in the area of the proposed use. General project impacts to other wildlife habitats will be minimal. App., Ex. 1, Sec. P. The Hearings Officer finds that no significant adverse impacts to special status species are anticipated. App., Ex. 1, Sec. R. Prefield investigations resulted in the identification of four threatened or endangered animal species that are known to occur in the general Project area including the transmission line and water supply and wastewater discharge pipelines: shortnose sucker, Lost River sucker, Bald Eagle, Peregrine Falcon. The Hearings Officer finds that the proposed ancillary facilities will have no adverse impacts on either the Lost River sucker or the shortnose sucker, because no ancillary facilities will be constructed within the aquatic habitat used by these species. The Hearings Officer finds that the potential impacts of Bald Eagle and Peregrine Falcon collisions with the transmission line should be avoided by the planned strategic routing of the transmission line away from the primary flyways and dense fog zones along the Klamath River. App., Ex. 1, Sec. R.

17. Policy: "The County shall preserve and protect required sites for generation of energy and reservoirs."

The Hearings Officer finds that the Project supports this policy because it will involve the generation of electric energy and steam energy. The electric energy generated from the Project will be sold to public and private utilities. The steam produced by the Project will be made available to Collins for its industrial operation and to other potential industrial users and will allow Collins and other potential industrial users to reduce reliance on natural gas, fuel oil and waste wood-fuel boilers. App., Ex. 1, p. A-1. The Hearings Officer finds that the proposed transmission line and water supply and wastewater discharge pipelines are necessary facilities of the Project. The Hearings Officer finds that the proposed use supports Policy number 17.

18-19. Policy: The Hearings Officer finds and concludes that the proposed transmission line and water supply and wastewater discharge pipelines are not located on public lands, parks, cultural resources, trails or unique open space areas (Exhibit 1, Section J, Section T), and, therefore, policy numbers 18 and 19 do not apply to the proposed use.

20-21. Policy: The Hearings Officer finds and concludes that Policy numbers 20 and 21 do not apply to the proposed use.

22. Policy: "The County shall protect riparian areas."

The Hearings Officer finds and concludes that because there are no riparian areas within the lands covered by the proposed transmission line and the water supply and wastewater discharge pipelines (other than a man-made drainage ditch that does not meet the wetland

hydrology criteria) (Application, Exhibit 1, Section H, Table H-1), Policy number 22 does not apply to the proposed use.

23-26. Policy: The Hearings Officer finds and concludes that Policy numbers 23 through 26 do not apply to the proposed use.

27. Policy: "Nonstructural flood protection methods may be used whenever practical for conservation of floodplains. Flood control measures shall, whenever practical, utilize natural floodways, maintaining riparian habitats and historic flow volumes. When nonstructural flood protection methods are not practical because of the value of previous urban development, concrete-lined channels will be used only if all other structural methods are impractical."

The Hearings Officer finds and concludes that because the land where the proposed use will be located is not located in a flood plain, Policy number 27 does not apply to the proposed use.

28. Policy: "The County shall encourage the management of groundwater resources."

The Hearings Officers finds that the Project is designed to use effluent discharge piped through the proposed cooling water supply pipeline from the City of Klamath Falls SSWTP for use at the Project's cooling tower. The Hearings Officer finds that, as a result, no new water right to a groundwater resource is required. Exhibit 1, Section O. The Project will also return its wastewater to the SSWTP through the proposed wastewater discharge return pipeline for treatment and discharge to the Klamath River. The Hearings Officer finds that thus, groundwater sources will not be affected, and groundwater resources will be properly managed. The Hearings Officer finds that the proposed use supports Policy number 28.

29-33. Policy: The Hearings Officer finds and concludes that Policy numbers 29 through 33 do not apply to the proposed use.

34. Policy: "The County shall encourage the protection of recognized scenic views and sites."

The Hearings Officer finds that the proposed transmission line and water supply and wastewater discharge pipelines will not be visible from any recognized scenic view or site. App., Ex. 1, Sec. S. The Hearings Officer finds that proposed use satisfies Policy number 34.

35-39. Policy: The Hearings Officer finds and concludes that Policy numbers 35 through 39 do not apply to the proposed use.

f. Goal 6: Air, Water and Land Resources Quality

Goal 6 attempts to maintain and to improve the quality of the air, water and land resources of Klamath County. Klamath County has adopted nine policies under Goal 6.

1. Policy: "The County shall support efforts to maintain and improve the quality of air resources."

The Hearings Officer finds that other than during construction activities, the proposed transmission line and water supply and wastewater discharge pipelines will produce no air emissions. The Hearings Officer finds that during construction activities, air emissions (chiefly dust) will be minimal. App., Ex. 1, p. J-2. The Hearings Officer finds that the proposed use satisfies Policy number 1.

2-5. Policy: The Hearings Officer finds and concludes that Policy numbers 2 through 5 do not apply to this proposed use.

6. Policy: "The County shall coordinate environmental management programs with State and Federal environmental statutes, programs, and policies (air, water, land, and noise)."

The Hearings Officer finds that the applicant has identified and will comply with all state and federal environmental permitting requirements. Appendix, Ex. 1, App. D-1. The Hearings Officer finds that the applicant will comply with all applicable requirements of environmental statutes, programs and policies.

7. Policy: "The County shall establish grading standards that limit runoff and erosion from residential, commercial, and industrial construction sites."

Article 7 and Article 73 of the LDC provide requirements for construction work that will be involved with the proposed use and may be applicable. The Hearings Officer finds that the applicant will obtain all local permits relating to runoff and erosion control. App., Ex. 1, App. D-1.

8. Policy: "Consideration shall be given to locating noise-sensitive activities away from noise generators."

The Hearings Officer finds that noise levels due to operation and construction of the transmission line are not anticipated to exceed accepted noise level criteria for residential areas.

App., Ex. 1, p. BB-4. The Hearings Officer finds and concludes that the anticipated noise level is substantially less than the noise level performance criteria specified for residential receptors. App., Ex. 1, p. BB-4. The Hearings Officer finds that it is anticipated that heavy construction activities will be restricted to the hours of 7:00 a.m. to 10:00 p.m., to minimize the potential for annoyance of nearby residents. App., Ex. 1, p. BB-4. The Hearings Officer finds that consideration will be given to locating potential noise generators away from noise-sensitive activities.

9. Policy: "Noise sensitive land uses shall be prohibited or limited within noise-affected areas of the Klamath Falls Municipal Airport in accordance with Table II-2. Conditional uses shall be permitted only when a detailed analysis of noise reduction requirements is made and needed noise insulation features are included in the building design."

The Hearings Officer finds and concludes that because the proposed transmission line and water supply and wastewater discharge pipelines will not be located within the noise affected areas of Klamath Falls Municipal Airport, Policy number 9 does not apply to the proposed use.

g. Goal 7: Areas Subject to Natural Disasters and Hazards

Goal 7 is aimed at protecting life and property from natural disasters and hazards. Klamath County has adopted seven policies under Goal 7.

1-2. Policy: The Hearings Officer finds and concludes that Policy numbers 1 and 2 do not apply to this proposed use.

3. Policy: "New development shall be kept off of slopes greater than 25 percent, unless engineering plans are approved by the County Department of Public Works."

The Hearings Officer finds that the proposed water supply and wastewater discharge pipelines will be located on relatively low sloping terrain, and therefore Policy number 3 does not apply to these facilities. The Hearings Officer finds that the proposed transmission line may be located along the flanks of linear ridges that vary from 20 to 35 percent slope. App., Ex. 1, p. G-3. The Hearings Officer finds that if the transmission line is located on a slope greater than 25 percent, engineering plans for the transmission line will be submitted to the County Department of Public Works for approval.

4. Policy: "The County shall study the feasibility of requiring on-site retention of stormwater runoff."

The County has implemented this policy by adopting Article 65 of the LDC. Article 65 specifies landscaping requirements to maintain and enhance the appearance of structures and properties, to provide for visual privacy and a quality visual environment, and to provide areas on sites to absorb rainfall and stormwater runoff. The Hearings Officer finds that the proposed transmission line and water supply and wastewater discharge pipelines will provide for and permanently maintain landscape requirements under Article 65. The Hearings Officer finds that the applicant will obtain all local permits relating to control of erosion and stormwater runoff. App., Ex. 1, Appendix D-1.

5. Policy: "The County shall restrict filling or construction in floodways. Uses such as sand extraction, recreational activities, industrial and agricultural pursuits may be exceptions to this policy."

The Hearings Officer finds and concludes that the proposed transmission line and water supply and wastewater discharge pipelines are not located in any floodway (Application, Exhibit 1, Section H), and as a result Policy number 5 does not apply.

6-7. Policy: The Hearings Officer finds and concludes that Policy numbers 6 and 7 do not apply to the proposed use.

h. Goal 8: Recreation Needs

Goal 8 has as its premise satisfaction of the recreational needs of the citizens of Klamath County and visitors to the County. Klamath County has adopted eleven policies under Goal 8.

1. Policy: "When planning for lands and resources capable of accommodating multiple uses, the County shall encourage the provision of appropriate recreation opportunities."

The Hearings Officer finds that the land where the proposed transmission line and water supply and wastewater discharge pipelines will be located is not a scenic, recreational or natural resource area. The Hearings Officer finds that the proposed use will not impact any recreational areas within Klamath County or diminish the recreational value of the County for citizens of Oregon or any visitors to Oregon and Klamath County. Further, the pipelines will be located within existing right-of-ways, along roads and areas not conducive to use as recreational areas. The Hearings Officer finds that the transmission line will likewise be located on lands that are not conducive to use as a recreational area. App., Ex. 1, Sec. Q. The Hearings Officer finds that the proposed use supports Policy number 1.

2-11. Policy: The Hearings Officer finds and concludes that Policy numbers 2 through 11 do not apply to the proposed use.

i. Goal 9: County Economy

The purpose of Goal 9 is to diversify and to improve the economy of Klamath County. Klamath County has adopted fifteen policies under Goal 9.

1. Policy: "The County shall work with local governments to coordinate and compile appropriate industrial and commercial site availability in order to develop a common regional economic development strategy."

The Hearings Officer finds that the Project will generate electricity for sale to public and private utilities. The Hearings Officer finds that the Project will also produce steam and make that steam available to Collins for its industrial needs and to other potential industrial users and will reduce Collins and other potential industrial users' reliance on natural gas, fuel oil and waste wood-fired boilers. App., Ex. 1, p. A-1.

The Hearings Officer finds that the Project including the proposed transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline will have a construction value of approximately \$150 million, will create up to 250 temporary jobs during the 20 months of construction, and will provide approximately 20 permanent positions. App., Ex. 1, pps. U-1 to U-3. The Hearings Officer finds that the Project will return substantial revenues to the City of Klamath Falls and provide economically priced steam for future economic development in the community while assisting existing industrial operations. The Hearings Officer finds that the revenues generated by the Project will allow the City to promote economic recovery. App., Ex. 1, p. A-1. The Hearings Officer finds that the proposed use complies with Policy number 1.

2-8. Policy: The Hearings Officer finds and concludes that Policy numbers 2 through 8 do not apply to the proposed use.

9. Policy: "The County shall encourage plans and methods that emphasize expansion of and increased productivity from existing industries and firms as a means to strengthen local and regional development."

The Hearings Officer finds that the Project is being built on property currently owned by Collins and operated in conjunction with Collins operations. The Hearings Officer finds that the Project will provide steam for Collins uses and industrial processes and other potential industrial users to reduce reliance on natural gas, fuel oil and waste wood-fired boilers. App., Ex. 1, p. A-

1. The Hearings Officer finds that the proposed transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline are necessary facilities of the Project. The Hearings Officer finds that the proposed use will provide support to existing industries and complies with Policy number 9.

10-11. Policy: The Hearings Officer finds and concludes that Policy numbers 10 and 11 do not apply to the proposed use.

12. Policy: "The County shall support efforts to establish technical industries that will utilize trained graduates of Oregon Institute of Technology."

The Hearings Officer finds that the Project will use up to 250 employees for construction activities during the 20 months of construction and also will require approximately 20 employees for permanent positions associated with the Project. App., Ex. 1, pps. U-1 to U-3. The Hearings Officer finds that graduates of Oregon Institute of Technology will in many cases be qualified for some of these positions. The Hearings Officer finds that the proposed use satisfies Policy number 12.

13. Policy: "The County shall identify potential rural, industrial and commercial sites and plan these sites for industrial and commercial uses to ensure that adequate and suitable rural, industrial and commercial lands are available."

The Hearings Officer finds that the proposed transmission line and water supply and wastewater pipelines will be located, in significant part, in existing right-of-ways dedicated to those types of uses. The Hearings Officer finds that the ancillary transmission line and water supply and wastewater discharge pipelines for the Project are Extensive Impact Services and Utilities under LDC Art. 11. The Hearings Officer finds and concludes that Extensive Impact Services and Utilities are conditionally permitted uses under the LDC in various land use zones where these ancillary facilities will be located: Suburban Residential (RS), LDC Section 51.530; Low Density Residential (RL), LDC Section 51.630.E; Medium Density Residential (RM), LDC Section 51.730.F; General Commercial (CG), LDC Section 52.430.D; Transportation Commercial (CT), LDC Section 52.830.A; Heavy Industrial (IH), LDC Section 53.430A; and Non-Resource (NR), LDC Section 56.030.D. The Hearings Officer finds that the proposed use supports Policy number 13.

14. Policy: "The County shall maintain a sufficient amount of industrial land in large parcels in order to encourage economic diversity and development in the community."

The Hearings Officer finds that the cogeneration facility of the Project will be located in a large parcel of land zoned and used for heavy industry. The Hearings Officer finds that the proposed transmission line, cooling water supply pipeline, potable water pipeline and wastewater discharge pipeline are necessary facilities of the Project. The Hearings Officer finds that, as a result, the proposed use supports Policy number 14.

15. Policy: "The County shall provide appropriate land, facilities, and resources to those economic activities that represent the most efficient use of resources, relative to other geographic areas."

The Hearings Officer finds that the proposed transmission line and water supply and wastewater discharge pipelines are located on lands that in large part are on existing right-of-ways dedicated to those types of uses. The Hearings Officer thus finds that the proposed use supports Policy number 15.

j. Goal 10: Housing

Goal 10 relates to the provision of adequate housing for the citizens of Klamath County. Klamath County has adopted twelve policies under Goal 10.

1-12. Policy: The Hearings Officer finds and concludes that Policy numbers 1 through 12 do not apply to this proposed use.

k. Goal 11: Public Facilities and Services

Goal 11 is premised on a need to plan and to develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. Klamath County has adopted eighteen policies under Goal 11.

1-6. Policy: The Hearings Officer finds and concludes that Policy numbers 1 through 6 do not apply to the proposed use.

7. Policy: "During the planning of utility lines and facilities, the County shall encourage their location on or adjacent to existing public or private rights-of-way to avoid dividing existing farm units, and attempt to avoid residential areas."

The Hearings Officer finds that the majority of the proposed transmission line and water supply and wastewater discharge pipelines will be located in significant part in existing rights-of-way dedicated to those types of uses. App., Ex. 1, Sec. C; Exhs. 8-11. The Hearings Officer finds that, thus, the proposed use supports Policy number 7.

8-11. Policy: The Hearings Officer finds and concludes that Policy numbers 8 through 11 do not apply to the proposed use.

12. Policy: "Development proposals shall not be approved unless the types and levels of public facilities and services required are available or are to be provided concurrently with defined levels of development within urban and rural areas."

The Hearings Officer finds that the proposed transmission line and water supply and wastewater discharge pipelines will not create an increased need for police protection; fire protection; domestic water facilities; sanitary facilities; storm drainage facilities; planning, zoning and subdivision services; recreation facilities and services; telecommunication services; governmental services; and water facilities. The Hearings Officer finds that the proposed potable water supply pipeline will receive water from an existing City of Klamath Falls water main. The Hearings Officer finds that the proposed use will not create an increased need for any public facilities and services. App., Ex. 1, Sec. O. The Hearings Officer finds that, thus, the proposed use satisfies Policy number 12.

13-18. Policy: The Hearings Officer finds and concludes that Policy numbers 13 through 18 do not apply to the proposed use.

I. Goal 12: Transportation

Goal 12 encourages the development of a safe, a convenient and an economic transportation system. Klamath County has adopted fourteen policies under Goal 12.

1-11. Policy: The Hearings Officer finds and concludes that Policy numbers 1 through 11 do not apply to the proposed use.

12. Policy: "Height and use of structures within the approach and departure zones designated for the Klamath Falls Municipal Airport in the 1976 Airport Master Plan shall be limited (Arnold Thompson Associates, Inc., Master Plan, Klamath Falls Municipal Airport, April, 1976)."

Article 58 of the LDC establishes an airport safety overlay for the City of Klamath Falls Kingsley Field. The Hearings Officer finds that the proposed transmission line and water supply and wastewater discharge pipelines are not located within the airport safety zone provided in Article 58. App., Ex. 1, Sec. C; Exhs. 3-6. The Hearings Officer finds and concludes that Policy number 12 does not apply to the proposed use.

13-14. Policy: The Hearings Officer finds and concludes that Policy numbers 13 and 14 do not apply to the proposed use.

m. Goal 13: Energy Conservation

Goal 13 requires that land use decisions be managed so as to maximize conservation of all forms of energy based on sound economic principles. Klamath County has adopted five policies under Goal 13.

1. Policy: "The County shall encourage the use of renewable and efficient energy sources in residential, commercial, and industrial development."

The Hearings Officer finds that the Project is a highly efficient natural gas-fired cogeneration facility. The Hearings Officer finds that the Project will produce steam and make some of that steam available to Collins for use in its industrial processes and to other potential industrial users. The Hearings Officer finds that this steam availability will reduce reliance on natural gas, fuel oil and waste wood-fired boilers. The Hearings Officer finds that the remainder of the steam produced by the Project will be used to generate electricity for sale to public and private utilities. App., Ex. 1, p. A-1. Mitigation measures to be installed as part of the process will employ renewable energy sources through use of solar photovoltaic cells, recovery of methane from sewage treatment systems and coal mines and through the expansion of the Klamath Falls geothermal heating district system. The Hearings Officer finds that the proposed transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline are necessary facilities for the Project. The Hearings Officer finds that the proposed use complies with Policy number 1.

2. Policy: "The development and use of alternative cost effective energy in Klamath County shall be encouraged."

The Hearings Officer finds that the Project is a highly efficient natural gas-fired cogeneration facility. The Hearings Officer finds that the Project will produce steam and make some of that steam available to Collins for use in its industrial processes and to other potential industrial users. The Hearings Officer finds that the proposed use will reduce reliance on natural gas, fuel oil and waste wood-fired boilers. App., Ex. 1, p. A-1. The Hearings Officer finds that the proposed transmission line, cooling water supply pipeline, potable water pipeline and wastewater discharge pipeline are necessary facilities of the Project. The Hearings Officer finds that the proposed use complies with Policy number 2.

- 3-5. Policy: The Hearings Officer finds and concludes that Policy numbers 3 through 5 do not apply to the proposed use.

n. Goal 14: Urbanization

Goal 14 attempts to provide for an orderly and efficient transition from rural to urban land use. Klamath County has adopted five policies under Goal 14.

1-5. Policy: The Hearings Officer finds and concludes that Policy numbers 1 through 5 do not apply to the proposed use.

2. Criterion 2 - Section 44.030.B. "The use is in conformance with all other required standards and criteria of this code."

The Hearings Officer finds and concludes that all required standards and criteria of the LDC have been applied and discussed above in Section VII, A and C of these Findings and Conclusions. The Hearings Officer further finds and concludes that the transmission line, cooling water supply pipeline, potable water pipeline, and wastewater discharge pipeline complies with all required standards and criteria of the LDC.

3. Criterion 3 - Section 44.030.C. "The location, size, design, and operating characteristics of the proposed use will not have a significant adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area."

The Hearings Officer finds that the proposed transmission line and water supply and wastewater discharge pipelines will be located to minimize any potential impacts to the livability, value, or appropriate development of abutting properties and the surrounding area. App., Ex. 1, Sec. C; Exhs. 8-11. The Hearings Officer finds that during operation, the proposed use will produce no air emissions. The Hearings Officer finds that during construction activities, minimal air emissions (chiefly dust) will be produced. App., Ex. 1, p. J-2.

The Hearings Officer finds that the proposed use will be located in significant part in existing rights-of-way dedicated to these types of uses. In these areas the proposed use will not increase the impact on the surrounding properties. Further, the Hearings Officer finds that because the proposed water supply and wastewater discharge pipelines will be buried underground, there will be no potential for impact on the surrounding properties from these pipelines once construction is complete.

The Hearings Officer finds that only the transmission line is anticipated to have any potential for impact on the surrounding properties. The Hearings Officer finds that the noise level potentially produced by the transmission line is not projected to exceed acceptable noise level criteria for residential areas. App., Ex. 1, p. BB-4. The Hearings Officer finds that potential visual impact of the transmission line is expected to be minimal because transmission lines, towers and poles now occur generally throughout the area; proposed transmission poles will

be placed as far apart as possible; and proposed transmission poles will be generally placed below the ridge tops. App., Ex. 1, p. S-2. Further, the Hearings Officer finds that no significant electrical and magnetic fields impacts are anticipated from the transmission line based on computer modeling of the operation of the proposed transmission line. App., Ex. 1, pps. U-9 to U-11. Also, the Hearings Officer finds that a significant portion of the transmission line will be constructed parallel to an existing transmission line and located in existing transmission line right-of-way.

The Hearings Officer finds that any impacts from construction of the proposed use will be minimized. The Hearings Officer finds that potential heavy construction activities will be restricted to the hours of 7:00 a.m. to 10:00 p.m. to minimize the potential for impact to any nearby residents. App., Ex. 1, pps. BB-4.

VIII. ORDER AND CONDITIONS

Based on an evaluation of the Application, the Planning Department's Staff Report and Recommendation, and on the above Findings and Conclusions, the Hearings Officer finds and concludes that the proposed conditional use is consistent and complies with the LDC and the Klamath County Comprehensive Plan. Therefore, it is ordered that PKE's request for a conditional use permit, CUP 54-97, is approved subject to the following condition:

- A. Any performed work or construction on ODOT right-of-way shall require application and permits from ODOT.

Dated this 1st day of August, 1997.


Neal G. Buchanan, Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified that this application may be appealed to the Klamath County Board of Commissioners by filing with the Klamath County Planning Department a Notice of Appeal as set out in Section 33.004 of the Klamath County Land Development Code, together with the fee required within SEVEN DAYS following the mailing of this final order.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 1st day
of August A.D., 1997 at 1:19 o'clock P. M., and duly recorded in Vol. 197
of Deeds on Page 24984.

FEE No Fee Return: Commissioners Journal

By Bernetha G. Letsch County Clerk
Kathleen Ross