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Fee: \$46.00

**BEFORE THE PLANNING DIRECTOR
KLAMATH COUNTY, OREGON**

IN THE MATTER OF CUP 20-09 DUCKS)
UNLIMITED FOR TULESMOKE TO)
RESTORE & ENHANCE WETLANDS)
WITHIN THE TULESMOKE MARSH ON)
PROPERTY ZONED (EFU-CG))
EXCLUSIVE FARM USE, IDENTIFIED)
AS: R-4008-01500-00100, 600, &1000, R-)
4008-00000-01800, 1700, 2100, 1600, &)
100, R-4008-00100-00500)

CUP TYPE II
ADMINISTRATIVE
FINAL ORDER

1. NATURE OF THE REQUEST:

The applicant requests a Conditional Use Permit restore and enhance wetlands within the Tule Smoke Marsh on property zoned Exclusive Farm Use. The Planning Director reviewed the request June 24, 2009 pursuant to KCLDC Article 22 – Administrative Review Procedure, Article 32 – Public Notice, Article 44 – Conditional Use Permit, and Article 57 – Significant Resource Overlay.

2. NAMES OF THOSE WHO PARTICIPATED:

The Planning Director in review of this application was Leslie C. Wilson. Alyssa Boles, Planner, prepared the Planning Department Staff Report.

3. LEGAL DESCRIPTION:

The subject property described in Conditional Use Permit File located in the Planning Department is described as Township 40 South, Range 08, Sections 1, 2, 11, 14, & 15 East Willamette Meridian, Tax Lots 100, 600, 1000, 1800, 1700, 2100, 1600, 100, & 500.

4. RELEVANT FACTS:

The applicant intends to restore a degraded wetland, as the site has been used as duck hunting club. The restoration of the site would enhance approximately 1700 acres. This Conditional Use Permit is required because the Tule Smoke Marsh is Goal 5 protected wetland. The subject parcel contains wetlands and is partially located in a Flood Zone A per FEMA map 410109 1350B (Exhibit 10). The south property line abuts a 1000 foot buffer for a mineral-aggregate site, but wetlands restoration is not considered a conflicting use. The subject parcel is lawfully created per deed number M71-16942, dated October 19, 1971 (Exhibit 7).

5. FINDINGS:

All evidence submitted shows that the approval criteria as set out in the code have been satisfied. The Planning Director finds this application does conform to criteria set out as follows:

KCLDC Article 44.030(A-C)

- A. The use complies with the Klamath County Comprehensive Plan Goal 1-Citizen Involvement, Goal 2-Land Use Planning and promotes Goal 5-Open Spaces, Scenic and Historic Areas, and Natural Resource, more specifically Policies 3, 4, 9, and 16, protecting and enhancing riparian areas.

- B. The proposed operation can be brought into compliance with Article 57 and Article 59 of the Klamath County Land Development Code through conditions of approval. Staff would note comments from ODOT and Klamath Tribes. Per ODOT comments, the applicant will need to work with ODOT on an access strategy for that portion of Highway 97, as access is limited in that area (Exhibit 15). Klamath Tribes noted there are three archeological sites within the area potential impact and was unaware if an archeological survey had been done (Exhibit 14). Comments suggest an archeological survey needs to be done for this site. The applicant will need to meet the survey requirements of KCLDC Article 86. A copy of the archeological survey needs to be supplied to the Planning Department.
- C. There should be minimal impact to the surrounding area because the project is entirely contained on property owned by the application. Flood waters are not to be increased. Applicant will be required to supply a no-rise certificate to demonstrate compliance with KCLDC Article 59. A no-rise certificate would ensure that there were no other impacts to the surrounding properties.

KCLDC Article 57.060(A-D)

- A. The restoration of degraded wetlands would not alter the significance of the resource because restoring the applicant wishes to bring a Goal 5 protected wetland back to a functional marsh state. Former wetlands channels have filled in with silt and organic material. The applicant proposes to remove the silt and organic material and spread it, causing the material to decompose and store habitat for fish and wildlife. The future goal of the restoration is to reconnect the wetland with the Klamath River. Obtaining permits from State and Federal agencies for removal and fill in wetlands further regulates the impacts to the resource. The applicant has applied for permits with US Army Corp of Engineers and Oregon Department of State Lands. The applicant will need to provide the Planning Department with copies of all final permits issued by State or Federal agencies.
- B. No threatened or endangered species are known to exist in that area. Oregon Department of Fish and Wildlife was notified of this project and submitted a comment stating they will submit comments to Oregon DSL (Exhibit 11).
- C. The project would be limited to the USFW in-water work period restrictions. All construction projects are temporary in nature and are also limited to the same in-water work period. The applicant has made an effort to keep things in their natural vegetative state or to improve the vegetative state.
- D. There will be some temporary impacts to the resource, such excavators moving around the site on wood mats. The applicant states the impacts will be limited by working during late summer months, when evapo-transpiration rates are highest and the site conditions are driest. Impacts would be temporary and not have a permanent adverse impact on the river. A no-rise certificate would also demonstrate that they project would not have permanent adverse impact.

6. ORDER:

Therefore, upon review of the information and exhibits, it is ordered the request of Ducks Unlimited for Tulesmoke, Inc. for approval of CUP 20-09 is **APPROVED** subject to all Federal and State law, rules, or policy; Klamath County Land Development Code and County Ordinances; Oregon Fire Codes and Appendices; Oregon Building Codes and Appendices; Klamath County Public Works Standards, Policies, and Procedures; and, subject to the following additional Conditions of Approval:

Condition # 1

Applicant must supply copies of all final State and Federal permits to the Planning Department.

Condition # 2

Applicant must submit a Floodway Certification, certified by a registered professional engineer or architect, to the Planning Department.

Condition # 3

Applicant must supply a copy of any archeological survey to the Planning Department.

Condition #4

Prior to application for site development permits, this final order must be recorded to the subject property. The applicant will supply the Planning Department with the applicable County Clerk recording fees and the Planning Department will record the final order on behalf of the applicant.

Condition # 5

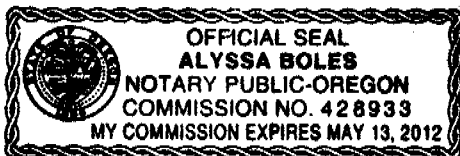
This approval will expire two years from the date of approval unless final Planning approval has been issued. The applicant may apply for up to three 1-year time extensions with the appropriate application and required fee.

DATED this 24 day of JUNE, 2009.



Leslie C. Wilson, Planning Director

Signed & Acknowledged before me this 24 day of June, 2009.





NOTARY PUBLIC FOR OREGON

My Commission Expires:

5-13-2012

NOTICE OF APPEAL RIGHTS

This decision may be appealed to the Klamath County Board of County Commissioners. Notice of intent to appeal a decision rendered under the procedures of the Klamath County Land Development Code shall be filed no later than 12 days following mailing of the final order (ORS 215.427). Failure to do so in a timely manner may affect your rights. Notice shall be in the form of a signed letter, shall state the name(s) of the party or parties appealing the decision, and must be received by the Planning Department before the close of business on the seventh day. The fee established by the Board of County Commissioners shall accompany the notice of appeal.

KCLDC ARTICLE 33.040 - STATEMENT OF APPEAL

No later than 12 days following the filing of a notice of appeal, pursuant to Section 33.030, the appellant shall file with the Planning Department a written statement of grounds for the appeal explaining:

- A. How the Comprehensive Plan, Klamath County Land Development Code, or applicable State law was incorrectly interpreted or applied in the decision; or*
- B. What information in the record of decision was pertinent to the decision, but was not considered by the review body*

For more information, please contact:

**Klamath County Planning Department
Phone 1-541-883-5121 or mail at 305 Main Street, Klamath Falls, Oregon 97601**

Exhibits:

Conditional Use Permit Application	Exhibit 1
US Army Corp/DSL Joint Permit Application	Exhibit 2
Site Maps/Photos	Exhibit 3
List of Adjacent Property Owners	Exhibit 4
Applicant Property List	Exhibit 5
Ownership Deeds	Exhibit 6
Lawful Creation Deeds	Exhibit 7
Parcel Assessor Maps	Exhibit 8
Zoning Map	Exhibit 9
FEMA Firmette	Exhibit 10
ODFW Comments	Exhibit 11
US Army Corp Comments	Exhibit 12
KC Public Works Comments	Exhibit 13
Klamath Tribes Comments	Exhibit 14
ODOT Comments	Exhibit 15

38765

WARRANTY DEED

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11030

STATE OF OREGON, acting by and through its FISH AND WILDLIFE COMMISSION, Grantor, conveys and warrants to the Tule Smoke Hunting Club, Incorporated, Grantee, the following described real property free of encumbrances except as specifically set forth herein.

Parcel No. 1: A parcel of land in Section 15, Township 40 South, Range 8 East, Willamette Meridian, County of Klamath, State of Oregon, containing an area of 84.86 acres, more or less, described as follows: Beginning at a point on the east boundary of said Section 15, distant therealong North 01° 26' 03.5" East 2657.97 feet from the southeast corner of said Section 15, said point being the east quarter corner of said Section 15; thence North 01° 26' 03.5" East 2657.96 feet along the east section line of said Section 15 to the northeast corner of said Section 15; thence North 88° 54' 56.5" West 1190.67 feet along the north section line of said Section 15 to a point on the east bank of the Klamath River said point being the meander corner between Sections 10 and 15; thence South 15° 42' 11.3" West 865.79 feet along the east meander of the Klamath River; thence South 53° 50' 43.0" West 813.84 feet along the east meander of the Klamath River; thence South 88° 57' 07.2" East 723.14 feet along the south line of the north half of the northeast quarter of said Section 15; thence South 01° 18' 34.1" West 1329.82 feet along the west line of the southeast quarter of the northeast quarter of said Section 15; thence South 88° 59' 20.8" East 1322.96 feet along the south line of the southeast quarter of the northeast quarter of said Section 15 to the point of beginning.

Parcel No. 2: A parcel of land in Section 15, Township 40 South, Range 8 East, Willamette Meridian, County of Klamath, State of Oregon, containing an area of 11.45 acres, more or less, described as follows: Beginning at a point on the east boundary of said Section 15, distant therealong North 01° 26' 03.5" East 620.00 feet from the southeast corner of said Section 15 said point being on the north bank of the Klamath Straits; thence North 68° 52' 36.5" West 388.90 feet along the north bank of the Klamath Straits; thence North 56° 18' 35.8" West 991.53 feet along said bank; thence North 86° 20' 52.0" West 165.46 feet along said bank; thence North 59° 16' 46" West 63.23 feet to a point on the north boundary of the south half of the southeast quarter of said Section 15; thence South 89° 01' 32.7" East 1425.21 feet to the northeast corner of the southeast quarter of the southeast quarter; thence South 01° 26' 03.5" West 703.98 feet along the east line of said Section 15 to the point of beginning.

Subject to and excepting existing rights of way of record or in use, including the following:

1. An easement created by instrument, including the terms and provisions thereof,

Dated : December 19, 1930
Recorded : January 8, 1932 Book: 96 Page 546
In favor of : California Oregon Power Company
For : A perpetual right of way and easement of raising and/or lowering the water level of Klamath River

2. An easement created by instrument, including the terms and