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## BEFORE THE KLAMATH COUNTY BOARD OF COMMISSIONERS

**IN THE MATTER OF FILE NUMBER: TYP II 7-20****FINAL ORDER**

WHEREAS, South Suburban Sanitation District, applicant, requested approval of an TYP II review for Land Application of Recycled Water onto land zoned Exclusive Farm Use - Cropland; and

WHEREAS, the subject property is described as Tax Lots 1300, 1200 and 1100, in Section 12 in Township 39 South, Range 10 East Willamette Meridian, Tax Lot 100 in Section 13 in Township 39 South, Range 10 East Willamette Meridian, Tax Lots 101, and 500, in Section 18V in Township 39 South, Range 11 East Willamette Meridian, Tax Lot 100, 200, and 300 in Section 19V in Township 39 South, Range 11 East Willamette Meridian and Tax Lot 600, in Section 20V in Township 39 South, Range 11 East Willamette Meridian; and

WHEREAS, the Klamath County Planning Department provided proper notice of a public hearing held on June 17, 2020 before the Klamath County Planning Commission and Board of County Commissioners; and

WHEREAS, the applicant submitted said request for the TYP II review in due form for consideration; and

WHEREAS, based on testimony entered and consideration of the whole record, and accepting the information provided in the application submittals as findings of fact and Findings in the Staff Report, the Klamath County Planning Commission concluded the application was not conformance with State Law, and the Klamath County Land Development Code and Comprehensive Plan and adopted findings attached as exhibit A.

Whereas, based on the adopted findings, Planning Commission forwarded a recommendation of Denial for Planning File TYP II 7-20 to the Board of County Commissioners; and

WHEREAS, based on testimony entered and after consideration of the whole record; and with a recommendation for denial from the Klamath County Planning Commission, the Klamath County Board of Commissioners acting within their authority, accepted the

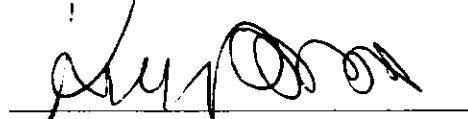
Planning Commission's recommendation and findings, and unanimously **denied** the request of Planning File TYP II 7-20.

**NOW, THEREFORE, THE KLAMATH COUNTY BOARD OF COMMISSIONERS ORDER AS FOLLOWS:**

**Planning File TYP II 7-20 is denied.**

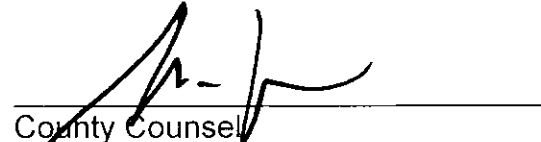
Dated this 11<sup>th</sup> day of August, 2020

**FOR THE BOARD OF COMMISSIONERS**

  
Chair

  
Commissioner

  
Commissioner

  
County Counsel  
Approved as to form

#### **NOTICE OF APPEAL RIGHTS**

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) within 21 days following the date of the mailing of this order. Contact LUBA for information as how to file this appeal (LUBA by phone 1-503-373-1265 or mail at 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552). Failure to do so in a timely manner may affect your rights.

# Exhibit A

**IN THE MATTER OF FILE NUMBER: TYP II 7-20**

**Finding of Facts**

## A. Introduction:

South Suburban Sanitary District (SSSD) submitted a TYP II review application to land apply recycled water onto lands zoned Exclusive Farm Use for the purposes of irrigation. The proposed project consisted of construction of a 11 mile pipeline to transfer the recycled water from the treatment facility on Maywood Drive to a 88 acre reservoir at the site for irrigation and then irrigate 750 acres of cropland with recycled water disinfected to a Class B or C level.

This matter was heard before the Planning Commission and the Board of County Commissioners in a series of meetings. A public meeting was held on June 17, 2020, where the applicant and citizens had the opportunity to testify. The record was left open for additional written comments, rebuttal and summarization by the applicant. The Planning Commission and Board of County Commissioners reconvened the meeting on July 21, 2020 to review the record in its entirety, and render a decision.

## B. Background:

Since 1959, SSSD has discharged its recycled water into the Klamath River. Now with adoption of the new Total Maximum Daily Load (TMDL) of nutrients for the Klamath River, SSSD is forced to consider other methods of discharging its recycled water or upgrade their treatment system to ensure compliance with the TMDL requirements.

Klamath Falls Community consists of the City of Klamath Falls as well as the unincorporated South Suburbs. The City and the South Suburbs area are approximately equal in total population. SSSD services the South Suburban population and the City provides sewer services to the City residences, with minor exceptions. Both treatment plants are in the same general location, approximately 1 mile apart. The City currently releases recycled water into the Klamath River, and due to the TMDL requirements, the City is also considering other methods of discharging its recycled water.

## C. Findings of Denial

### 1. Alternative site analysis:

The applicant submitted an alternative site analysis entered into the record as exhibit CM and an addendum to the site analysis entered into the record as exhibit DS to satisfy the requirement of ORS 215.246(3).

**Alternative Site: Swan Lake**

On page 6 of Exhibit CM, the applicant provided a 3 paragraph narrative regarding the use of cropland in the Swan Lake Valley as an alternative location to land apply recycled water. The applicant concluded that due to the longer pipeline needed to reach the Swan Lake Valley and with higher elevation of the Swan Lake Valley the capital cost would be greater than other alternatives. Based on cost reasons the alternative was not pursued.

However, the Applicant made assertions with regard to availability of land that did not appear to be accurate, did not provide a thorough cost analysis associated with land applying recycle water into the Swan Lake Valley or use any type of matrix rating environmental factors, costs, expansion potential and so on to help determine if land applying in the Swan Lake Valley even though the capital cost might be higher would be more appropriate to the long-term benefit of the community and the citizens of Klamath County. The lack of thorough analysis and dismissing out of hand an alternative site location was found to not meet requirements of ORS 215.246(3).

**Alternative Site: Klamath Drainage District**

On Page 7 of Exhibit CM and on page 10 of Exhibit DS, the applicant discusses discharging recycled water into the Klamath Drainage District. The applicant stated the reason land applying South Suburban Sanitary District's Recycled Water within Klamath Drainage District (KDD) was not feasible as *"The key criterion that cannot be stratified for this alternative to be viable is that recycled water cannot be discharge to any water of the State. As the KDD system currently operates, a mixture of recycled water and irrigation water would be discharged to the Klamath River in the spring when farmer are required to drain the fields."* However, in exhibit AC, the Ms. Kennedy indicates that KDD will be changing its operating practices and will in the future (less than 5 years) no longer discharge to the Klamath River and Exhibit O indicates the City of Klamath Falls Design Team is working on a scope and the cost to complete an analysis to land apply their recycled water onto lands within KDD District. Because of the change in operation by KDD and the fact the City is completing the analysis to Land Apply its recycled water, it is too early to conclude this alternative is not the best for the citizen of Klamath County. The lack of thorough analysis and dismissing out of hand an alternative site location was found to not meet requirements of ORS 215.246(3).

**Alternative Site: City of Klamath Falls**

In Exhibits CM and Exhibit DS, the applicant discusses why the SSSD and City of Klamath Falls cannot combine into a single entity and this was affirmed in Exhibit O by the City of Klamath Falls. In Exhibit O, the City of Klamath Falls states they are in the process of evaluating area to land apply their recycled water. If an area can be found that is large enough to irrigate with the recycled water from both the City of Klamath Falls and SSSD, it could be more efficient for the two entities to work together to construct one transmission pipeline, reservoir system for storage if needed, and irrigation system. The idea of combining recycled water from both sewer provider to irrigate one area has not been explored. The lack of thorough analysis and dismissing out of hand an alternative site location did not meet requirements of ORS 215.246(3).

2. Allowing Land Application of Recycled Water next to River with endangered species.

The applicant proposes to irrigate lands with recycled water next to the Lost River. Lost River provides habitat for several endanger species including the Short Nose Sucker (*Chasmistes brevirostris*) and Lost River Sucker (*Deltistes luxatus*) as well as many other terrestrial and aquatic wildlife species. As stated in numerous exhibits, there is significant community concern about irrigating with recycled water next to a river with endangered species and other sensitive wildlife.

3. Not a long term solution:

In numerous exhibits, opponents of the recycled water proposal have stated that this project has a maximum lifespan of 20 years. The applicant has not refuted this claim. It will be more difficult to expand the project at the subject site than other alternative sites such as Swan Lake Valley, in combination with the City of Klamath Falls or with KDD. Both Swan Lake Valley and KDD are large open valleys with large commercial farms, and very low density of dwelling.

4. Pipeline and Storage Reservoir are Utilities Facilities:

The recycled water will be chlorinated shortly before it leaves the treatment facility. While in the pipeline the chlorine will continue to react with the various organisms in the water, killing the pathogens. Because the water will still be in continued treatment within the pipeline, the pipeline is a Utility Facility.

If the water treatment fails and water reaches the reservoir without being disinfected, the disinfection would need to occur within the reservoirs, or treatment continues while in the reservoirs, turning the reservoirs into

Utilities Facilities. The applicant has not submitted the correct permits pertaining to approval of Utility Facilities for the pipeline or reservoirs.

D. Conclusion:

Based on the review of the record, the Planning Commission concluded the applicant has not met the criteria of ORS 215.246(3), nor did the applicant submit the correct application for the construction of a Utilities Facilities. The Board of County Commissioners reviewed both the record in its entirety and deliberation of the Planning Commission, and concluded the proposal has not met the criteria of ORS 215.246(3) nor did the applicant submit the correct application for the construction of a Utilities Facilities. On July 21, 2020, the Board of County Commissioners with an unanimous vote, adopted these findings.