

2021-014444

Klamath County, Oregon



00287884202100144440090098

09/22/2021 01:02:53 PM

Fee: NO FEE

BEFORE THE KLAMATH COUNTY BOARD OF COMMISSIONERS

IN THE MATTER OF FILE NUMBER CLUP 3-20

FINAL ORDER

WHEREAS, Adkins Consulting Engineering, LLP for the City of Chiloquin, applicant, requested approval of an amendment to the Comprehensive Plan approving an exemption to the Statewide Forestry Goal (Goal 4) and establishing a Limited Use Overlay restricting the use of the subject property to wastewater treatment facility and the land application of effluent; and

WHEREAS, the subject property is described as Tax Lot 100 in Section 28 and Tax Lot 700 in Section 29 in Township 34 South, Range 7 East Willamette Meridian; and

WHEREAS, the applicant submitted said request for the Comprehensive Plan Amendment and Conditional Use Permit in due form- for consideration; and

WHEREAS, the Klamath County Planning Department provided proper notice of a public hearing held on April 28, 2020 before the Klamath County Planning Commission and Board of County Commissioners; and

WHEREAS, based on testimony entered and consideration 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 in conformance with State Law, Klamath County Land Development Code and Comprehensive Plan, and forwarded a recommendation of Approval for Planning File CLUP/ZC 3-20 and CUP 5-20 to the Board of County Commissioners; and

WHEREAS, based on testimony entered and after consideration of the whole record, and with a recommendation for approval from the Klamath County Planning Commission, the Klamath County Board of Commissioners acting within their authority, accepted the Planning Commission's recommendation, and unanimously **APPROVED** the request of Planning Files CLUP/ZC 3-20 and CUP 5-20.

WHEREAS, on remand from the Land Use Board of Appeals, the Klamath County Board of Commissioners held an additional properly noticed public hearing by the Klamath County Planning Department on May 11, 2021, and the public hearing was closed with the written record remaining open until June 15, 2021.

WHEREAS, on June 22, 2021 the Klamath County Board of Commissioners deliberated on the evidence in the written record, and voted unanimously to reaffirm and approve Planning Files CLUP/ZC 3-20 and CUP 5-20.

ORDER for approval of an exception to Statewide Planning Goal 4 and establishing a Limited Use Overlay for a stipulated use for a wastewater treatment facility, lagoon storage of effluent and the land application of effluent on a 211 acre parcel described as Township 34 South, Range 7 East, Section 28, Tax Lot 100 and Township 34 South, Range 7 East, Section 29, Tax Lot 700.

RECITALS:

1. Pursuant to Chapter 197 of the Oregon Revised Statutes and in conformance with the Statewide Planning Goals, Klamath County's Comprehensive Plan and the Klamath County Land Development Code which have been acknowledged by the Oregon Land Conservation and Development Commission.
2. Sections 48.040 and 59.830 of the Land Development Code states the procedures and requirements for filing an application.
3. Articles 26 and 28 of the Land Development Code state the procedures for joint Quasi-Judicial Hearings.
4. Articles 47, 48, 55, 57 and 59.8 of the Land Development Code states the approval criteria for a Comprehensive Plan Amendment, Change of Zoning, Limited Use Overlay and Condition Use Permits.
5. The criteria and standards for applying the Limited Use Overlay are contained in Articles 47, 48, 57 and 59.8 of the Land Development Code. The criteria for approval of a Conditional Use Permit in a Forest zone are contained in Article 55 of the Land Development Code.
6. On May 11, 2021, the Klamath County Board of Commissioners held a properly advertised public hearing to reconsider, on remand from the Land Use Board of Appeals, the application and receive evidence and testimony. A request for continuance was made and granted with the written record being open till June 15, 2021. After considering the evidence and testimony submitted into the record, the Klamath County Board of Commissioners, by motion and vote during deliberations on June 22, 2021, approved and reaffirmed a request for a Comprehensive Plan Amendment, Change of Zoning to apply the Limited Use Overlay for the development of a wastewater treatment facility with effluent storage lagoons and the land application of effluent with an approval of a Conditional Use Permit, on property legally described as Township 34, Range 7 East, Section 28, Tax Lot 100 and Township 34, Range 7 East, Section 29, Tax Lot 700.

Now, therefore,

The Klamath County Board of Commissioners finds and concludes, as follows:

SECTION 1. FINDINGS OF FACT: Based upon the evidence and arguments, the Klamath County Board of Commissioners make the following finding(s) of fact with respect to this application. Where factual conflicts arose, the Klamath County Board of Commissioners has weighed the evidence and resolved them consistent with these finding(s).

1.1 The Klamath County Board of Commissioners finds that proper legal notice was sent to the applicant, agent, adjacent property owners, affected agencies and media on April 23, 2021. Legal notice was published in the Friday, April 16, 2021 and Saturday April 17, 2021, editions of the Herald and News (legal ad).

1.2 The Klamath County Board of Commissioners finds the subject property is legally described as Township 34, Range 7 East, Section 28, Tax Lot 100 and Township 34, Range 7 East, Section 29, Tax Lot 700.

1.3 The Klamath County Board of Commissioners finds that the subject parcel was lawfully created in 1993 through land partition as Parcel 3 on Partition Plat No. LP 37-93.

1.4 The Klamath County Board of Commissioners finds that the subject property is not within the City of Chiloquin Urban Growth Boundary or City Limits.

1.5 The Klamath County Board of Commissioners find that the subject property is zoned Forest (F).

1.6 The Klamath County Board of Commissioners find that the subject property is within an area designated as Goal 5 Big Game Winter Habitat Overlay as recognized by the Oregon Department of Fish & Wildlife (ODFW). ODFW comments demonstrates that the applicant has evaluated and prepared a habitat mitigation plan for the impacts of development and that the mitigation plan when developed will be a net benefit to elk and wildlife habitat. The enhancement of, with greater quality of grasses, shrubs and aspens and other vegetation, will not result in the loss of habitat for threatened or endangered animal species that may be found on the subject property.

1.7 The Klamath County Board of Commissioners find that the subject property is not within the City Limits nor the Urban Growth Boundary for the City of Chiloquin and is not able to extend any urban public facilities to the property, particularly water and sanitary sewer.

SECTION 2. LEGAL FINDINGS: The Klamath County Board of Commissioners find that this Comprehensive Plan Amendment, Zone Change to apply the Limited Use Overlay for a stipulated development proposal of a wastewater treatment facility, effluent storage lagoons and land application of effluent with a conditionally approved Conditional Use Permit, is consistent with

Statewide Planning Goals, Oregon Administrative Rules and Klamath County Comprehensive Plan. The Klamath County Board of Commissioners find that this application, subject to the conditions of approval attached hereto, is consistent with the standards contained in Articles 47, 48, 55, 57 and 59.8 of the Klamath County Land Development Code, and hereby adopts the Finding(s), Conclusions and evidence noted as Exhibits SUP A, SUP B, SUP C, SUP D, SUP E, SUP W and SUP AH, submitted by the applicant in the whole Record as our own Finding(s) and Conclusions.

These legal finding(s) demonstrate that the application is in compliance with the Oregon Revised Statutes, Oregon Administrative Rules, Statewide Planning Goals, the Klamath County Comprehensive Plan, and Articles 47, 48, 55, 57 and 59.8 of the Klamath County Land Development Code.

SECTION 3. CONCLUSIONS: Based on the evidence and arguments included in the record, the Klamath County Board of Commissioners conclude that the proposed Comprehensive Plan Amendment, Zone Change, and Conditional Use Permit are in compliance with the Oregon Revised Statutes, Oregon Administrative Rules, Statewide Planning Goals, the Klamath County Comprehensive Plan and the Klamath County Land Development Code. Where factual conflicts arose, the Klamath County Board of Commissioners has evaluated and resolved them consistent with these conclusions.

3.1 Statewide Planning Goals: The Klamath County Board of Commissioners conclude that this application complies with Statewide Planning Goals:

3.1.1 Statewide Planning Goal 1, Citizen Involvement.

3.1.2 Statewide Planning Goal 2, Land Use Planning.

3.1.3 Statewide Planning Goal 3, Agricultural Lands.

3.1.4 Statewide Planning Goal 4 Forest Lands.

3.1.5 Statewide Planning Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces.

3.1.6 Statewide Planning Goal 6, Air, Water and Land Resource Quality.

3.1.7 Statewide Planning Goal 9, Economic Development.

3.1.8 Statewide Planning Goal 11, Public Facilities and Services.

3.1.9 Statewide Planning Goal 12, Transportation.

3.1.10 Statewide Planning Goal 13, Energy Conservation.

3.2 Klamath County Comprehensive Plan: The Klamath County Board of Commissioners conclude that this application complies with:

Goal 1: Citizen Involvement: Klamath County has established a mailing notice standard to provide for input from nearby citizens when changes are proposed to the Comprehensive Plan. Public notice is provided for all land use applications, consistent with state law. The surrounding neighbors were notified of the original hearing and notified of the remand hearing before the Board of Commissioners.

Goal 2: Land Use Planning: Klamath County has established a process in which individual property owners may apply for a plan change as prescribed in Article 48.040 KCLDC.

Klamath County has written hard copies of the Plan map available upon request at the Planning Department.

Klamath County has worked with and coordinated with all plans and programs from the applicable agencies.

Klamath County has established a land use review process and noticing for the changes and amendments proposed to the Comprehensive Plan. Klamath County does receive and consider any new information that is made available since the latest plan updates.

The official zoning map for Klamath County is consistent with the underlying land use plan map. The zoning district boundaries on the official zoning map typically follows existing property lines.

The Exception to Goal 4, addressed Article 48 KCLDC, which required findings demonstrating compliance with Article 47 KCLDC for a change of zoning to apply the Limited Use overlay on the subject property. Both the plan map and the official zoning map will have this overlay applied.

Goal 3: Agricultural Lands: Not applicable.

Goal 4: Forest Lands: The existing zoning on the subject property is Forest. This application for a change in the land use plan to the Limited Use zoning designation is consistent with and in conformance with the applicable Goals and policies of the Klamath County Comprehensive Plan.

Klamath County has provided procedures and review criteria and standards for development and non-forest uses in the Forest zones, as prescribed in the Klamath County Land Development Code.

Goal 5: Open Space: Klamath County has adopted Article 57, Significant Resource Overlay, into the Klamath County Land Development Code. The subject property is located within the Big Game Habitat overlay. The subject property is located within a Significant Resource Overlay for Winter

Elk Habitat. Article 57 KCLDC provides the procedures and general review criteria for the Big Game Winter Range. Rabe Consulting has addressed the winter range impacts and proposed mitigation measures. ODFW has reviewed the report and proposed mitigation plan and is in agreement to the mitigation plan along with monitoring measures. The Klamath Board of Commissioners agree with ODFW that there will be a net benefit to the elk and wildlife habitat, and there will be no loss of habitat for threatened or endangered animal species found on the subject property.

Goal 6: Air, Water and Land Resources Quality: The existing WWTF within the City of Chiloquin is not in compliance with the Federal NPDES standards and also not in compliance with the Oregon DEQ standards for discharging treated effluent water into the Williamson River. Klamath County Board of Commissioners approves the relocation of the treatment facility onto the subject property to ensure that coordination is done in compliance with the state and federal environmental programs to protect the waters of the state and the water quality for aquatic fish.

Goal 7: Areas Subject to Natural Disasters and Hazards: Not applicable.

Goal 8: Recreation Needs: Not applicable.

Goal 9: County Economy: Not applicable.

Goal 10: Housing: Not applicable.

Goal 11: Public Facilities and Services: Adkins Engineering has designed and are proposing the pre-treated effluent transport pipeline facilities within the public road, Highway 422 right-of-way, to be consistent with this goal.

There is no rural residential development proposed. There are no planned extensions of public services to the subject property and proposed lagoon facility. Klamath County approves the proposal to allow the City of Chiloquin to transport wastewater, store wastewater, treat wastewater, and apply wastewater onto the soil for disposal purposes. These matters shall be controlled, permitted and monitored by Oregon DEQ for compliance purposes.

The site may be served by an on-site well for potable water, and an approved Oregon DEQ septic system. The only public utility extension required for this facility is the main pipeline which will carry screened and pre-treated effluent from the existing WWTF to the subject site for storage and treatment. This pipeline is not designed for and will not be available for individual private property owner sewer connections.

The current WWTF for the City of Chiloquin is failing to meet federal and state environmental permitting requirements. The Wastewater Facilities Plan identified a preferred alternative to address these ongoing issues. The approved plan is to provide a wastewater treatment facility that meets regulatory requirements and is engineered appropriately for the current and forecasted future population of the City of Chiloquin. The plan is not to create excess capacity in

the system or to provide sewer service to properties outside of the UGB. The exception is necessary to implement the Wastewater Facilities Plan and to be in compliance with Oregon DEQ and Federal NPDES permit requirements.

Goal 12: Transportation: Not applicable.

Goal 13: Energy Conservation: Not applicable.

Goal 14: Urbanization: The City of Chiloquin has evaluated alternative sites within the Urban Growth Boundary and lands adjacent to the City for a practical size and feasible location that was available for the proposed uses. It has been demonstrated that the subject property is the closest suitable site meeting the requirements for the WWTF. The WFP identifies that the existing treatment facility is failing to meet state and federal water quality standards for discharging into the Williamson River.

3.3 Klamath County Land Development Code: The Klamath County Board of Commissioners conclude that this application complies with:

3.3.1 Articles 47, 48, 55, 57 and 59.8: The conditions of approval attached will assure compliance with the requirements and minimum standards contained within these articles of the Land Development Code. Requirements for the provision of a reasons exception to allow a portion of the property for wastewater treatment facility, effluent storage lagoons, and land application of effluent have been met or will be met through conditions of approval.

3.3.2 The criteria and standards for a reasons exception have been adequately addressed in the Klamath County Board of Commissioners findings, which are Exhibits SUP A, SUP B, SUP C, SUP D, SUP E, SUP W and SUP AH of the record. The exception and proposed development will ultimately provide compliance with Oregon DEQ and Federal NPDES permit requirements.

3.3.3 The Klamath County Board of Commissioners conclude that proper public notice was given per requirements and guidelines established in Article 32 of the Land Development Code.

SECTION 4. DECISION:

The Klamath County Board of Commissioners adopts the applicants Burden of Proof statements addressing Articles 47, 48, 57 and 59.8 along with the 2018 Chiloquin Wastewater Facilities Plan as Findings of Fact and evidence, as well as with the Staff Report as our own Findings of Fact and evidence to grant an exception to Goal 4, Statewide Forestry Goal and to establish the Limited Use overlay on the subject property to allow a wastewater treatment facility, lagoon storage of effluent and land application of treated effluent. CLUP 3-20

The Klamath County Board of Commissioners adopts the applicants Burden of Proof statements addressing Article 55, Conditional Use Permit, and site plan, as Findings of Fact and evidence as

our own Findings of Fact and evidence to approve a wastewater treatment facility, lagoon storage of effluent and land application of treated effluent. CUP 5-20

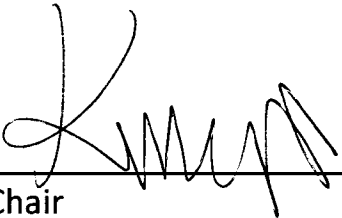
The Klamath County Board of Commissioners orders approval for a Goal 4 reasons exception to apply the Limited Use Overlay for the specific use of a Wastewater Treatment Facility, effluent storage lagoons, and the land application of effluent, on property legally described as Township 34, Range 7 East, Section 28, Tax Lot 100 and Township 34, Range 7 East, Section 29, Tax Lot 700. Conditions of Approval, as illustrated in Exhibit A.


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

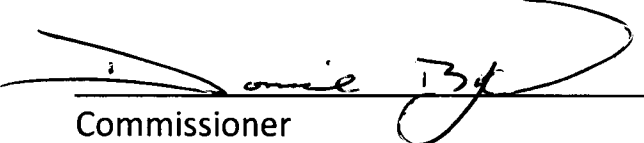
The Klamath County Planning Director shall draft for adoption by the Board of County Commissioners an Ordinance amending the Klamath County Comprehensive Plan – General Land Use Plan Map to reflect the proposed revision to the plan designation as shown on attached Exhibit A.

Dated this 17 day of September, 2021

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 by mail at 550 Capitol Street NE, Suite 235, Salem Oregon 97301-2552). Failure to do so in a timely manner may affect your rights.

Subject property of an exemption to the Statewide Forestry Goal (Goal 4) and the establishment of a Limited Use Overlay restricting the use of the subject property to wastewater treatment facility and the land application of effluent.

SEE MAP 34 07 33

125,300