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BEFORE THE KLAMATH COUNTY BOARD OF COMMISSIONERS

IN THE MATTER OF FILE NUMBER CLUP/ZC 3-20**FINAL ORDER**

WHEREAS, Adkins Consulting Engineering, Inc. 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 remand on April 26, 2023 before the Klamath County Board of County Commissioners; and

WHEREAS, at the April 26, 2023 hearing, the Klamath County Board of Commissioners adopted, as part of the record on remand, the record of all prior proceedings in this file, including but not limited to all prior appeals to LUBA (LUBA 2021-093/094 and LUBA 2020-094); and

WHEREAS, based on testimony entered and after 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 Board of Commissioners acting within their authority, unanimously **APPROVED** the request of 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 Conditional 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 April 26, 2023, the Klamath County Board of Commissioners held a properly advertised public hearing to consider, on remand from the Land Use Board of Appeals, the application and receive evidence and testimony. After considering the evidence and testimony submitted into the record, the Klamath County Board of Commissioners, by motion and vote during deliberations on April 26, 2023, 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.

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 finds that the subject property is zoned Forest (F).

1.6 The Klamath County Board of Commissioners finds 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 demonstrate 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 and will result in a net habitat gain and benefit. Applicant's mitigation plan is incorporated herein by reference and adopted by the Klamath County Board of Commissioners. The Klamath County Board of Commissioners further finds that there are no threatened or endangered species on the subject property, based on Applicant's T & E report, which is adopted herein and incorporated by reference. The Klamath County Board of Commissioners finds that the fencing will not be a danger to wildlife, due to the fact that ODFW has stated that despite fencing, there will be a net benefit to wildlife, and in consideration of the fact that ODFW is supportive of exclusion fencing, which will be built to ODFW standards and approval. The fencing is only around the lagoons and not the greater property.

1.7 The Klamath County Board of Commissioners finds 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 such as sanitary sewer to the property.

1.8 The Klamath County Board of Commissioners incorporates and adopts as its own findings, the document entitled "CLUP 3-20 & CUP 5-20 Supplemental Remand Findings," which is Exhibit A to the Staff Report of Erik Nobel.

1.9 The Klamath County Board of Commissioners carefully considered the testimony of all attendees at the hearing, as well as the April 26, 2023 letter from Charles Woodward, IV, attorney at law. The Klamath County Board of Commissioners rejects the contentions in the Woodward letter. The Klamath County Board of Commissioners defer to, and accept the expert testimony of ODFW and Andrea Rabe with regard to wildlife issues, including fencing. Further, the Woodward letter is misinformed as to the date of ODFW concurrence with the updated

mitigation plan. With regard to odor, the Woodward letter cites the “clearly supports” standard out of context and is inapplicable. The Klamath County Board of Commissioners finds the evidence of similar lagoons, as well as the testimony of Daniel Scalas, P.E. regarding the similarity of the similar lagoons, to be compelling and find that the project will not result in offensive odors. The threatened and endangered species report clearly states that there will “be no effect to threatened or endangered species or their associated critical habitats from the proposed Project.”

1.10 The Klamath County Board of Commissioners finds, in addition to the foregoing, that the subject site is suitable for the project due to the size, shape, location, topography, the existence of natural features and natural improvements and incorporates applicant’s findings and evidence in that regard and further finds that wind action will mitigate mosquito issues and will use SolarBees when necessary to agitate, mix and prevent stagnation and further mitigate and/or prevent mosquito proliferation and odor issues. Existing and planted trees will provide a visual screen. The topography and location across from Highway 422 add additional screening and natural odor barrier. The ferric chloride injection at the pump station within the existing facility will further mitigate odor at the lagoons. The topography of the subject property climbs toward the northeast and falls to the southeast, with the topographical change helping to provide a visual buffer from the properties the east of the subject.

1.11 The Klamath County Board of Commissioners incorporates the LUBA records of LUBA 2021-093/094 and LUBA 2020-094 and considers those records before it in this remand hearing and application.

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 and incorporates the Finding(s), Conclusions and evidence noted as CLUP 3-20 and CUP 5-20 Supplemental Remand Findings and all exhibits thereto, all exhibits to the hearing Staff Report, Exhibits SUP A, SUP B, SUP C, SUP D (SUP A-D are contained within Record 356-429, LUBA 2021-093), SUP E (Record 444, LUBA 2021-093), SUP W (Record 325, LUBA 2021-093) and SUP AH (Record 87, (LUBA 2021-093), 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 KCDC.

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 with the mitigation plan along with monitoring measures. The Klamath Board of Commissioners agrees 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 and there are no threatened or endangered species 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. It is only in compliance with interim standards set by the MAO until the new plant is constructed. 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 operations building onsite 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 the aforementioned Exhibits SUP A, SUP B, SUP C, SUP D, SUP E, SUP W and SUP AH of the record, as well as CLUP 3-20 and CUP 5-20 Supplemental Remand Findings and all exhibits thereto, and all exhibits to the hearing Staff Report. 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, along with Exhibits SUP A, SUP B, SUP C, SUP D, SUP E, SUP W and SUP AH of the record, as well as CLUP 3-20 and CUP 5-20 Supplemental Remand Findings and all exhibits thereto, and all exhibits to the hearing 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 well as Exhibits SUP A, SUP B, SUP C, SUP D, SUP E, SUP W and SUP AH of the record, as well as CLUP 3-20 and CUP 5-20 Supplemental Remand Findings and all exhibits thereto, and all exhibits to the hearing Staff Report, 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

Based on the foregoing, 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 described in Exhibit A, and as illustrated on the Zoning Map and the Site Plan, attached hereto and incorporated herein as Exhibit B and Exhibit C.

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 27th day of June, 2023

FOR THE BOARD OF COMMISSIONERS



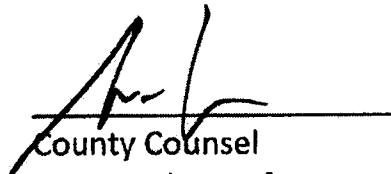
Chair



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.

EXHIBIT A

Conditions of Approval by the Klamath County Board of Commissioners

- 1) Prior to permits, the City of Chiloquin shall provide evidence of an Ordinance that prohibits any lands outside of their UGB or unincorporated community boundary to be served with the urban sewer system and mainline, consistent with OAR 660-011-0060.
- 2) The Klamath County Board of Commissioners and the City of Chiloquin stipulate that no rural properties located outside of the Chiloquin UGB or unincorporated community boundary will be served with sewer service from this urban sewer system and transport mainline. The Klamath County Board of Commissioners or community development may require the City of Chiloquin to execute a restrictive covenant to enforce this condition.
- 3) Prior to and during construction operations, if any cultural or archaeological artifacts are found, the applicant will cease activities and report to appropriate tribes according to the project Inadvertent Discovery Plan.
- 4) Prior to operations on the subject property, the City of Chiloquin shall designate a contact person within City Hall for any neighboring property owner to report of any new nuisance that may arise outside of the required/scheduled monitoring of the Wastewater Treatment Facility and operations.
- 5) Prior to operations on the subject property, the City of Chiloquin shall complete all recommended Elk Habitat mitigation measures made by Rabe Consulting and as reviewed, inspected and approved by ODFW.
- 6) Prior to operations on the subject property, the City of Chiloquin shall obtain any license, permit or other required approvals from the Oregon DEQ.
- 7) Prior to operations on the subject property, the City of Chiloquin shall plant sufficient amount of conifer trees, as recommended by a professional forester for the carrying capacity of the soils present, adjacent to and within 100-feet of Highway 422 for screening purposes.
- 8) Prior to operations on the subject property, the City of Chiloquin shall install an exclusion fence, built to ODFW specifications and approved by ODFW.
- 9) The City of Chiloquin shall ensure adequate mixing of the lagoons when necessary by the use of SolarBees.