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Via Email

Klamath County Planning Commission
c/o Klamath County Planning Department
Government Center, First Floor
305 Main St.
Klamath Falls, OR 97601
(541) 883-5121
enobel@klamathcounty.org

Re: Testimony on Behalf of Judy Dahl and Joyce Jacobus for CLUP 3-20 and CUP 5-20, Articles 47 (zone change), Article 48 (comprehensive plan designation change), Article 55 (conditional use permit), Article 59 (LU Overlay zone).

Members of the Planning Commission,

On behalf of Judy Dahl and Joyce Jacobus please accept this testimony for the above-entitled planning actions on remand from the Land Use Board of Appeals (LUBA).

The applicant alleges that the "Lagoon-Irrigaiton Area will have a permanent impact of 25 acres and construction of water treatment ponds. The remainder of the Lagoon-Irrigation Area will be improved through project actions by the application of irrigation water (reclaimed water from the wastewater treatment system) and aspen release through reduction in pine encroachment." This conflicts with the allegations that the ponds and the irrigation areas will be fenced off, totaling 50 acres (35 acres of irrigation area fenced-off and 15 acres of sewage lagoons). If the entire area is 211 acres and 50 acres will be fenced-off, then there is clearly a net loss of habitat, despite the allegation that the goal is to achieve a no net loss of either predevelopment habitat quantity or quality. If the 50 acres is fenced off, including sewage lagoon ponds, there is no possibility of no net loss of habitat for elk, whether quantitatively or qualitatively. Even the ODFW representative indicated that he was "[c]oncerned about fencing and wildlife." Notably, the figures presented by the applicant (including 3 lagoons at 3.7 acres for the primary treatment lagoon, 2.47 acres for the secondary treatment lagoon, and a storage

EXHIBIT SUP X
FILE # CUP 3-20
6 pages

lagoon of 9.13 acres) add up to more than 15 acres for the lagoons. Beyond that, the applicant does not even identify the overflow area for the lagoons. This will be necessary during the freezing and thawing of the lagoons, heavy rainfall, and melting snowpack.

As to the allegation that the applicant is improving water quality in the Williamson River, the Klamath Basin TMDL Coordinator states that "in the TMDL one can ascertain that the contribution of the WWTP is small in the gran scheme of things." Exhibit 1. Moreover, the 2002 Upper Klamath Lake Drainage TMDL and WQMP "targets a 40% loading rate reduction" and the TMDL Coordinator states that "the Chiloquin WWTP has made the needed changes to comply with the 40% reduction in phosphorous as required by the TMDL and by permit." The applicant has made upgrades and improvements to its facility to only to inexplicably abandon the facility.

The applicant also alleges that there will be a "[r]eduction in conifer encroachment. The pine component will be removed within the irrigation area to allow for release of aspen and desirable habitat shrubs (i.e., bitterbrush, willows)." The applicant, however, also relies upon trees to shield the lagoons and mitigate odor. Either the applicant will reduce the conifers and pines (and apparently the area has already been clear cut) or the applicant will use the trees to shield the lagoons and mitigate odors. The applicant cannot have it both ways. ODFW expressed concerns about the loss of trees. It is undisputed that winter range for elk is intended to provide cover, which is incompatible with removing trees in elk winter range habitat.

KCLDC 47.030 requires conformance with the Comprehensive Plan and does not afford special privileges to an individual property owner not available to the general public or outside the overall public interest for the change. The objectives of the comprehensive plan are to "[p]rotect forest lands from incompatible uses" and "[e]ncourage an increase in timber supply and consequently an increase in manufacturing and employment through intensification of management of both publicly and privately owned forest lands." The rationale in the first forest policy designating lands as forest is to "preserve the maximum area of productive forest land." This proposal removes 50 acres of forest land from use as wildlife habitat. Under policy 3 for the forest zone, "existing forest uses shall be protected unless proposed land use changes are in conformance with the Klamath County Comprehensive Plan," and the rationale is to "[p]revent loss of existing forest uses[.]" Because the proposal removes 50 acres of elk habitat through fencing (and likely more because the applicant has indicated the entire area would be fenced), the applicant has not demonstrated conformance with the forest policies of the comprehensive plan.

KCLDC 47.030 requires that "[t]he property affected by the change of zone designation is adequate in size and shape to facilitate any uses allowed in conjunction with such zoning." The application alleges that no suitable places within the UGB are available, but the application does not consider the *existing facility*. The facility has cured the phosphorous issue, and, according to the TMDL coordinator, the facility is in compliance. The applicant also fails to account for immediately adjacent residential uses and the adverse impacts from the proposed use

on adjacent residential uses (including odors, well and groundwater contamination, risk of flooding, increase in vectors (mosquitos and midge flies, Exhibit 3 ("Lagoon midge flies, or chironomids, are common during warm summer temperatures, and swarms of them can drive local residents indoors."). Moreover, the applicant alleges that the site will be inspected once per month[1], which means that there may be significant problems with the lagoon that go un-remedied for weeks at a time. Additional disadvantages from wastewater lagoons include settled sludges and inert material require periodic removal (the applicant has not addressed the effects and costs of removal), difficult to control or predict ammonia levels in effluent, sludge accumulation will be higher in cold climates due to reduced microbial activity, mosquitos and similar insect vectors can be a problem if emergent vegetation is not controlled, requires large expanses of land, strong odors occur when the aerobic blanket disappears and during spring and fall lagoon (Exhibit 4). The applicant alleges that the subject property was chose due to the size, usable area and the rural location, but these allegations are belied by the fact that the applicant has placed the lagoons on the edge of the subject property and immediately across from residences.

KCLDC 47.030 requires that the "proposed change of zone designation will have no significant adverse effect on the appropriate use and development of adjacent properties." The applicant alleges that "[t]he project's location near the west side of the property takes advantage of the highway right-of-way to provide separation between the proposed use and properties to the west. The road itself is not a buffer that will prevent odors, vectors, and other significant adverse effects from adjacent residential use and development. The applicant concedes that that "[t]he proposed facility could have some periodic negative impacts related to odor and mosquitos. Moreover, the applicant's placement of the lagoons immediately adjacent to the road and residences raises serious issue of overflow during heavy rains and/or melting snow. Cold weather can result in inversions in the spring and fall when the surface water layer may have a higher density than lower layers due to temperature fluctuations. This higher density water sinks during these unstable periods, creates turbidity, and produces objectionable odors. The applicant has not demonstrated how it will address these issues and prevent odors in the fall and spring. The EPA has identified limitations of wastewater lagoons that include the inability of the process to meet a 30 mg/L limit for TSS due to the presence of algae in the effluent, particularly during warm weather, and not meeting effluent criteria consistently throughout the year. In cold climates, low temperatures and ice formation will limit process efficiency during the winter. Odors may be a problem in the spring and fall during periods of excessive algal blooms and unfavorable weather conditions. Because the proposal will occur in areas where freezing takes place, the applicant must demonstrate how freezing will not adversely affect nearby residences, including odors and sewage overflows. Indeed, odor is common in lagoon systems with wintertime ice cover, when the ice melts in the springtime and the backlog of winter stored BOD

[1] The application at various times says there will be once per month visits, once per day visits, and more likely once per week visits.

is oxidized. Exhibit 6. Odor in lagoons is always due to low oxygen conditions where the bacteria use alternate electron acceptors to oxidize BOD; sulfate, producing hydrogen sulfide, and true fermentation of organic materials, producing odorous organic acids. This condition occurs at organic overloading and low oxygen conditions, and when sludge accumulation becomes excessive. Odor is common in lagoon systems with wintertime ice cover, when the ice melts in the springtime and the backlog of winter stored BOD is oxidized. Exhibit 6.

The applicant has not included in the costs of the proposal the cost of removal of sludge. Lagoon dredging is by far the most common form of lagoon sludge removal. There are a few different methods of lagoon dredging, all of which involve mechanically removing sludge from the lagoon. Once the sludge is removed, it is dried and is transported to either a landfill or a land application facility. This is an extremely laborious and costly process. An average cost is around $350 per dry ton of sludge. Many lagoons can easily have as much as 2500–5000 dry tons of sludge stored up (i.e. $875,000–$1,750,000). Exhibit 5.

KCLDC 47.030 requires that "[t]he proposed change is supported by specific studies or other factual information, which documents the public need for the change." As indicated by the TMDL coordinator, the contribution from the Chiloquin Wastewater Treatment facility is negligible. There is no need to limit the discharge of the treated effluent into the reiver. The applicant also concedes that the treated effluent under alternatives 1 and 2 can met regulatory requirements. Moreover, it has not been established that the wastewater lagoons would decrease the operating costs. The wastewater will still be processed through the existing facility (a cost that has not been addressed) and lagoons have to be leak proof and may require pumps, manholes for clean outs and heavy liners. These items drive up the costs quickly. Exhibit 7. Moreover, dredging of the lagoons requires significant costs, as noted above. The City has not accounted for the costs of installing the pipeline and the necessary maintenance of that pipeline. It must be disputed that the proposed location is "near" the source of the wastewater given that it is almost two miles away from the source. It is simply false and contrary to the evidence in the record that the wastewater lagoons can only be reasonably obtained at the proposed exception site.

For similar reasons, the applicant has not presented reasons to justify an exception, under ORS 197.732(2)(c)(A)-(D).because the issues associated with the existing facility have been resolved, according to the TMDL coordinator, and there is negligible contribution to the Williamson River. Moreover, the applicant has not justified the costs of the lagoons costs as compared with using the existing facility, which will have to still be used even with the lagoons.

The applicant's proposed ESEE analysis does not account for wildlife that becomes stuck within the ponds and within the fenced-in, irrigated areas. Even ODFW noted that it is concerned about the effects to wildlife and to elk from fences, despite the fact the letter fails to address the amount of acreage that will be taken out of resource use as wildlife habitat.

The ESEE analysis prepared under Article 48 is also inadequate. It fails to identify the energy needs of the project, including the use of the existing facility and the energy requirements for the pumps. The social component fails to accurately or adequately account for individuals that will be adversely affected by odors, vector, and potential groundwater contamination. The economic component also fails to account for the costs identified above, including the pump costs, dredging costs, use of the existing facility, and so forth. The environmental costs are also significant given that the applicant will be removing significant elk winter range habitat. In short, the ESEE analysis is inadequate and does not account for all relevant conflicts.

For KCLDC 48.030's requirement that the "proposed change [in comprehensive plan designation] complies with the Comprehensive Plan," the proposal is inconsistent with Goal 5, Policy 12, which provides that "[t]he county shall protect significant big game winter range and other significant wildlife habitat." It is undisputed that the proposal will permanently remove 50 acres of wildlife habitat. The notion that there will be a no-net loss of habitat is unsubstantiated because fencing will prevent or inhibit the elk from its habitat. The applicant also alleges that 120 acres would be directly affected. While at some points the applicant alleges that the lagoons and irrigation area will be fenced off, at other times, the applicant alleges that the entire property will be fenced off. At the very least, 50 acres will be removed from significant wildlife habitat and at most the subject property will be removed from use as significant wildlife habitat. As for Goal 6, Policy 5, the applicant alleges that the existing wastewater treatment facility is not in compliance with the Federal NPDES standard and not in compliance with the Oregon DEQ standards. The email from the TMDL coordinator demonstrates that this is not the case. Moreover, even if the applicant's allegations were true, the applicant would be trading negligible pollution in the Williamson River for removal of significant elk winter range.

The applicant must take an exception to Goal 11. It is specifically disputed that the applicant is not proposing to extend public services to the lagoon facility. The lagoon facility itself is an extension of urban public facilities that will be placed on rural land. This cannot be accomplished without taking an exception to goal 11. Goal 11 expressly states "[l]ocal governments shall not allow the establishment or extension of sewer systems outside urban growth boundaries or unincorporated community boundaries, or allow extensions of sewer lines from within urban growth boundaries or unincorporated community boundaries to serve land outside those boundaries, except where the new or extended system is the only practicable alternative to mitigate a public health hazard and will not adversely affect farm or forest land." Here, no "public health hazard" has been identified and the proposal is removing significant wildlife habitat.

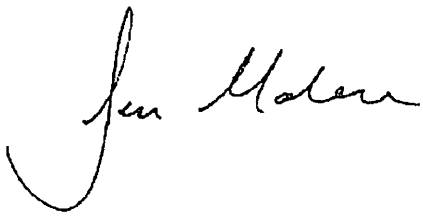
The applicant must take an exception to Goal 14 because the proposal places urban uses outside of the urban growth boundary and on rural lands. The wastewater treatment facility accommodates urban uses and is currently placed within the urban area. To place it outside of the urban area requires an exception to Goal 14.

Need to identify the overflow area and whether it will also be fenced off.

The facility is an extensive impact facility and is therefore a conflicting use in big game winter range.

The applicant has not addressed whether the lagoons will be sealed.

Sincerely,



Sean T. Malone
Attorney for Judy Dahl and Joyce Jacobus

Cc:
Client

Enclosures

Exhibits 1 through 7.