

BEFORE THE KLAMATH COUNTY PLANNING COMMISSION AND
BOARD OF COMMISSIONERS

Application for Approval to allow the Land Application of Class B Biosolids as a soil amendment on approximately 750 acres of agricultural land for the production of certain crops on property located at 18704 North Poe Valley Road in Klamath County.

Applicant: South Suburban Sanitary District

Case File No. TYP II 21-20

South Suburban Sanitary District

Final Written Argument
ORS 197.763 (6) (e).

North Poe Valley Road Site

I. Introduction.

This Final Written Argument is submitted by the South Suburban Sanitary District ("District") on February 16, 2021 pursuant to ORS 197.763 (6)(e) and the procedures established by the County regarding the above-entitled matter. The public record was closed for Case File No. TYP II 21-20 on February 9, 2021. This Final Written Argument does not contain any new evidence. It is intended to summarize the District's legal position based on the criteria applicable to the County's review of the District's

EXHIBIT AH
FILE # TYP II 21-20

proposed Class B Biosolid Application for its North Poe Valley Road Site and the evidence in the record.

The Planning Commission and Board have scheduled a joint meeting for February 23, 2021 to deliberate and render a decision regarding Case File No. TYP II 21-20. No new testimony or evidence can be submitted at this joint meeting since the record is closed.

II. The District's Request.

The District is proposing to apply Class B Biosolids as a soil amendment to existing farmland for the production of certain crops ("Class B Biosolid Project" or "Project"). Biosolids are nutrient rich organic solids that will be derived from the District's treatment of domestic wastewater at its facility located on Maywood Drive. The organic matter in the Biosolids will improve the quality of the cultivated soil and the added nutrients improves crop growth. The Biosolids will be delivered by truck from the District's Maywood facility to the North Poe Valley Road Site.

The farmland is located on the south side of North Poe Valley Road, approximately ¼ mile east of the intersection of North Poe Valley Road and Hwy. 140 E. ("Property). The Property is approximately 976 acres in size and

zoned Exclusive Farm Use – Cropland (“EFU-C”). The area of the Property to be used for the application of Class B Biosolids is approximately 750 acres (less setbacks and non-productive land) and is currently in agricultural production. The District owns the Property.

III. The District’s Class B Biosolid Project is a permitted use under State of Oregon and Klamath County Law.

The use of Biosolids as a soil amendment on agricultural land has been legislatively recognized by the State of Oregon as a permitted use on farmland (Senate Bill 212 – 2001). The District’s Class B Biosolid Project is a permitted use in the County’s EFU zone subject to the issuance of a permit from the Department of Environmental Quality (“DEQ”). Klamath County Development Code (“KCLDC”) 54.010 V.

DEQ’s review of a Biosolid project is complex and technical and requires DEQ to consider EPA’s requirements of 40 CRP Part 503 regarding the regulation of Biosolids as part of its review and the issuance of the District’s National Pollutant Discharge of Elimination System (“NPDES”) permit. The District previously submitted into evidence a lengthy document entitled “A Plain English Guide to the EPA Part 503 Biosolid Rules” that describes the rigorous review that will govern the District’s Class B Biosolid

Project at DEQ (See Exhibit X). The public can participate in the DEQ permitting process and address any resource or environmental concern related to the Class B Biosolid Project.

IV. The Planning Director's Staff Report.

The Planning Director's Staff Report for the District's Class B Biosolid Project acknowledges that the Project is a use permitted by State of Oregon law and the County's EFU Zone subject to Site Plan Review and the issuance of a permit from DEQ.

The Staff Report identifies the "Applicable Criteria" governing the District's Class B Biosolid Project: KCLDO 54.010(V), KCLDO 54.030 (L), the Site Plan Review Criteria of Article 41 of the KCLDO, and the Land Application Requirements of ORS 215.246, ORS 215.247, ORS 215.249 and ORS 215.251 regarding the Land Application of Biosolids.

Chapter 413 of the Klamath County Code is not a criterion identified by the Planning Director as applicable to the District's Class B Biosolid Project since the District's Application for Case File No. TYP II 21-20 was filed with the County and deemed complete by the Planning Director prior to the County's adoption and effective date of Ordinance No. 93. As a result, the Planning Commission nor the Board can apply a condition of

approval requiring the District's Class B Biosolid Project to meet standards identified in the new Ordinance pursuant to ORS 215.427 (3).

It is the Planning Director's opinion that the "submitted TYP II Review" for Case File No. 20-21 can meet the criteria set forth in the Klamath County Land Development Code subject to one condition that the District shall obtain any and all permits and approvals required from the Oregon Department of Environmental Quality. The District agrees with the Planning Director's conclusion and his proposed condition of approval.

V. The Evidence in the Record.

The testimony submitted by opponents regarding Case File No. TYP 20-21 is not relevant to the criteria applicable to the District's Class B Biosolid Project and cannot be used as a basis to deny the District's Application. As explained below, any concerns expressed by opponents can be satisfactorily addressed during the DEQ permitting process which is a condition of approval recommended by the Planning Director.

Concerns expressed by some opponents that the District's plans and maps were inaccurate were specifically addressed in a letter from Gregory S. Hathaway, the attorney for the District, dated January 26, 2021,

and supported by a Letter from Walt Meyer, the District's Project Engineer dated February 1, 2021 (*See Exhibit AC, Exhibit A*). For example, Mr. Meyer explained that the District relied on existing Oregon Water Resource Department ("OWRD") maps, which the District believed were inaccurate, but that concerns regarding the exact location of wells on the North Poe Valley Road Site would be addressed in the DEQ permitting process where the District would be required to survey the site and precisely show any wells located on the Site.

Some opponents also expressed concern regarding the existence of wells on the Site and the land application of Class B Biosolids potentially contaminating those wells. Mr. Meyer advised in his Letter (*See Exhibit AC, Exhibit A*) that the District plans to decommission the wells on the Site to protect groundwater resources in compliance with state rules for abandoning wells (OAR Chapter 690, Division 220). In the alternative, Mr. Meyer advised that should the District retain any existing wells on the Site, State law requires that certain setbacks be established including the setback that Class B Biosolids cannot be applied within 200 feet of a well. As a result, any groundwater quality concerns expressed by opponents will either be

addressed by capping or abandoning any existing wells on the Site in accordance with State law or, in the alternative, complying with setbacks established by State law. As Mr. Meyer points out, these issues will be addressed in the DEQ permitting process.

Some opponents identified alternative areas or methods regarding the District's plan to apply Class B Biosolids. As your Planning Commission and Board are aware, ORS 215.246 (3) only requires the District to address alternatives identified in the public process. Here, opponents have identified the Swan Lake area, and also the City of Klamath Falls and Klamath Drainage District approach as alternatives to the District's proposal to apply Class B Biosolids on its North Poe Valley Road Site.

Based on LUBA's recent decisions reversing Klamath County's denials of the District's two Recycled Water Projects, an applicant's burden of consideration under ORS 215.246 (3) only requires an applicant to provide a written explanation for not using any sufficiently identified alternative under the very limited obligation imposed by ORS 215.246 (3). *South Suburban Sanitary District v. Klamath County*, (LUBA No. 2020-082); and *South*

Suburban Sanitary District v. Klamath County and Susan F. House and William D. Kennedy, (LUBA No. 2020-090).

Here, the District owns the North Poe Valley Road Site. As a result, Mr. Meyer, advises in his Letter (*See Exhibit AC, Exhibit B*) that the District restricted its consideration of alternatives, including the Swan Lake Area alternative and methods as identified above, to land controlled by the District. This reason is sufficient to meet the District's obligation under ORS 214.246 (3).

In addition, the District previously evaluated the City of Klamath Falls and Klamath Drainage District ("KDD") approaches in its alternatives analysis for its two Recycled Water Projects that were recently approved by the County based on LUBA's reversals. The District concluded that a City of Klamath Falls alternative was not viable because the City did not currently have a defined project that would meet all of the state regulatory requirements. The District also concluded that a KDD alternative was not a viable alternative because under the current KDD operating system any recycled water would be discharged to the Klamath River which would not be allowed by the State. LUBA determined that these

explanations complied with the requirements of ORS 215.246 (3). And, in any event, since the District owns and controls the North Poe Valley Road Site, that is sufficient reason for the District to meet its obligations under ORS 215.246 (3).

Based on the foregoing, the evidence in the record supports the Planning Director's recommendation of approval of the District's Class B Biosolid Project and cannot be used as a basis to deny the Project.

VI. Conclusion.

The District respectfully requests the County to adopt the Planning Director's conclusion that the District's Class B Biosolid Project (Case File No. TYP 20-21) meets the applicable criteria set forth in the Klamath County Land Development Code and approve the District's Application subject to the condition that the District obtain the necessary permits and approvals from DEQ.

DATED this 16th day of February, 2021.

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