



BEFORE THE PLANNING COMMISSION

KLAMATH COUNTY, OREGON

Hearing Dates: 03/16/2021
Application File No: TYP II 22-20
Staff Contact: Erik Nobel

REVISED STAFF REPORT

APPLICANT: South Suburban Sanitation District (SSSD)

FILE NO. TYP II 22-20

REQUEST: Approval for land application of Bio-Solids for agricultural production.

GENERAL LOCATION: The subject properties are generally found east of Hwy 39, North of Short Road, East and West of Reeder Road and South of the OC&E Trail.

MAP DESCRIPTION: Map – R-3910-01700 Tax Lot(s): 01300, 01200; Map: R-3910-01800 Tax Lot(s): 00901; 00800; Map – R 3910-02000 Tax Lot(s) 00300, 00200, 00600; Map: R-3910-019B0 Tax lot(s): 00601.

REVIEW CRITERIA: Article 54.010, 54.030(L) and 41.040 of the Klamath County Land Development Code

ZONE DESIGNATION: Exclusive Farm Use – Cropland (EFU-C)

APPLICATION SUMMARY

South Suburban Sanitary District is applying for a TYP II review to allow the spreading of Bio-Solids on lands zoned Exclusive Farm Use (EFU). Spreading Bio-Solids is a permitted use in the EFU zone under section 54.010 V of article 54.

In 2001, Senate Bill 212 was passed by the Oregon Legislative Assembly to allow the land application of reclaimed water, agricultural process water and biosolids for agricultural, horticultural or silvicultural productions. Upon passage of Senate Bill 212, DLCD revised Goal 3 (agriculture land) Oregon Administrative Rule (OAR) 660-033 to incorporate these amendments into the state wide program for land use planning.

There are several steps the applicants go through prior to receiving approval for land application:

- 1) Obtain the required DEQ application and Land Use Compatibility Statement (LUCS) Form
- 2) Submit the completed LUCS to the County planning office for review and approval

- 3) County conducts its land use review process in accordance with requirements of law and returns the LUCS to the Applicant with any findings.
- 4) The applicant submits the DEQ application and the approved LUCS to DEQ for processing
- 5) DEQ processes the application and conducts a technical review in accordance with its rules and requirements of the law.
- 6) The applicant receives final approval from DEQ to conduct land application operation.

APPLICABLE CRITERIA

Land application of recycled water is a permitted use (54.010(V)) in the Exclusive Farm Use Zone, subject to a Type II Administrative Review Process (Article 22) and subsection 54.030(L). Permitted Uses in the EFU Zone are subject to the site plan review criteria of Article 41.

Article 54.030(L): *Land application of reclaimed or process water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an EFU zone is subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251.* **Land Application of Reclaimed or Processed Water**

Article 41: Site Plan Review Criteria:

- A. *A site plan may only be approved if it meets all applicable review standards and criteria of this code.*
- B. *A site plan shall be reviewed against all applicable requirements of this code.*

Application of Bio-Solids are also subject to the standards found in **Oregon Revised Statute (ORS) 215.246**. ORS 215.246(3) states:

When a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids under a license, permit or approval by the Department of Environmental Quality, the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered and, if the alternatives are not used, explain in writing the reasons for not using the alternatives. The applicant must consider only those alternatives that are identified with sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The applicant has addressed the above criteria in their application submittals for the TYP II Review with Burden of Proof (Exhibit B).

Review of Klamath County Land Development Codes Review Standard and Criteria:

Article 57: Significant Resource Overlay

Proposed Finding: This article is not applicable. There are no Goal 5 resources identified on the subject property such as Mineral and Aggregate resources, Riparian Area, and Big Game Habitats. Oregon Department of Fish and Wildlife were notified of this application, and did not respond.

Articles 58 – 58.4 Airport Safety Overlays

Proposed Finding: This article is not applicable. The subject properties are not in an Airport Safety Overlay.

Article 59 – Flood Hazard Overlay

Proposed Finding: This article is not applicable. The subject properties are not in a 100-year Floodplain as determined by the 1984 Flood Insurance Study for Klamath County.

Article 59.4 - Geothermal Overlay

Proposed Finding: This article is not applicable. The proposed use application of biosolids is not a commercial or industrial activity nor is the applicant proposing to use any geothermal resource.

Article 59.8 - Limited Use Overlay

Proposed Finding: This article is not applicable. The proposed use application of biosolids is a permitted use in the EFU zone.

Article 59.9 – OR 66 Greenspring Hwy Interchange Area Management Plan

Proposed Finding: This article is not applicable. The subject properties are approximately 6 miles away for the intersection Hwy 97, Hwy 140 and Hwy 66.

Article 61 – Lot Size and Shape:

Proposed Finding: This article is not applicable. The proposal will not create any new lots or parcels.

Article 62 – Height and Setback

Proposed Finding: This article is not applicable. The purpose of this article is to establish the minimum requirement for structure height and setback from property lines. The application is to apply biosolid does not require the construction of any buildings.

Article 63 – Wireless Communication

Proposed Finding: This article is not applicable. The proposed use application of biosolids is not a wireless communication facility.

Article 64 – Fence, Walls and Screening

Proposed Finding: This article is not applicable. No fence or walls are being constructed as part of this application. There is no required screening required in the EFU zone for a permitted use.

Article 65 – Landscaping

Proposed Finding: This article is not applicable. Landscaping is only required in the Commercial, and Industrial zones, in new or expanding manufacture home parks, and Multifamily Structures and PUD. The proposed use application of biosolids is not a commercial or industrial activity nor residential.

Article 66 – Signs

Proposed Finding: This article is not applicable. No signs are being proposed as part of this project.

Article 68 – Off Street Parking and Loading

Proposed Finding: This article is not applicable. The proposed use application of biosolids does not generate a need for Off Street Parking.

Article 71 – Vehicular and Non-Vehicular Access and Circulation

Proposed Finding: There are existing public roads from the treatment facility on Laverne Street to the subject properties. Both the treatment facility and subjected properties have permitted accesses. The application does not require of the construction of any additional streets or roads. ORS 246.247 states the use of roads to transport biosolids is not part of a land use decision. Tracking of material onto County road is always a concern. To prevent material being tracked onto County Roads commercial driveways way be required. This article can be met with Conditions 2, 3, and 4.

Article 72 – Street Name, Number and Signs

Proposed Finding: This article is not applicable. No new streets are being created.

Article 73 – Site Drainage

Proposed Finding: This article is not applicable. A drainage plan may be required by the Planning Director or the Director of Public Works for any development or land use which: A. Involves a land disturbance through grading, excavation or paving on lands with slopes in excess of 10 percent; B. Involves a land disturbance through grading, excavation or paving of an area that might reasonably be expected to impact drainageways; C. Involves a proposal that will create impervious surfaces of such extent that might reasonably be expected to impact drainageways; D. Involves land subject to local ponding due to soil or topographic conditions; or E. Involves land located in an area with a history of flooding, or may be subject to flooding.

The proposed use application of biosolids does not involved any grading, excavating or paving nor has flooding been identified as an issue on the subject properties.

Article 74 - Urban Area and Rural Service Center Water, Sewer and Fire Protection.

Proposed Finding: This article is not applicable. The subject properties are outside of any urban area.

Article 75 – Rural Area Water and Sewer Service.

Proposed Finding: This article is not applicable. The proposed use does not require sewer or water.

Article 76 – Utilities

Proposed Finding: This article is not applicable. The proposed use does not require utilities.

Article 77 – Solid Waste

Proposed Finding: This article is not applicable. The proposed use does not require solid waste collection nor is it within the Klamath Falls Urban Area.

Article 81 - Mineral and Aggregate Extraction Standards

Proposed Finding: This article is not applicable. The proposed use is not an Aggregate site

Article 82 - Camping

Proposed Finding: This article is not applicable. The proposed use will not include Camping.

Article 83 - Planned Unit Development

Proposed Findings: This article is not applicable. The proposed use is not a Planned Unit Development.

Article 84 – Manufacture Dwelling, Recreational Vehicle, and Park

Proposed Findings: This article is not applicable. The proposed use is not a Manufacture Dwelling, or Recreational Vehicle Park.

Article 85 – Home Occupation

Proposed Findings: This article is not applicable. The proposed use is not a Home Occupation.

Article 86 – Archeological Resources

Proposed Finding: The proposed use application of BioSolid is a permitted use in the EFU. Biosolid are applied to agricultural land in the same manner as other fertilizers. Fertilizing agricultural land is an accepted farm practice. Art. 86.030(C) states accepted farming practices are exempt from the requirements of this article. Both Oregon State historical Preservation Office and the Klamath Tribes were notified of this application. Neither responded. This article is not applicable.

Article 87 – Historical Building and Sites

Proposed Finding: The proposed use will not affect any historic structures. This article is not applicable.

Article 88 – Destination Resort

Proposed Finding: The proposed use is not a destination resort. This article is not applicable.

Article 89 – Accessory Dwelling Unit

Proposed Finding: The proposed use is not an Accessory Dwelling Unit. This article is not applicable.

Article 99 – Sensitive Bird Species Habitat Overlay

Proposed Finding: The purpose of the Sensitive Bird Species Habitat Overlay is to ensure that sensitive habitat areas identified in the County's Goal 5 Sensitive Species Inventory as critical for the survival of the Golden Eagle, Prairie Falcon, and the Northern Bald Eagle are protected from the effects of conflicting uses or activities.

There are no Goal 5 Sensitive Bird Habitat Inventoried on the subject properties. The closest inventoried Sensitive Bird Habitat site is approximately 2 miles to the northeast. Oregon Department Fish and Wildlife was notified of this application and did not respond. This article is not applicable.

Review of Oregon Revised Statutes as identified in Article 54.030(L):

ORS 454.695: License required to perform sewage disposal services

Proposed Finding: The applicant, South Suburban Sanitary District, has been an established sewer provider since 1958, and are licensed. This Statute is met.

ORS 459.205: A disposal site shall not be established, operated, maintained or substantially altered, expanded or improved, and a change shall not be made in the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department of Environmental Quality.

Proposed Finding: The applicant, South Suburban Sanitary District, is in the process obtaining the necessary permits. This statute can be met with proposed condition #1: *The applicant shall obtain any and all permits and approvals required from the Oregon Department of Environmental Quality.*

ORS 468B.050: Water Quality Permit

Proposed Finding: This application is to spread biosolids onto agricultural lands. Waste or bio solids will not be discharged into water of the state requiring a permit from DEQ. However, the spreading of BioSolids does require a permit from DEQ and obtaining a permit from DEQ is a condition of this decision.

ORS 468B.053: Alternatives to obtaining water quality permit

Proposed Finding: This application is to spread biosolids onto agricultural lands. Waste or bio solids will not be discharged into water of the state. As part of the requirement to spread BioSolids, the applicant has to obtain a permit from DEQ. This statute is met with condition #1: *The applicant shall obtain any and all permits and approvals required from the Oregon Department of Environmental Quality.*

ORS 468B.055: *Plans and specifications for disposal, treatment and sewerage systems*

Proposed Finding: The DEQ may require plans and specification to be submitted or rejection or approval. This statute can be met with condition #1: *The applicant shall obtain any and all permits and approvals required from the Oregon Department of Environmental Quality.*

ORS 468B.095: *Use of sludge on agricultural, horticultural, or silvicultural land.*

Proposed Finding: This statute requires Environmental Quality Commission to adopt rules for the use of sludge on agricultural lands. This statute is not applicable. The applicant is not the Environmental Quality Commission.

ORS 215.246: Approval of land application of certain substance

Proposed Finding: This statute contains 5 subsections.

ORS 215.246(1) – Ensure the continued agricultural and production level is not reduced. The applicant plans on continuing the agricultural practices on the subject properties. The addition of biosolid will help maintain agricultural production levels. This subsection is met.

ORS 215.246(2) – The use of the tract of land on which the land application ofbiosolids may not be changed... The applicant has no plans to change the use of the subject property. This subsection is met.

ORS 215.246(3)- ... the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered. The applicant explained in Exhibit __ dated February 23 ,2021 how the alternative identified in public comment were considered by the district. The applicant submitted an earlier application to irrigate the same property with reclaimed water that application was denied by the County in part because the County determined the Applicant consideration to alternatives identified was insufficient. The applicant appealed the County's denial to the Land Use Board of Appeal (LUBA). LUBA reverse the County decision determining the Applicant's response to the identified alternatives was in deemed adequate. This subsection is met.

ORS 215.246(4) – This subsection is not applicable. This application is for the application of Biosolids. The applicant is not proposing: 1) to treat reclaimed water ORS 215.246(4)(A). 2) to establish facilities such as buildings, pumps and so on ORS 215.246(4)(B) 3) to establish facilities not on the tract of land associated with the application. ORS 215.246(4)(C) 4) to transport reclaimed or agricultural or industrial water ORS 215.246(4)(D)

ORS 215.246(5) – This subsection is not applicable. The applicant is not applying to establish treatment facilities or service lines.

ORS 215.247 – Transport of biosolid to a tract of land for application.

Proposed Findings: The transportation of biosolids and the application of biosolids are allowed. Any required permit connected with the transportation is not part of the land use decision. Because this Statute is not part of a land use decision, it is not applicable to this application.

ORS 215.249 – Division of land for application of biosolids

Proposed Findings: The applicant has not proposed any land division within the area mapped for the application of biosolids. To ensure, no land division occur, the applicant shall record deed restriction restricting the division of the properties within the area mapped for biosolid application. Condition #5

ORS 215.251 – Relationship to other farm uses

Proposed Findings: This statute is not applicable. The proposed land use application of Biosolids is listed under ORS 215.213 as a permitted use in the Exclusive Farm Use Zone.

CONCLUSION

The submitted TYP II Review can meet the criteria set forth in the Klamath County Land Development Code with a series of conditions. The proposed conditions are:

1. *The applicant shall obtain any and all permits and approvals required from the Oregon Department of Environmental Quality.*
2. *A Commercial Driveway application may be required for any location entering or leaving the fields where biomass will be delivered from county roads.*
3. *Provide Public Works with the amount of trucks for hauling and the time frame for which this project will occur.*
4. *Ensure no material is tracked onto any county road.*
5. *The applicant shall record deed restriction preventing the division of any lands in the area mapped to receive BioSolids.*

POSSIBLE ACTIONS

Approval

If the Planning Commission finds the information presented in the Applicant’s Application and Burden of Proof Statement as adequate to demonstrate compliance with the applicable criteria, approval of land application of BioSolids along with the construction of the transmission pipeline and storage reservoir can be granted with the conditions of approval. Please indicate that the Finding of Facts are as presented by the Applicant and in the Staff Report.

Approval with Modifications

If the Planning Commission determines that modifications to the findings are necessary to meet the review criteria, the Commission can continue the review to allow the applicant time to make the needed modifications, or the Commission can identify the modifications themselves and add them to the proposed decision.

Denial of the Application

If the Planning Commission determines that the application has not met the applicable criteria, findings identifying the deficiencies will need to be approved and then a decision of denial could be made.

Erik Nobel, Planning Director
Klamath County Planning

Exhibits:

A	Application
B	Burdon of Proof

C	Map
D	Katrina and Jacob Seck
E	Collier Lane Homeowners
F	David Mauser
G	Mona Novotny and Bruce Tofell
H	James and Kayla Hull
I	Mark and Kay Doolittle
J	Justin Poe
K	David Whitlatch
L	Laura Campos and Family
M	Don Davidson
N	Dan and Jackie Martin
O	Lisa Stringer
P	Quintin McBain
Q	Stephanie and Duke Sumner
R	Mark and Kay Doolittle
S	Mona Novotny
T	Randell and Carolyn Souders
U	Mike and Jean Bandfield
V	Jon and Damain Goodell
W	Joan Riker
X	Jon Hall
Y	Orville and Cinda Hands
Z	New Horizon Christian Fellowship
AA	Dan and Ann Mohler
AB	Quintin and Paula McBain
AC	Anthony Igou and Debi Caltron
AD	Suzy Field
AE	Alan Freeman-Scott
AF	Klamath Basin Improvement Board
AG	Ryan Kliewer
AH	James King
AI	Casey and Jacob Bennett
AJ	Adam Long
AK	Melissa Long
AL	Akimi King
AM	Melonie Parrish
AN	Willaim Harworth
AO	Dale Landrum
AP	Orville and Cinda Hands
AQ	Applicant's Summary

AR	EPA - Part 503 Biosolid Rule
AS	Applicant Rebuttal