

# The Klamath Tribes Tribal Council

March 13, 2024

Erik Noble, Planning Director  
305 Main St.  
Klamath Falls, OR 97601

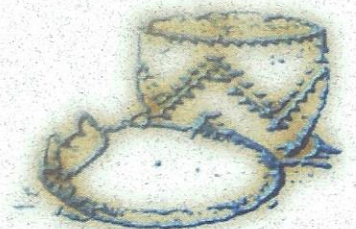
Re: Proposed Landfill on Klamath Marsh, File Number: CUP 1-24

Dear Director Nobel:

With anger and sadness, I read the Notice of Proposed Land Use Action detailing the request to place an 806 acre "regional land fill" in one of the most ecologically sensitive areas of the Klamath Tribes Treaty Rights Protected Homeland. Please know that the Klamath Tribes will marshal every ounce of our collective energy, resources, and political strength to stop this foolish and dangerous plan before it gets off the drawing board.

As virtually everyone in the Klamath Basin is aware, federally recognized tribes from our homeland here in the Upper Basin all the way down river to the ocean, as well as our agricultural partners, are engaged in a Herculean effort to restore some semblance of health to our ecosystem. Tribal cultures, the continued existence of threatened and endangered species, and any hope of a sustainable future for farming families are at stake. The proposed landfill would undermine those efforts and hasten widespread ecological collapse.

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As the Klamath Tribes point out at every opportunity, harm to any part of our highly-evolved, highly-complex ecosystem ripples out in too often unanticipated and detrimental ways. Although more than a century of damage here in the Upper Basin is widespread, there is no area more ecologically integral and yet more injured than ?ewksi (the Klamath Marsh).

Groundwater depletion at ?ewksi continues at an alarming pace and has done so for decades. The Klamath Tribes in partnership with the United States Geological Survey collect and maintain data documenting this decline. The marsh is now little more than dust in the warmest part of summer, and water no longer flows over Kirk Reef into the yaaga goge (The Little Willow or Williamson River).

The proposed landfill would almost certainly add contamination to the ongoing depletion—causing a cascade of problems downstream in our spring fed creeks and rivers. Imagine adding an array of poisons to the already tenuous aquatic lifelines of countless plants, animals, and human beings! I urge you to take a close look at the enclosed map depicting the flow of groundwater from north to south below the proposed landfill site moving directly toward major rivers and ultimately Ews (Upper Klamath Lake) and the Klamath River.

As I told the individual who telephoned me months ago to “take the Tribes’ temperature” on this proposal, the idea is beyond stupid and well into the realm of insanity. No one in their right mind could seriously contemplate welcoming thousands of tons of trash from (based on our understanding of the word “regional” as it is routinely used by this industry) multiple states into a place so deeply loved by so many.

What follows are parts of what could be a much larger technical analysis of some of the problems we see with this proposal. We note that the proposed site not only threatens the Klamath Marsh and waterways directly to the south but also borders the Giiwas property owned by the Klamath Tribes.

Our team has reviewed the proposal and associated Conditional Use Permit considering the requirements and restrictions provided in Articles 44, 54, 62, and 63 of the Klamath County Land Development Code.

The following narrative and attachments document the Klamath Tribes’ initial assessment of why this project does not merit authorization of the requested Conditional Use Permit.

The proposed location poses a significant risk of groundwater contamination.

1) Subsurface soils in the surrounding area are the Mazama sandy alluvial deposits. Filtration of most of the Scott Creek and Sand Creek flow saturates these deposits with subsurface water. This subsurface groundwater layer is connected hydraulically with Klamath Marsh subsurface groundwater, which often rises to the surface during wet seasons. Contamination of this layer could potentially affect neighboring livestock areas and wildlife in the marsh.

2) Below the subsurface water, the first groundwater aquifer is at risk of contamination, which would affect some closer pumping wells. Moreover, the pollution could be spread with groundwater flowing southward and affect the Williamson River and Spring Creek groundwater discharging area (See the attached USGS regional groundwater model map, which indicates that groundwater flows in this direction from the proposed landfill site).

From a cursory review of readily available information, the proposed project area is in close proximity to five to six wells. Those include domestic, livestock, and irrigation wells. The wells located along the west side of the project are mostly domestic wells.

As documented by the EPA, landfills are included in the list of "Typical Sources of Potential Ground Water Contamination". As stated:

Solid waste is disposed of in thousands of municipal and industrial landfills throughout the country. Chemicals that should be disposed of in hazardous waste landfills sometimes end up in municipal landfills. In addition, the disposal of many household wastes is not regulated. Once in the landfill, chemicals can leach into the groundwater by means of precipitation and surface runoff. New landfills are required to have clay or synthetic liners and leachate (liquid from a landfill containing contaminants) collection systems to protect groundwater. Most older landfills, however, do not have these safeguards. Older landfills were often sited over aquifers or close to surface waters and in permeable soils with shallow water tables, enhancing the potential for leachate to contaminate groundwater. Closed landfills can continue to pose a groundwater contamination threat if they are not capped with an impermeable material (such as clay) before closure. (U.S. EPA, 1990a)

The proposed location of the landfill does not meet suitable geological criteria.

As stated in *Groundwater contamination from a municipal landfill: Effect of age, landfill closure, and season on groundwater chemistry* (Science of The Total Environment, Daniel Abiriga, Live S. Vestgarden, Harald Klempe): 2020 (737).

One of the leading pollution problems caused by Municipal Solid Waste (MSW) landfill is landfill leachate (Bhalla et al., 2013). The leachate may constitute both soluble and insoluble organic and inorganic products from physical, chemical, hydrolytic and fermentative processes (Lema et al., 1988; Slack et al., 2005; Bhalla et al., 2013; Peng, 2017). This makes leachate highly polluted (Øygard et al., 2004). The major environmental impacts associated with leachate are pollution of groundwater (Kjeldsen and Christophersen, 2001; Kjeldsen et al., 2002; Słomczyńska and Słomczyński, 2004), since many of the thousands of landfills, active or abandoned, have been operated with little regard for groundwater contamination (Reinhard et al., 1984). The prime reason is that, historically, landfill site selection was seldom based on geological criteria of suitability (Hamer, 2003). Groundwater contamination becomes inevitable, especially when the bottom of the landfill is below the water table, or if the material separating

the dump from the aquifer is permeable (Zanoni, 1972). Such pollution of groundwater may last for decades or centuries (Bjerg et al., 2003; Bjerg et al., 2011; Cozzarelli et al., 2011; Bhalla et al., 2013), thereby posing serious threat to groundwater security (Chen et al., 2019).

#### Assessment of impacts to groundwater

The Klamath Tribes assert that a detailed groundwater model of the area, which has not been completed, will show that a landfill cannot be legally located in this sensitive location.

#### The proposed landfill must meet the Oregon DEQ requirements.

Anyone applying for a DEQ Solid Waste Disposal Permit should contact the Solid Waste Program for an Initial Site Evaluation. The evaluation process will allow the Department to discuss with you what types of plans should be submitted and what conditions must be met for your type of facility.

The following documentation and information must be included with the permit application for the application to be complete:

- A Land Use Compatibility Statement
- A recommendation from the local solid waste planning authority
- Demonstration of the need for a new, modified, or expanded facility
- A Certificate of Business Registry
- Identifying any other known or anticipated permits
- Application fee and compliance fees (if required)
- Any other information DEQ deems necessary

#### A proposed landfill must address risks to air quality.

The US Environmental Protection Agency has documented that landfills are the third-largest source of methane emissions in the United States generated by human activity, accounting for approximately 14.3 percent of these emissions in 2021.

In October 2021, the Oregon Environmental Quality Commission adopted new rules that regulate landfill gas emissions. The rules require many landfills in Oregon to obtain an Air Contaminant Discharge Permit to submit data on the landfill characteristics and potentially monitor, collect, and/or control landfill gas emissions.

For most landfills, new permit applications were due Oct. 1, 2022.

#### National Historical Preservation Act Section 106

The proposed landfill has a high potential to adversely affect historic properties.

The National Historic Preservation Act (NHPA) requires any project that qualifies as an Undertaking under 36 CFR § 800.16(y) to initiate the Section 106 process as outlined in 36 CFR § 800.3. According to Oregon State Historic Preservation Office records, no survey for cultural resources has been conducted within the proposed project footprint. However, numerous Pre-Contact and Historic Era historic properties are known to exist near the Klamath Marsh. The Marsh is culturally significant to the people of the Klamath Tribes as it functions as an ideal habitat for waterfowl and aquatic species that have sustained people for thousands of years. In addition, Historic Era features such as Silver Lake Road, south of the proposed project area, is a remnant of the Lamm Railroad System which was constructed in the late 1920s to transport timber to lumber mills. Features like this contribute to our understanding of land use patterns over time and the history of our region.

Based on what is already known about the area, the proposed project area has a high probability for encountering historic properties. These properties can be present on the ground surface or buried. Construction of a landfill would require disturbing the ground and potentially disturbing buried archaeological material. Only Qualified Archaeologists are allowed to conduct cultural resource surveys to identify such properties.

In addition to Federal regulations, ORS 358.905 – 358.961 and ORS 390.235 prohibit the excavation, injury, destruction, or alteration of an archaeological site or removal of artifacts on public or private land in Oregon unless it is authorized by an Archaeological Permit. Only Qualified Archaeologists are allowed to apply for an Archaeological Permit. ORS 97.740 – 97.760 prohibits disturbance of Native American religious sites and objects. Violation of this statute is a Class C Felony and fines of up to \$10,000 can be issued.

The proposed landfill does not meet the purpose of the Exclusive Farm Use Zone designation.

Code 54.000 states:

The purpose of the Exclusive Farm Use (EFU) is to protect and maintain agricultural lands for farm use, consistent with the future needs for agricultural products. The EFU zone is intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources, and fish and wildlife habitat, and to maintain or improve the quality of air, water, and land resources in the county.

Code 54.010 – Permitted Uses does not list landfills as a permitted use in EFU-zoned lands. Code 54.010, X, however, allows for the development of utility facilities necessary for public service. If the development of a landfill is necessary, it must be located in a feasible area that meets the requirements of the Klamath County Land Development Code.

The proposed landfill does not meet the requirements of Development Code 44.030, C.

The location, size, design, and operating characteristics will have a significant adverse impact on the livability, value, future development of properties, and current and future agricultural use of properties located in the vicinity of the proposed landfill.

Why use a proposed landfill Conditional Use Permit rather than a Land-Use Zone Change?

The proposed project is not a “Basic operation” as stated under the Conditional Use Permit purpose definition. CUP permits are also temporary mechanisms allowed under a basic zone designation; a project of this size and potential impact cannot be classified as temporary.

44.030 – Conditional Use Permit Review Criteria

A. The use complies with policies of the Comprehensive Plan (Pg. 44-1)

In addition to the multitude of Land Development Code defilements, reviewing several of the Land Goals in the Klamath County Comprehensive Plan is enough to indicate that the approval of this CUP is not warranted. This project would be in direct conflict with Goal 2 (Land-Use Planning), Goal 4 (Forest Lands), Goal 5 (Open Space, Scenic, and Historic Areas and Natural Resources), and Goal 6 (Air, Water and Land Resources Quality).

*Goal 2* specifically states “All land use plans shall include identification of issue and problems; inventories and other factual information for each applicable statewide planning goal; evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy, and environmental needs. The required information shall be contained in the plan document or in supporting documents....”

The applicant has failed to provide critical information that would allow for the proper review of this Conditional Use Permit application.

*Goal 5* specifically states: “To preserve open space and protect natural and scenic resources in Klamath County.”<sup>1</sup> The proposed landfill conflicts with this goal. A proposed landfill is not synonymous nor compatible with protecting Cultural Resources, Natural Areas, Historic Areas, Scenic Areas, or Wilderness Areas.

The Klamath Marsh National Wildlife Refuge was established in 1958 as an inviolate sanctuary, or for any other management purpose, for migratory birds. The refuge primarily consists of 40,000 acres. Originally designated as Klamath Forest National Wildlife Refuge, the Refuge was renamed as virtually all of the historic Klamath Marsh now lies within Refuge boundaries. This large natural marsh provides important nesting, feeding, and resting habitat for waterfowl, while the surrounding meadowlands are attractive nesting and feeding areas for sandhill crane, yellow rail, and various shorebirds and raptors. The adjacent pine forests also support diverse

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<sup>1</sup> [GOAL 5: \(klamathcounty.org\)](http://klamathcounty.org)

wildlife including the great gray owl, Rocky Mountain elk, and Mule Deer. During summer months, opportunities to view wildlife and to travel a great scenic route<sup>2</sup>.

The Klamath Tribes have a deep and well documented connection to ?ewksi, the Klamath Marsh area. As the site of our largest precontact village, it sustained us from time immemorial until its relatively recent, human-caused ill-health. It is a sacred place.

The Klamath Tribes have recently secured 2 million dollars to initiate restoration of the entire marsh system. We hope and expect to secure another 3 million by this time next year. Decades of effort already expended and decades of work planned for the future<sup>3</sup> are at risk of being undercut and undone if Conditional Use Permit 01-24 is approved. The best alternative is for the project proponent to find an alternative location that will not maim a foundational part of our homeland ecosystem and harm all the living things who rely on it.

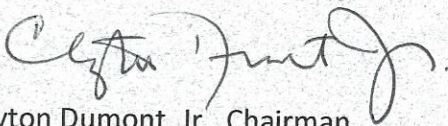
Proposed location does not meet requirements of Development Code 54.035, C, 1, 2, and 4.

The proposed landfill is not suitable for the proposed use considering its size, location, topography, existing improvements and residential uses in the area, and natural geologic features of the Klamath Marsh.

The proposed landfill will alter the character of the area in a manner which substantially limits, impairs or prevents the use of the surrounding properties for the permitted uses listed in the underlying zoning district.

The proposed landfill cannot be made compatible with existing uses and other allowable uses in the area.

Respectfully,



Clayton Dumont, Jr., Chairman  
The Klamath Tribes

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<sup>2</sup> [Klamath Marsh National Wildlife Refuge - Wikipedia](#)

<sup>3</sup> [Tribes to deploy beavers in bid to save Klamath Marsh National Wildlife Refuge • Oregon Capital Chronicle](#)