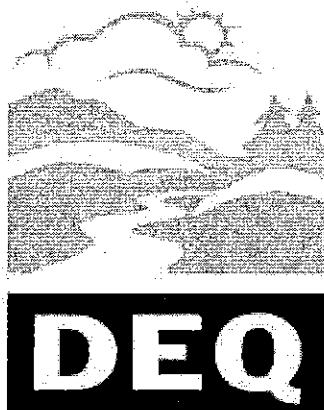


**10/26/1977**

**OREGON  
ENVIRONMENTAL QUALITY  
COMMISSION MEETING  
MATERIALS**



**State of Oregon  
Department of  
Environmental  
Quality**

This file is digitized in **black and white** using Optical Character Recognition (OCR) in a standard PDF format.

Standard PDF Creates PDF files to be printed to desktop printers or digital copiers, published on a CD, or sent to client as publishing proof. This set of options uses compression and downsampling to keep the file size down. However, it also embeds subsets of all (allowed) fonts used in the file, converts all colors to sRGB, and prints to a medium resolution. Window font subsets are not embedded by default. PDF files created with this settings file can be opened in Acrobat and Reader versions 6.0 and later.

MINUTES OF THE SPECIAL MEETING  
OF THE  
OREGON ENVIRONMENTAL QUALITY COMMISSION  
October 26, 1977

On Wednesday, October 26, 1977, a special conference call meeting of the Oregon Environmental Quality Commission was convened.

Connected by conference telephone call were Commission Chairman Joe B. Richards, Vice Chairman Grace S. Phinney, and Jacklyn Hallock. Commissioners Ronald Somers and Albert Densmore were not available for the call. Connected at Department offices were Peter McSwain, Hearing Officer, and members of the Department staff.

READOPTION OF OAR 340-71-020(7) RELATING TO CLATSOP PLAINS

Mr. McSwain explained that the purpose of this conference call meeting was for some housekeeping measures. He said that due to the failure to file the proposed amendments to OAR 340-71-020(7) with the Legislative Counsel prior to their adoption on October 21, 1977, the Commission would have to readopt those amendments. Further, he said that due to an oversight in the amendments adopted on October 21, 1977, the Department wished to now amend 340-71-020(7)(c)(c)(e) to read as follows:

- (e) The restrictions set forth in paragraphs (B) through (E) of subsection (b) and in subsection (c) above shall not apply to prohibit permits for systems to serve one single family dwelling per parcel of land of less than one acre if such parcel's legal description was on file in the deed records of Clatsop County prior to April 2, 1977, either as a result of conveyance or as part of a platted subdivision.

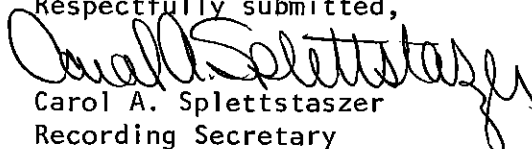
It was MOVED by Commissioner Phinney, seconded by Commissioner Hallock and carried unanimously that OAR 340-71-020(7) be readopted, including the amendment presented by Mr. McSwain.

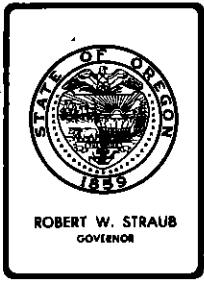
SNOWMOBILE REGULATION AMENDMENTS

It was MOVED by Commissioner Phinney, seconded by Commissioner Hallock and carried unanimously that Table A of OAR 340-35-025 be amended as follows:

<u>Vehicle Type</u>	<u>Effective For</u>	<u>Maximum Noise Level dBA</u>
Snowmobiles as defined in ORS 481.048	1975 Model	82
	1976- <del>1978</del> 1979	78
	Models after 1979	75

There being no further business, the meeting was adjourned.

Respectfully submitted,  
  
Carol A. Spletstaszer  
Recording Secretary



## Environmental Quality Commission

1234 S.W. MORRISON STREET, PORTLAND, OREGON 97205 PHONE (503) 229-5696

October 25, 1977

To: Environmental Quality Commissioners  
From: Peter <sup>PLM</sup> W. McSwain  
Subject: Business which should be addressed in a conference call the week of October 24

1) The Clatsop Plains Moratorium (OAR 340-71-020(7)) should be re-adopted as its draft was not filed with Legislative Counsel.

2) The moratorium sets forth certain restrictions on septic tank/drainfield systems in the areas of the moratorium that were not retained. The intended result is to prohibit more than one acre/family density of systems. "Grandfathered" however were some 75 undersized lots (of record on or before April 1).

To include these lots we removed the restrictions. We may have removed one too many; i.e., the provision on page 9, subsection (b), paragraph (A) that "the system complies with all rules in effect at the time the permit is issued."

It was not our intent in grandfathering an insignificant number of lots that we exempt them from the entire body of rules regarding slope, soils types, sizing of systems, etc.

Perhaps subsection (e) on page 11 should be amended in the proposal to read:

(e) The restrictions set forth in paragraphs (B) through (E) of subsection (b) and in subsection (c) above shall not apply to prohibit permits for systems to serve one single family dwelling per parcel of land of less than one acre if such parcel's legal description was on file in the deed records of Clatsop County prior to April 2, 1977, either as a result of conveyance or as part of a platted subdivision.

Clatsop County officials brought this oversight to our attention.

3) It is judged within the scope of recent hearings regarding snowmobile noise to correct a somewhat obvious oversight in the draft before



Contains  
Recycled  
Materials

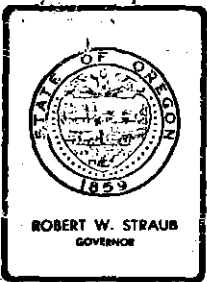
October 25, 1977

the Commission on September 23. While one might be warned due to the obvious incongruity of the situation, read in plain english the present draft exempts 1979 snowmobiles from the rules entirely. The language in table A of OAR 340-35-025 should be further amended as follows:

<u>Vehicle Type</u>	<u>Effective For</u>	<u>Maximum Noise Level dBA</u>
Snowmobiles as defined in ORS 481.048	1975 Model	82
	1976- <del>1978</del> 1979	78
	Models after 1979	75

/vt

cc: Bill Young  
Mike Downs  
John Hector  
Dave Gemma  
Ray Underwood  
Curtis Schneider, Clatsop County  
Planning & Development  
W. Louis Larson, Clatsop County  
Courthouse, Astoria



## Environmental Quality Commission

1234 S.W. MORRISON STREET, PORTLAND, OREGON 97205 PHONE (503) 229-5696

October 18, 1977

To: Environmental Quality Commission  
From: Hearing Officer  
Subject: Agenda Item G, October 21, 1977, EQC Meeting  
Addendum to Previous Agenda Item

### BACKGROUND

The October 11, 1977 hearing on this rule-amendment petition could not have occurred sooner and still have complied with Oregon law regarding public notice (ORS 454.685). This statutorily imposed time schedule, coupled with the requirement of staff time to present a responsible recommendation to the Commission has rendered this report quite late in contrast with normal Commission business of this magnitude. If the Commission decides deferment is in order for this problem, the reason is apparent.

The effort to get this matter before the Commission is reciprocal to the efforts of Clatsop County in locally exploring alternatives to the April 1, 1977 "Clatsop Plains moratorium" which the County then opposed. Since the County has diligently worked toward a basic modification that will still protect groundwater reserves, the Department has attempted to honor this effort by local government and bring this matter before the Commission at this late hour. The comments set forth below will result in a revision of the Proposed Rule Amendment and a revised recommendation. It should be noted that all are made independently of the Director who has not had opportunity for review. He may agree or disagree at the time of Commission deliberation.

### PLANNED UNIT DEVELOPMENTS

Clatsop County has asked that planned unit developments (where the dwellings may be in a single building or otherwise concentrated but accompanied by land sufficient to provide at least one acre for each single family unit) be permitted in the proposed rule. We have attempted to comply in our latest draft. (See subparagraphs (c) and (d) on page 9 of the Proposal).

### GRANDFATHERING OF EXISTING LOTS

We are assured in interviewing personnel in the Clatsop County Assessor's office that new lots of record (deeded or platted and filed under the subdivision law) receive tax lot numbers (which would have been included in our information) within two months of their recording. Hence, there is no danger that lots of record on or before April 1, 1977 have escaped our notice.



Contains  
Recycled  
Materials

For each recorded lot under one acre in size in the proposed areas for one acre/family systems there may well be an owner of a large parcel who bought, built, and waited with the intention of selling a small part of his parcel to another builder later. Also, for each undersized lot there may well be a large lot whose owner intended planned unit development denser than one acre per family. Nevertheless, the undersized lots of record have constituted a dividing line the County has urged the Commission to draw. Therefore, it is recommended below that the 75 lots subject to Clatsop County's testimony, though of less than one acre in size, be allowed systems if they were of record prior to April 1, 1977. The 75 lots are a minor aspect of the 14 square mile study area. There will be available at the Commission meeting a map showing these lots. The use of the April 1 cutoff date will preclude preferential, windfall benefits for those who may have partitioned after the original moratorium for reasons other than development.

#### USE OF PARCELS WITH EXISTING SYSTEMS FOR AVOIDANCE OF THE RULE

A simple requirement that parcels be of a one acre/family equivalent size would leave open undesirable options. For example: A and B own contiguous 3/4 acre lots with houses and disposal systems located on the farthest 1/4 acre from their common property line. Already we have less than the desired one acre density. They could still each convey half an acre to C so as to make C's parcel eligible for a system and increase overall density to two families per acre. Wording has been proposed to prevent this.

#### CLATSOP COUNTY'S RELATION TO GEARHART ON THIS ISSUE

It was not entirely accurate for the drafter of the public hearing notice in this matter to characterize Gearhart as a place wherein the County wishes to see the moratorium remain. Gearhart took exception to this language and we apologize for it. Suffice it to say our information is that Gearhart is not among the areas where the County wishes to have the moratorium modified or removed. With regard to Gearhart, Hammond, and Warrenton, the staff continues to be respectful of the duties and rights of local government in this matter and will give serious consideration to such proposals as these cities may make in the future. At this point, we do not understand the County to be taking an incompatible position with ours and did not mean to imply otherwise.

#### CRITICISM OF THE SWEET REPORT

Among the conclusions of the consultant hired to evaluate the Sweet Report was the conjecture that more thorough review may indicate in the future that three families per acre on septic tank drainfield systems are appropriate in Gearhart. We neither endorse nor dispute this appraisal of the Gearhart area. The comments submitted tend, in general, to point out that the Sweet Report is conservative. We understand its author to be in agreement with this appraisal. Also, we understand the County to be cognizant of this aspect of the report. Our present recommendation is strengthened by such comment. It further emphasizes, for example, our inability to give sound technical reasons for denial of a permit to one intending to build on one acre. Reasons for lesser (or greater) restrictions may come in the future. When this happens, we will deal accordingly.

#### FUTURE MODIFICATION

In the next ten months, the subject area is expected to develop a comprehensive plan. In a few months thereafter there will be zoning to implement the plan. It is readily apparent that the present recommendation should be considered temporary in nature. Future reexamination should address problems like that of Mrs. Steele and her neighbors to see if denial of a permit remains a sound course. Also, the impact on groundwater of the comprehensive plan and its resultant zoning will probably give new options to property owners. The present recommendation protects the aquifer with what conservative information is available and continues to leave open the opportunity for further evaluation.

#### UNACCEPTABLE DEGRADATION

We have addressed requirements of future modification to "unacceptable" degradation as requested by the County.

#### PROPOSED AMENDED DIRECTOR'S RECOMMENDATION

The Director recommends that the Commission take the following actions:

- 1) Enter findings that
  - a) The protection of the groundwater in the moratorium area requires continuation of the existing moratorium in the five unincorporated areas outlined in the County's letter of August 31, 1977. (Attachment E of the original agenda item G for October 21, 1977).
  - b) The preservation of water supplies for the future makes advisable the continuation of the moratorium in the two parcels of county-owned land and in Camp Riley. This land was designated for future reserves in the County's August 31 letter.
  - c) There is no petition to modify the moratorium within the incorporated areas of Gearhart, Hammond, or Warrenton before the Commission and the moratorium should remain undisturbed until such time as the cities themselves or some other person petitions for modification and gives sufficient reason.
  - d) The seventy-five lots of record which are less than one acre in size but are not in the above-mentioned sub-areas of the moratorium do not threaten the 14 square mile aquifer study area with unacceptable groundwater degradation. While preferential, windfall benefits would accrue to allow systems on lots recorded after the April 1, 1977 moratorium date, the County's request to allow one single family system on such of these lots as were of record on April 1, 1977 and as otherwise qualify should be granted.
  - e) In the moratorium areas not mentioned above, septic tank/drain-field development not to exceed one single family flow equivalent per acre can take place without contributing unacceptable levels of nitrates of nitrogen to the groundwater beneath.

- f) The attached proposed rule amendment will continue to prevent unacceptable degradation of groundwater while allowing such development as, at present, appears to be compatible with preserving the quality of the groundwater.
  - g) The proposal, based upon conservative information, is subject to further review and does not prejudice future proposals which may be based on new information.
  - h) At the time a comprehensive plan and appropriate zoning are accomplished it is expected further review will be appropriate.
- 2) Adopt the attached proposed amendment to OAR 340-71-020(7) as a permanent rule to take effect immediately upon its filing with the Secretary of State.

**Attachments**



9/\_\_\_/77

PROPOSED AMENDMENT TO OAR 340-71-020(7)

(a) Pursuant to ORS 454.685, neither the Director nor his authorized representative shall issue either construction permits for new subsurface sewage disposal systems or favorable reports of evaluation of site suitability within the boundaries of the following geographic areas of Clatsop County [~~where there are unconsolidated sands or unconsolidated foamy sands~~]:

- (A) [~~All areas located south of the Columbia River; west of the Skipanon River (or Skipanon Waterway); and north of the southernmost part of Gullaby Lake;~~] That area bounded on the South by the North line at that certain right-of-way reserved by Frank L. Hurlburt, et al, in a deed to Charles V. Brown as recorded in Book 65, Page 527, Clatsop County Record of Deeds;  
Bounded on the West by the high tide line of the Pacific Ocean;  
Bounded on the North and East by a line extending from the Pacific Ocean Easterly to the Southwest corner of that certain tract conveyed to the State of Oregon as recorded in Book 230, Page 485, Clatsop County Record of Deeds;  
thence Easterly and Southerly along the South line of said tract to the Southeast corner thereof;  
thence running Easterly to the Westerly right-of-way line of the Fort Stevens - Camp Clatsop Highway, commonly referred to as "Ridge Road," said point being the Easterly terminus of the North boundary of tract herein described;  
thence Southerly along the Westerly right-of-way line of said Ridge Road to its intersection with the South line of the Hobson D.L.C.;

thence West along the South line of said Hobson D.L.C. to the Northwest corner of that certain tract conveyed to Stanley I. and Elvira M. Guild as recorded in Book 260, Page 161, Clatsop County Record of Deeds;

thence Southerly along the West boundary line of the said Guild tract and the extension thereof to the South right-of-way line of County Road #34, commonly known as DeLaura Beach Road;

thence East along the Southerly right-of-way line of said County Road a distance of 2275' more or less to the Easterly right-of-way line of Clark Boulevard as platted in DeLaura Subdivision as platted in Section 29, Township 8 North, Range 10 West, Willamette Meridian;

thence Southeasterly along the Easterly right-of-way line of said Clark Boulevard to its intersection with the East bank of the West branch of Neacoxie Creek;

thence Southerly along the East bank of the said West branch of Neacoxie Creek to an intersection with the South line of Neacoxie Subdivision as platted in Section 33, Township 8 North, Range 10 West, Willamette Meridian;

thence East along the South line of said Neacoxie Subdivision to the Westerly right-of-way line of aforesaid Ridge Road;

thence South and East along the Westerly right-of-way line of said Ridge Road to its intersection with the West bank of the East branch of Neacoxie Creek;

thence Southerly along the West bank of the East branch of said Neacoxie Creek to the Northeast corner of that certain tract conveyed to Ben D. and Muriel Hayes by deed recorded in Book 213, Page 446, Clatsop County Record of Deeds;

thence West along the North line of said Hayes property to the Northwest corner thereof;

thence Southeasterly along the Westerly line of the said Hayes property to the Southwest corner thereof, said point being the Northwest corner of property conveyed to Donald R. and Helen A. Falleur by deed recorded in Book 364, Page 282-83, Clatsop County Record of Deeds;

thence continuing Southeasterly along the Westerly line of said Falleur property to the North Boundary line of the Platted Ivyloo Subdivision in Section 9, Township 7 North, Range 10 West, Willamette Meridian;

thence West along the North line of said Ivyloo Subdivision to the Northwest corner thereof;

thence South 13° 32' East along the Westerly line of said Ivyloo Subdivision and the extension thereof to the North line of that certain right-of-way reserved by Frank L. Hurlburt as aforesaid.

- (B) [~~All areas within the Shoreline Estates Sanitary District,~~  
and

The Del Rey Beach Subdivision located in Section 33, Township 7 North, Range 10 West, Willamette Meridian, as shown on Plate 7-10-33A, Clatsop County, Oregon.

- (C) [~~All areas south of the southernmost part of Gullaby Lake and north of the northernmost part of Heawanna Creek at its confluence with the Necanicum River, save and except those lands more than one-half mile due east of U.S. Highway 101.]~~

That area beginning at the intersection of Clark Boulevard with County Road #34 in DeLaura Beach Subdivision as platted in Section 29, Township 8 North, Range 10 West, Willamette Meridian, Clatsop County, State of Oregon;  
thence Southerly along the center line of Clark Boulevard to the South right-of-way line of College Avenue;  
thence West along the South right-of-way line of said College Avenue to the East bank of the West branch of Neacoxie Creek;  
thence Southerly along the East bank of said creek to the South line of Neacoxie Subdivision as platted in Section 33, Township 8 North, Range 10 West, Willamette Meridian;  
thence East along the South line of said Neacoxie Subdivision and the extension thereof to the West line of Ridge Road;  
thence Southerly along the West line of said Ridge Road and East along the Southerly right-of-way line of Columbia Beach Road to its intersection with the East right-of-way line of Oregon Coast Highway 101;  
thence South along the East right-of-way line of said Hwy 101 to its intersection with the North right-of-way line of Perkins Road;  
thence East along the North right-of-way line of said Perkins Road to its intersection with the West right-of-way line of Rodney Acres Road;  
thence Northerly along the West line of Rodney Acres Road to the center line of Skipanon Creek;  
thence Northwesterly along the needle of Skipanon Creek to the South line of Warrenton City limits;

thence following the Warrenton City limits boundary in a  
Northwesterly direction to the point of beginning.

- (D) That area beginning at a point where the North line of that  
certain tract conveyed to Michael Palmer by deed recorded  
in Book 400, Page 576-587, Clatsop County Record of Deeds,  
intersects the East right-of-way line of the Burlington  
Northern Railroad in Section 9, Township 7 North, Range 10  
West, Willamette Meridian, Clatsop County, State of Oregon;  
thence East along the North line of the said Palmer tract to  
the Northeast corner thereof;  
thence South along the East boundary of said tract to the  
Southeast corner thereof;  
thence West along the South boundary of said tract to its  
intersection with the East line of the Burlington Northern  
Railroad right-of-way as aforesaid;  
thence North along the East line of said right-of-way to the  
point of beginning.

Said parcel being located in Sections 9 and 10, Township 7  
North, Range 10 West, Willamette Meridian.

- (E) That area beginning at the Southwest corner of Ivyloo Acres  
Subdivision as platted in Section 9, Township 7 North, Range  
10 West, Willamette Meridian, Clatsop County, State of Oregon;  
thence South 13° 32' East a distance of 370' more or less to  
the North line of that certain right-of-way reserved by  
Frank L. Hurlburt in his conveyance to Charles V. Brown as  
recorded in Book 65, Page 527, said point being the true  
point of beginning of parcel herein described;

thence continuing South 13° 32' East a distance of  
more or less to its intersection with the South line of the  
John Hobson D.L.C.;  
thence West along the South line of said Hobson D.L.C. to  
the East bank of Neacoxie Creek;  
thence Southerly along the East bank of said Neacoxie Creek to  
the South right-of-way line of Sunset Beach Road;  
thence East along the Southerly right-of-way line of said  
Sunset Beach Road to the Northeast corner of Sunset Terrace  
Subdivision as platted in Section 9, Township 7 North, Range  
10 West, Willamette Meridian;  
thence Southeasterly along the Easterly line of said Sunset  
Terrace and its extension thereof to the North line of Loch  
Haven Highlands Subdivision as platted in Section 16, Township  
7 North, Range 10 West, Willamette Meridian;  
thence East along the North line of said Loch Haven Highlands  
Subdivision to the Northeast corner thereof;  
thence Southeasterly to the Southeast corner thereof;  
thence following the Loch Haven Highlands Subdivision bound-  
aries as platted Westerly, Southerly, Southwesterly, and  
Westerly to where the South line of Loch Haven Highlands  
Subdivision intersects the East bank of Neacoxie Lake;  
thence Southerly along the East bank of said Neacoxie Lake  
to a point East of the Southeast corner of that certain  
tract conveyed to Anthony M. and Alberta M. Stramiello by  
deed recorded in Book 333, Page 523;

thence West to the Southeast corner of said Stramiello tract;  
thence West along the South line of said tract and the extension thereof a distance of 718.8' to a point;  
thence South 389.7' to a point;  
thence West 400' to a point;  
thence North 00° 02' West to the Northwest corner of D.L.C. #42, said point being in the South line of the Sunset Beach Subdivision, as platted in Section 9, Township 7 North,  
thence West along the South line of said subdivision to the Westerly right-of-way line of Columbia Boulevard in said subdivision;  
thence Northerly along the Westerly right-of-way line of said Columbia Boulevard to the North line of said Sunset Beach Subdivision;  
thence West along the North line of said subdivision to the Pacific Ocean;  
thence North along the Pacific Ocean to its intersection with the North line of that certain right-of-way reserved by Frank L. Hurlburt as aforesaid;  
thence East along the North line of said right-of-way to the point of beginning.

Excepting therefrom, however, the following described parcel. Beginning at the Southwest corner of Ivyloo Subdivision as platted in Section 9, Township 7 North, Range 10 West, Willamette Meridian; thence South 19° 32' East a distance of 375' more or less to the Northerly line of that certain 60'

strip reserved as a right-of-way by Frank L. Hurlburt in his conveyance to Charles V. Brown and recorded in Book 65, Page 527 Clatsop County Record of Deeds; said point being the true point of beginning of tract herein described; thence West along the North line of said right-of-way to the Pacific Ocean; thence Southerly along the high tide line of the Pacific Ocean to an intersection with the South boundary line of the John Hobson D.L.C. extended; thence East along the South boundary line of the said Hobson D.L.C. to a point 339.1' East of the East bank of Neacoxie Lake; thence North 19° 32' West a distance of 1290' more or less to the point of beginning.

- (F) That area bounded on the North by the North line of the Gearhart Donation Land Claim; bounded on the East by Burlington Northern Railroad; bounded on the South by the North boundary of the Gearhart City Limits; bounded on the West by the Pacific Ocean.

Excepting therefrom, however, the following described parcel. Beginning at the intersection of the North line of the Gearhart City Limits with the Westerly right-of-way line of Marion Avenue; thence North and East along the said Westerly right-of-way to its intersection with the East boundary of the platted Gearhart Green Subdivision; thence North along the East line of said subdivision and the extension thereof to the North boundary of the Gearhart Donation Land Claim; thence East along the North line of said Donation Land Claim to the center line of Neacoxie Creek; thence Southerly along the needle of said



creek to the North line of the Gearhart City Limits; thence West along the North line of said City Limits to the point of beginning. All above described property being in Sections 3 and 4, Township 6 North, Range 10 West, Willamette Meridian, Clatsop County, State of Oregon.

(G) That area bounded on the West and North by the South boundary of the Gearhart City Limits; on the East by Burlington Northern Railroad and on the South by Seaside City Limits.

(H) The Cities of Gearhart, Hammond, and Warrenton.

(I) Fort Stevens State Park.

(b) Pursuant to ORS 454.685, within the areas set forth in subsection (c) below, neither the Director nor his authorized representative shall issue either construction permits for new subsurface sewage disposal systems or favorable reports of evaluation of site suitability, except to construct systems to be used under the following circumstances:

(A) The system complies with all rules in effect at the time the permit is issued.

(B) The system is not to be installed within any of the areas subject to the prohibition set forth in subsection (a) above.

(C) The system is to be installed on an undivided parcel of one acre or more in size upon which the dwellings or buildings to be served by the system are located and which is owned fully or fully subject to a contract of purchase by the same person or persons who own or are contract purchasers of the dwellings or buildings to be served by the system.

(D) The dwellings or buildings to be constructed or existing on the land parcel when fully occupied or used allow for no more than

the equivalent of sewage flow for one single family per acre of the land parcel.

- (E) The land parcel upon which the system is to be constructed did not become of a size conforming to the requirement of paragraphs (C) and (D) of this subsection by any means so that a subsurface sewage disposal system may be used, installed, or under a permit to be installed on any land which otherwise would not conform to paragraphs (C) and (D) of this subsection and, after using such means, would result in a greater family to acreage ratio than one single family to one acre or more of land for such land which otherwise would not conform to paragraphs (C) and (D) above.

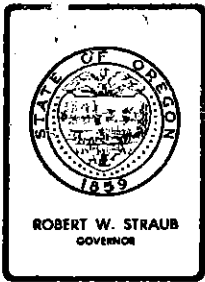
(c) The minimum parcel size requirement of subsection (b) above shall apply to all of the following areas [which are not subject to the complete prohibition set forth in subsection (a) above] of Clatsop County where there are unconsolidated loamy sands:

- (A) All areas located south of the Columbia River, west of the Skipanon River (or Skipanon Waterway), and north of the southernmost part of Cullaby Lake,
- (B) All areas within the Shoreline Estates Sanitary District,  
and
- (C) All areas south of the southernmost part of Cullaby Lake and north of the northernmost part of Neawanna Creek at its confluence with the Necanicum River, save and except those lands more than one-half mile due east of U.S. Highway 101.

~~[(b)]~~ (d) The restrictions set forth in [subparagraph]  
~~[(A)-above-is]~~ this rule are subject to modification or repeal on an area-  
by-area basis upon petition by the appropriate local agency or agencies.  
Such petition either shall provide reasonable evidence that development  
using subsurface sewage disposal systems in accordance with single family  
unit equivalent densities specified in the local land use plan for the area  
will not cause unacceptable degradation of groundwater quality or surface  
water quality or shall provide equally adequate evidence that degradation  
of groundwater or surface water quality will not occur as a result of such  
modification or repeal.

(e) The restrictions set forth in paragraphs (B) through (E) of sub-  
section (b) and in subsection (c) above shall not apply to prohibit permits  
for systems to serve one single family dwelling per parcel of land of less  
than one acre if such parcel's legal description was on file in the deed  
records of Clatsop County prior to April 2, 1977, either as a result of  
conveyance or as part of a platted subdivision.

~~[(e)]~~ (f) The restrictions set forth in [subparagraph] subsections [(A)]  
(a), (b) and (c) above shall not apply to any construction permit application  
based on a favorable report of evaluation of site suitability issued by the  
Director or his authorized representative pursuant to ORS 454.755(1)(b) where  
such report was issued prior to the effective date of this subsection (7).



## Environmental Quality Commission

1234 S.W. MORRISON STREET, PORTLAND, OREGON 97205 PHONE (503) 229-5696

October 18, 1977

To: Environmental Quality Commission

From: Hearing Officer

Subject: Hearing Report on October 11, 1977 Hearing re: "Clatsop Plains Moratorium" (OAR 340-71-020(7))

### SUMMARY OF PROCEDURE

Pursuant to notice as required for rule making and by ORS 454.685 a public hearing was convened in the Clatsop County Courthouse at 7:30 p.m. on October 11, 1977. The purpose was to receive testimony regarding possible modification of the "Clatsop Plains Moratorium" (on subsurface sewage system installation - OAR 340-71-020(7) as adopted April 1, 1977).

More specifically, the hearing was in response to a request by Clatsop County that septic tank installation not more dense than one acre per single family dwelling be allowed in the moratorium area with the exception of the following areas set aside as valuable for future water supply or already densely developed.

- 1) Camp Rilea and some twenty or so acres of county-owned land to the south of the camp.
- 2) The Del Rey Beach Subdivision.
- 3) The Smith Lake area.
- 4) The Glenwood Mobile Home Park.
- 5) The Sunset Lake area.
- 6) Except land between Neacoxie Creek and the Gearhart Green Subdivision, all the area north of Gearhart, west of the Burlington Northern Railroad, and within the Gearhart Donation Land Claim.
- 7) The area southeast of Gearhart, north of Seaside, and west of the Burlington Northern Railroad.
- 8) The cities of Gearhart, Hammond and Warrenton.
- 9) Fort Stevens State Park.

Oral testimony was offered by Clatsop County Commissioners Orvo Nikula and Don O. Corkill, by Clatsop County Planner Curtis J. Schneider, Hydrogeologist Randy Sweet, and by Mr. William Vassell and Mr. John S. Lisoski.

Written testimony was offered by Commissioner Nikula, on behalf of Clatsop County (attached), the City of Gearhart (attached), Mildred M. McKee, Mrs. Donald M. MacRae, Mrs. H.M. Steele, and Mr. Rodney C. Adams. Also,



Contains  
Recycled  
Materials

as forwarded to the members of the Commission under separate cover, Mr. H. Randy Sweet's August 20, 1977 report entitled "Carrying Capacity of the Clatsop Plains Sand-Dune Aquifer" is of record in this matter (hereinafter, Sweet Report).

SUMMARY OF TESTIMONY

Clatsop County (see attached) noted that, in addition to the reasons given by the staff for reducing the recommended 1.2 acre/single family density to one acre, the reduction would be supported by other factors not accounted for in the Sweet Report.

Also, the County recommended that some seventy-five undersized, existing, undeveloped lots of record (as taken from the tax assessor's computer bank) are statistically insignificant in the 14 square mile study area to the protection of the aquifer and should be allowed septic systems. These lots lie outside the areas where the county recommended retention of the moratorium and are not in sewerred areas.

The County urged that the language in the proposal be worded to allow for planned-unit developments.

The County suggested that the term "unacceptable" precede the term degradation so the rule would be compatible with the language of the Sweet Report.

Finally, the County suggested that the lots be free of any disposal system restrictions at such time as sewers are available to any of them.

The City of Gearhart objected to the County's determinations regarding the City's wastewater needs, lamented a lack of opportunity to participate in the Sweet study even though the City would have to pay for some of it, cited and included materials by its consultant that were critical of the report, and urged that the Commission/Department take the lead in gaining County/City cooperation in funding a regional solution to the problem.

Mr. Rodney C. Adams, owner of a lot of 1.02 acres just north of Gearhart (Surf Pines area) noted that his tract was laid out many years ago, purchased by him ten years ago and (in common with the beach front lots near it) has many features conducive to a septic system including 1) 300 to 600 feet in which to lay drain lines, all east of the fore dune, large lots in the area ranging from 3/4 to 3 acres, and many lots which will not be built on for years.

Further, Mr. Adams noted that many in the area who already have large, comfortable homes on septic systems oppose sewers or other means by which newcomers would be facilitated.

Mrs. Elaine Steele pointed out special circumstances in an area just south of Camp Rilea, bounded on the west by Oceanview Drive, on the south by Taylor Street, and on the east by Lakeview Avenue. The area has platted

lots of 10,000 square feet. These lots have been the subject of exchange negotiations with the military. After arduous proceedings involving the Governor's office and the Legislature, the lots were chosen as possible compensation for other lots long ago "swallowed up" by Camp Rilea. After this process, the April 1, 1977 moratorium leaves doubt that the lots will be buildable. Mrs. Steele asks special consideration of these circumstances, noting that there is very little developed property in the area at present.

Mrs. Donald M. MacRae (also involved in the "Camp Rilea Property Exchange" mentioned by Mrs. Steele) cited the recent drought and many discoveries of harmful components in drinking water as reminders that we should conserve water, for ourselves and for those of the future.

Mrs. Mildred M. McKee reported that her lot had been reassessed from \$8,750 up to \$32,000. She said the taxes were prohibitive and she decided to sell only to be told the lot was almost worthless with the moratorium in place. She asked when the moratorium was imposed and what its duration would be.

Mr. John S. Lisoski of Portland owns a 100 x 100 foot lot in Gearhart which he purchased five years ago with the intention of retiring on it. He retired last April. On the tenth of April he discovered the moratorium prevented his getting a building permit. In the five years of his ownership, the assessor's valuation of his lot has risen by at least \$1,000 (more than doubled). Mr. Lisoski found the requirement of paying taxes coupled with the prohibition on building to be unreasonable. He noted that building costs were rising by 27% a year and that his planned development went up \$3,000 during the month of September alone. The waiting of two, three, or five years, he said, would defeat his plans entirely. It was apparent from his testimony that if Mr. Lisoski had applied for a septic tank permit prior to April 1, 1977 he could have built a dwelling on his property. It is located in a subdivided tract of semi-developed land between Cottage and Marion Streets in Gearhart. He added that considerable land around the tract remains undeveloped.

#### RECOMMENDATIONS

Your hearing officer's recommendations in this matter come in a separate document added to the agenda item for the October 21, 1977 Commission meeting.

Respectfully submitted,



Peter W. McSwain  
Hearing Officer

PWM:vt

#### Attachments:

1. Testimony by Clatsop County
2. Testimony by the City of Gearhart



# CLATSOP COUNTY

Courthouse . . . . Astoria, Oregon 97103

TESTIMONY OF CLATSOP COUNTY  
DEPARTMENT OF ENVIRONMENTAL QUALITY HEARING  
CLATSOP COUNTY COURT HOUSE  
ASTORIA, OREGON

October 11, 1977

The following information is presented at this hearing as a result of the D.E.Q. staff reviews and subsequent meetings between Clatsop County, Department of Environmental Quality and Consultant, Randy Sweet. Three questions have evolved from these meetings:

1. On-site disposal area density, net vs. gross requirements;
2. Existing lots of less than the required area; and
3. Clarification of Proposed Amendment language including "undivided parcel of one acre", "owned fully" and "degradation?"

"Carrying Capacity of the Clatsop Plains Sand-Dune Aquifer" surmised that an on-site disposal density not exceeding one dwelling unit (du) per 1.2 acres would meet the D.E.Q. water quality "upper limit for planning purposes," i.e.  $\text{NO}_3\text{-N}$  would not exceed 5 mg/l. During staff review, D.E.Q. indicated that consideration of roadways and other public utility areas would justify a net density of one acre per du.

Clatsop County is in agreement that the size limitation change from 1.2 acres to one acre is appropriate. However, our motivations and reasoning in reaching that conclusion are somewhat different. In addition to the justification indicated in the D.E.Q. staff reviews and summarized above, we would like to suggest additional particularly relevant reasons for reduction of the net area requirement:

- (a) The computation to determine density was extremely conservative and was made without regard for any area being eliminated for on-site disposal such as the aquifer reserve areas totalling more than 1.6 square miles, which constitutes 9 percent of the area being considered for rule revision.
- (b) No consideration was given to the amount of land to be excluded from development through existing rules and regulations, e.g. fore-dune (3 square miles, 12 percent of the total study area).

- (c) All residential property was considered on the basis of full time habitation as part of the conservative approach, i.e. the recreational (part-time residential) nature of the Clatsop Plains.
- (d) Parcels of property which when divided produce a fraction over an even division are precluded from using the fraction; this increases the average size. Thus, all those with 1.25 acres can still accommodate only one dwelling unit.
- (e) Clatsop County has an average of 2.68 persons per dwelling unit. This figure was rounded up to three, a factor of more than 10 percent.

The above points emphasize the conservative approach utilized in this study. Although one cannot attach a total cumulative percentage to the various factors, they do show that a more than adequate margin of safety has been considered. For this reason Clatsop County, in agreement with their consultant, maintains that an on-site disposal density not exceeding one dwelling unit disposal site per gross acre will not compromise the water quality criteria as dictated by the D.E.Q.

In an effort to quantify the like number of existing undeveloped lots of record in the Clatsop Plains which are less than one acre in size Clatsop County has completed an inventory of those lots as requested by D.E.Q. A summary of that inventory follows:

EXISTING UNDEVELOPED LOTS LESS THAN ONE ACRE	NUMBER OF LOTS
TOTAL AREA PROPOSED FOR RULE MODIFICATION	141
AQUIFER RESERVE AREA	53
SEWERED AREA	13
UNSEWERED AREAS	
0.99 - 0.75 acre	8
0.74 - 0.50 acre	27
0.49 - 0.25 acre	24
0.24 - 0.00 acre	16
	} 75

This shows that of the 141 lots; 53 are in aquifer reserve areas; 13 in sewered areas; and the balance of 75 are in areas located in the proposed rule modification area.

The County proposes that this number (75) is statistically insignificant with respect to the total study area and that in order to provide a practical administrative avenue for application of the proposed rule modification those existing lots of record which will meet current rules and regulations for on-site disposal be considered for approval.

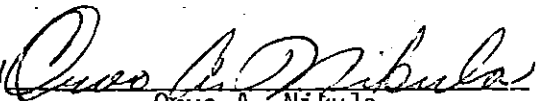


Page Three

The County suggests that the "undivided parcel" and "owned fully" language in the Proposed Amendment be altered to allow for such circumstances as planned developments with common areas in joint ownership as long as the disposal area density relationship does not exceed the density requirement of one on-site d.u. disposal site per acre. Also in order to make the County-D.E.Q.-Consultant contract language compatible with the Proposed Amendment the County suggests that reference be made to "unacceptable" degradation of ground water.

In conclusion Clatsop County requests that the Proposed Amendment state that in the event sewerage facility(s) are constructed in the Clatsop Plains, or portions thereof, those areas shall be released from any on-site disposal area requirements. However, those areas shall conform to the policies of the Clatsop Plains Comprehensive Plan and applicable standards in the zoning ordinance.

BOARD OF COUNTY COMMISSIONERS  
FOR CLATSOP COUNTY, OREGON

BY   
Orvo A. Nikula

# CITY OF GEARHART

*"Gearhart By The Sea"*

Drawer "D"

Gearhart, Oregon 97138

Phone 738-5501

October 11, 1977

Oregon State Environmental Quality Commission  
c/o Mr. William Young, Director  
Department of Environmental Quality  
1234 S.W. Morrison Street  
Portland, Oregon 97205

Gentlemen:

On behalf of the City of Gearhart, I wish to offer the following comments with regard to the proposed modification to Oregon Administrative Rule 340-71-020(7) which among other things provides for maintaining the moratorium against new subsurface sewage disposal system for the City of Gearhart. The order states that "the areas Clatsop County wishes to remain subject to the order are delineated with particularity in the files of Clatsop County Department of Planning and Development in Astoria continuation." It then goes on to state that the Cities of Gearhart and Warrenton will continue to be subject to the moratorium.

The City of Gearhart objects to any determination by Clatsop County as to the wastewater requirements for the City of Gearhart. Gearhart wishes to cooperate with the County and the other incorporated cities with regard to wastewater requirements for the Clatsop Plains area but, unfortunately, was not given the opportunity to participate in the recent groundwater study commissioned by the County. This study was apparently the basis for the modification of the ruling of the Environmental Quality Commission. The County specifically excluded the City of Gearhart and other incorporated cities within the Clatsop Plains from the scope of the groundwater study.

Gearhart has been obligated to proceed at its own expense to address the moratorium issue. At the City's request, our engineering consultant has reviewed and commented on the County's groundwater study. These remarks have previously been transmitted to the County and are attached for your information. At the same time, the City will have to pay for a portion of the County's groundwater study which has provided no benefit to Gearhart.

We firmly believe that any solution to the wastewater problems of the Clatsop Plains area must address the requirements for the entire geographical area including both incorporated cities and unincorporated County areas. We maintain that the Environmental Quality Commission and the Department of Environmental Quality have a responsibility for insuring coordination between

(2)

the Cities and the County prior to releasing any funds to any of the respective jurisdictions. We question whether the County is the appropriate lead agency in this regard.

CITY OF GEARHART



Orrin A. Kulland, Mayor

OAK:ww  
Encl.

# R. W. BECK AND ASSOCIATES

ENGINEERS AND CONSULTANTS

PLANNING  
DESIGN  
RATES  
ANALYSES  
EVALUATIONS  
MANAGEMENT

200 TOWER BUILDING  
SEATTLE, WASHINGTON 98101  
TELEPHONE 206-622-5000

SEATTLE, WASHINGTON  
DENVER, COLORADO  
PHOENIX, ARIZONA  
ORLANDO, FLORIDA  
COLUMBUS, NEBRASKA  
WELLESLEY, MASSACHUSETTS  
INDIANAPOLIS, INDIANA  
MINNEAPOLIS, MINNESOTA

FILE NO. WW-1448-WP1-MB

September 7, 1977

City of Gearhart  
Drawer "D"  
Gearhart, Oregon 97128

Attention: Mr. Bruce Maltman

Gentlemen:

Subject: Report on the Clatsop Plains  
Sand Dune Aquifer Carrying Capacity

This letter is in response to your request that we review the draft report of the subject study which was prepared for the Clatsop County Commission by H. Randy Sweet, Geologist/Hydrogeologist. This review has been made with special reference to Gearhart and the implications of the findings on the present on-site waste disposal practices in Gearhart. In making this review, we have drawn on information obtained during our recent preparation of the Gearhart Comprehensive Sewer Plan and have supplemented this data with further research and discussions with groundwater experts.

The purpose of the Clatsop Plains Sand Dune Aquifer Study as summarized from the study scope of work was to identify the portions of the groundwater aquifer within the Clatsop Plains that should be protected as a future source of water supply, to identify background levels of nitrate in the groundwater from natural sources, and to estimate the quantity of nitrates introduced by man's activities. We do not find that the report fulfills all of these objectives as will be discussed below.

## Groundwater Hydrology

The groundwater report identifies the groundwater flow patterns within the Clatsop Plains aquifer and divides the groundwater aquifer into a number of discrete drainage basins as shown on Plate 1 in the Report. Gearhart is referred to as the Neacoxie Creek Basin. The Report indicates that groundwater changes within Gearhart will not have an influence on the rest of the Clatsop Plains aquifer.

The Report does not identify the geographical limits of the productive groundwater aquifer which has value as a potential source of water supply. Several groundwater geologists knowledgeable as to the Clatsop Plains area have suggested that the Gearhart area should not be considered within the productive aquifer due to its proximity to the Ocean and the Necanicum River which results in generally lower groundwater levels than in other areas of the aquifer and increases the danger of sea water intrusion if substantial quantities of groundwater were withdrawn such as for municipal supply. This issue is not, however, addressed in the Report.

### Groundwater Quality

The Clatsop Plains Sand Dune Aquifer Report presents considerable secondary data as a basis for determining both the natural and man-made contributions of nitrates to the groundwater within the study area. The Report does not present any new evidence or monitoring results on the groundwater aquifer although it is our understanding that some water quality monitoring is under way and will be added as an addendum to the Report.

The Report uses 5 mg/l as the maximum allowable nitrate concentration. It is not clear whether this criteria refers to areas that should be protected as a future source of water supply or for all areas within the Clatsop Plains. The maximum of 5 mg/l has apparently been agreed upon with the Oregon State Department of Environmental Quality as a conservative estimate to preclude the possibility that the nitrate levels would exceed the 10 mg/l limit specified in the U.S. Environmental Protection Agency drinking water standards. It should be noted, however, that the 10 mg/l is only relevant where the groundwater is used as a source of potable water supply so that if Gearhart lies outside the productive aquifer areas, this limit has no particular significance.

The Clatsop Plains Sand Dune Aquifer Report makes a number of assumptions and cites previous research in determining the amount of development that can be allowed without exceeding the 5 mg/l concentration of nitrates in the groundwater. There are a number of these assumptions which are either erroneous or questionable:

1. The Report assumes that 5 lbs/dwelling unit is a reasonable fertilizer application and that all of the nitrogen in the fertilizer leaches into the groundwater table. The nitrogen is applied to lawns and even in sandy soils, a substantial percentage of this nitrogen is taken up by this ground cover and does not reach the groundwater table.

2. The Report cites several references to determine the nitrogen contribution from septic tanks in the Report. These references are inconsistent and the Report utilizes the highest recorded figure of 73 lbs of nitrogen for a family of 4 in the calculations (Walker 1973b). This figure has been modified to an assumed occupancy rate of 2.68 persons/dwelling unit (56 lbs) in the Report. A review of two of the references cited and discussion with one of the authors indicates that the figure of 73 lbs for a family of 4 was not intended to be used for determining the nitrogen contribution by septic tank effluent. The measurements were taken at the bottom of septic tank seepage beds which were located under fertilized lawns and landscaping so that the readings were undoubtedly influenced by other sources of nitrogen. The research report also states that clay subsoil in the area was high in nitrogen which may be indigenous to the lattice structure of the clay.

The above research effort was part of a series of studies conducted by the University of Wisconsin into on-site waste management. A later report which was prepared as part of this same research effort by Siegrist et al is also cited in the Clatsop Plains Sand Dune Aquifer Report. This later report was directed specifically towards identifying the flow and quality of septic tank effluents. The Siegrist findings are based upon not only the independent research of the authors but a review of similar studies being conducted in Wisconsin and elsewhere. The value used in the Clatsop Plains Sand Dune Aquifer Report is 35% higher than the highest value reported in the Siegrist study. Siegrist concludes that the loading rates are influenced by climate, soil, life style, and geographic area. The average reported by Siegrist from his research is only 20% of the value used in the Clatsop Plains Aquifer Report. The above information was not taken into consideration in the Clatsop Plains Report and the results obtained by using the Walker information are extremely high.

Another assumption made in the Clatsop Plains Sand Dune Report which results in high estimates of nitrate-nitrogen is that all dwelling units house permanent residents. Activity in the Clatsop Plains Area is highly oriented towards seasonal recreational activity. For instance, in Gearhart 40% of the dwelling units are seasonally occupied. The occupancy of condominiums, motels, and other commercial facilities is even more highly seasonal.

The Clatsop Plains Sand Dune Aquifer Report does not address the hydrodynamic features of the groundwater aquifer which certainly have a major impact on the level of nitrates and their persistence within the groundwater aquifer. All of the calculations presented in the Report assume the equal distribution of

nitrites and other pollutants in the groundwater with no evaluation of the chemical changes or dispersion of these wastes within the aquifer. Thus, the Report does not present a "mass balance" of the hydrologic features of the aquifer and the influence of nitrites and other water quality constituents introduced into the aquifer. This would require a considerably more expensive investigation than is possible within the scope or budget for the Clatsop Plains Sand Dune Aquifer Report. It must consider the annual rainfall cycle, the changing patterns of land use during the year, and water movement and discharge from the aquifer.

### Water Supply

The Clatsop Plains Sand Dune Aquifer Report is confusing in its approach to estimating future water supply and in its recommendations for protecting the groundwater aquifer. The Report makes an estimate of the year 2000 water requirements and indicates that an area of approximately 1.5 square miles should be set aside as a groundwater reserve to supply these requirements. If, however, groundwater is a potential future source of water supply to the Clatsop Plains Area, the estimated year 2000 water requirements, no matter how generous, are a short-sited approach for determining the future water supply requirements. Instead, it is recommended that the entire productive aquifer area be managed as a water resource so that development and wastewater management practices are consistent with protecting this resource for future generations.

### Conclusions

The purpose of this review is to point out areas in which the Clatsop Plains Sand Dune Aquifer Report has not met all of its objectives. It was not possible within the time and scope of our investigations to develop alternative recommendations, but we have tried to point out some of the deficiencies in the Aquifer Report and to suggest a course of action for resolving the important issue of the Clatsop Plains aquifer resource. The Aquifer Report presents considerable data, some of which is not particularly relevant to the issues at hand. Further, it is not a rigorous technical document and does not utilize the data sources correctly in arriving at conclusions and recommendations. We offer the following recommendations in conjunction with the Aquifer Report and further action to resolve the sand dune aquifer issue.

1. The Clatsop Plains Sand Dune Aquifer Report should be revised to identify the geographic limits of the productive aquifer area.
2. The nitrate-nitrogen loadings should be revised to be consistent with the findings of recent research. It appears that dwelling unit densities between 1

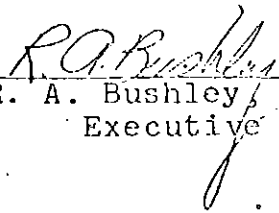
and 3 units per acre may be acceptable without exceeding a nitrate concentration of 5 mg/l using the criteria presented in the Sand Dune Aquifer Report.

3. In order to accurately assess the carrying capacity of the land lying over the productive aquifer area to protect the aquifer, it is recommended that a more detailed study be undertaken considering the hydrologic features of the aquifer, the persistence and dispersion of induced nitrates and other pollutants within the aquifer, and the discharge rate of the aquifer itself.

As for Gearhart, it is recommended that the City await the determination of the geographic limits of the productive aquifer area. If Gearhart is shown to lie outside the productive aquifer, it is our belief that on-site waste disposal should be an acceptable solution for single-family residential areas within Gearhart without degrading water quality. This issue should be pursued in discussions with representatives of the Oregon State Department of Environmental Quality and the Environmental Quality Commission to resolve the present moratorium placed on development in Gearhart. If Gearhart lies over the productive aquifer area, it is recommended that the City request funds from the Department of Environmental Quality for a Step 1 - Wastewater Facilities Planning Study or a Section 208 Study to consider the options available for wastewater disposal. The scope can include a detailed investigation of groundwater quality and hydrology within the area during the course of determining the best wastewater management system.

Very truly yours,

R. W. BECK AND ASSOCIATES

  
R. A. Bushley, Associate and  
Executive Engineer

RAB:mls

cc: Dennis R. Rittenback