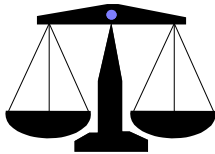


**MINUTES  
KOOTENAI COUNTY HEARING EXAMINER  
PUBLIC HEARING**

**SEPTEMBER 1, 2011  
KOOTENAI COUNTY ADMINISTRATION BLDG.  
ROOM 1**

**HEARING EXAMINER  
MIKE TEDESCO**

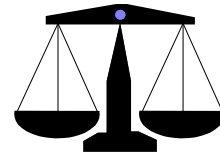
**STAFF PRESENT  
VLAD KRYUKOV  
PAT BRADEN  
SCOTT CLARK  
KATHRYN FORD**



**MINUTES  
PREPARED BY:**

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**KATHRYN FORD**  
Recording Secretary



**MINUTES  
REVIEWED BY:**

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**VLAD KRYUKOV**  
Planner II



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**MIKE TEDESCO**  
Hearing Examiner

The Official Record of Public Hearing is on a CD recording available at the Kootenai County Community Development.

**Mike Tedesco called the meeting to order at 6:01 p.m.**

The Hearing Examiner explained that the purpose of the public hearing is to take testimony on the items that appear on the agenda.

The Hearing Examiner will review the testimony presented and make written recommendations to the Board of County Commissioners, who will make the final decision.

**The hearing was adjourned at 7:12 p.m.**

HEARING EXAMINER MINUTES  
SEPTEMBER 1, 2011

**CASE NO. CUP10-0003**

**Type: Conditional Use Permit**, proposal to amend conditions of approval #7.10, 7.20, and 7.29 of **Conditional Use Permit (Case No. C-999-99 Burlington Northern and Santa Fe [BNSF] Railroad)**. The developed project site encompasses approximately 20.35 acres west of Greensferry Road and east of McGuire Road, which is located within 382.34 acres of the overall project area described as portions of Sections 2, 9, 10, 11, 15, and 16, Township 51 North, Range 5 West, Boise Meridian, Idaho, owned by BNSF Railway Company. The individual parcel numbers for the land subject to this request are:

<u>Parcel Numbers</u>	<u>Property Description</u>			<u>Acreage</u>
51N05W-02-6950	Sec. 2	Twnp. 51 North	Rng. 5 West	8.36 ac.
51N05W-02-4800	Sec. 2	Twnp. 51 North	Rng. 5 West	68.24 ac.
0-2920-09-016-AA	Sec. 9	Twnp. 51 North	Rng. 5 West	5.61 ac.
0-2900-10-032-AA	Sec. 10	Twnp. 51 North	Rng. 5 West	46.32 ac.
51N05W-10-8150	Sec. 10	Twnp. 51 North	Rng. 5 West	62.39 ac.
0-2900-10-005-AA	Sec. 10	Twnp. 51 North	Rng. 5 West	63.48 ac.
0-2900-10-011-AB	Sec. 10	Twnp. 51 North	Rng. 5 West	29.04 ac.
0-2900-10-037-AA	Sec. 10	Twnp. 51 North	Rng. 5 West	2.85 ac.
51N05W-11-3220	Sec. 11	Twnp. 51 North	Rng. 5 West	20.08 ac.
51N05W-15-3150	Sec. 15	Twnp. 51 North	Rng. 5 West	7.15 ac.
51N05W-15-3400	Sec. 15	Twnp. 51 North	Rng. 5 West	10.00 ac.
51N05W-15-3750	Sec. 15	Twnp. 51 North	Rng. 5 West	10.00 ac.
51N05W-16-1500	Sec. 16	Twnp. 51 North	Rng. 5 West	32.97 ac.
51N05W-16-6100	Sec. 16	Twnp. 51 North	Rng. 5 West	15.85 ac.
Total				382.34 ac.

**Applicant/Staff Presentation:** Vlad Kryukov, Planner II, introduced the application stating the purpose of the hearing is to consider potential modifications of the Conditions of Approval set in the original Order of Decision in Case No. C-999-99 in which a CUP was issued to Burlington Northern Santa Fe Railway for the operation of a public utilities complex facility and above-ground bulk storage tanks. The conditions sought to be modified are 7.10, 7.20 and 7.29. The staff report references the current condition language and proposed modifications in Section VII. The public agencies requested to comment had no significant concerns. Mr. Kryukov introduced into the record two letters received after deadline HE 1000 a letter from Kootenai Environmental Alliance (P-8) and HE 1001 a letter from Department of Environmental Quality (PA-15).

Pat Braden, Staff Attorney, stated for the record a procedural point. Since Kootenai County is actually the applicant but BNSF is clearly the party that would be affected by any modification of the current Conditions of Approval he requested after this presentation that BNSF be allowed time to provide a presentation and answer any questions and also be given enough time on rebuttal.

Hearing Examiner Mike Tedesco agreed to the use of time for presenting the application.

Mr. Braden stated the Condition Modifications were a result from the December 17, 2009 Order of Decision which identified some areas of concern even as the BOCC acknowledged the facility was in compliance with all 33 of the conditions that were originally set in the original permit. Basically, this is an opportunity to provide greater environmental protection to the aquifer, provide an ongoing source of funding for the site of the BNSF facility and aquifer protection education programs. The County and BNSF have come to an agreement as to what would be acceptable conditions to both parties. The County has no issues with the DEQ letter which suggests additional language to 7.10 and funding in 7.20. DEQ is the agency with the jurisdiction and expertise to implement the oversight of the facility. However, any conditions recommended

HEARING EXAMINER MINUTES  
SEPTEMBER 1, 2011

for approval need to be acceptable by BNSF so the County can settle the underlying federal litigation. Mr. Braden added he would address any concerns regarding the submitted KEA letter on rebuttal. The success of this hearing is dependent on agreement by BNSF and the County to those conditions presented in the staff report and they are seeking a recommendation of approval.

Janet Robnett, BNSF Attorney, added they are not intending to short circuit this recommendation since this is the County's application and it is limited. They are here because the modifications are substantive in material. It is not the facility or what BNSF does that is under review here but it is those conditions and are those conditions satisfying the requirements of County code to be in the general conformance with the Comprehensive Plan and adverse to the public interest. BNSF held two lengthy workshops open to the public. The workshops and tours are an education process to identify and appreciate what went on before and what is currently in place. The language in these conditions satisfies the Commissioners concern that they had following the five year review held two years ago. The DEQ letter was reviewed and if there is something that should be considered and incorporate there is no objection with the recommendation of additional language. Ms. Robnett addressed the public concerns submitted regarding the noise level stating the railroad has been in this location for about 100 years and the Hauser facility for at least 35 years. The noise level was mitigated in the original CUP and the residents live across the state highway which also has its noise issues.

**Exhibits:** HE 1000 – Letter 8-22-11 from KEA submitted by Vlad Kryukov.  
HE 1001 – Letter 8-29-11 from DEQ submitted by Vlad Kryukov.

**Public Testimony:** Comment Sheets submitted: 7, Applicant/Representatives – Kootenai County staff; In Favor-4, Neutral-2, Opposed-1. The names and address of the individuals speaking or submitting comments are part of the record. The Public Testimony had comments regarding:

- Facility should have never been permitted
- Not sufficient protection for the aquifer
- Emergency shutdown operations should happen immediately on Hauser site and not ordered from the main facility

**Applicant's Rebuttal:** Janet Robnett, BNSF Attorney, stated the purpose of the hearing is not to re-evaluate the sufficiency of all the conditions at the facility but to just review the submitted conditions. The aquifer at this site is 160 feet below the site. DEQ has the guidelines and procedures that BNSF have to operate. Ms. Robnett added they obligated themselves to go through the five year process. There was no agency with expertise or jurisdiction that has suggested any additional conditions. The BOCC hearing took testimony and had concerns on the three conditions which are being presented. BNSF went through the process and have honored the obligations that they were committed to under the CUP and do not think they are obligated to enter into this process but they are willing to recognize the Commissioners concerns and they do operate with the language that is now being proposed. Terry Gay, General Foreman, stated they have had KEA out at the site several times. Anyone can come for a tour and they will come out with an education and armed with the truth about the operation. They have multiple levels of protections put in place for the environment and these compliance guidelines are much higher for their site than anywhere in Idaho. Pat Braden, Staff Attorney, they are pleased that BNSF are agreeable to DEQ's suggested changes in the letter. The County would not have any objections to those changes either. The fact is BNSF is operating under a valid CUP from the County and is in compliance with the current conditions. The County is not advocating for the suggested conditions from KEA. The conditions proposed and in the staff report are agreeable to both the County and BNSF. The County appreciates BNSF's willingness to work with them on these issues and asked that the Hearing Examiner recommend approval to the Commissioners as proposed.

There being no further comments from the public, testimony was closed on this item at 6:50 p.m. The Hearing Examiner, Mike Tedesco, will review this case and submit her written report to the Board of County Commissioners within two weeks.

HEARING EXAMINER MINUTES  
SEPTEMBER 1, 2011

Submitted by,

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Kathryn Ford  
Recording Secretary

HEARING EXAMINER MINUTES  
SEPTEMBER 1, 2011

**CASE NO. CUP11-0005**

**Type: Conditional Use Permit, a request by Cave Bay Community Services, Inc. (CBCS)** for a Conditional Use Permit to establish a Public Utility Complex Facility on two parcels approximately 8.7 acres (combined) in the Restricted Residential and Rural zones. A Conditional Use Permit will allow an upgrade to the existing Cave Bay community wastewater treatment system to meet current DEQ standards. Proposed upgrades include expansion of the existing lagoons, a new irrigation pump station, and land application (irrigation) area for reuse of the treated wastewater effluent. The Parcel Numbers are: 48N04W-32-2450 and 48N04W-32-2600. The site is described as Parcel 1: TAX #11887 (IN LOT 1 & NE-NW) and Parcel 2: NE-NW E OF RD EX TX#’S EX PLTD P TN, both parcels in Section 32, Township 48N, Range 04W B.M. Kootenai County Idaho.

**Staff Presentation:** Vlad Kryukov, Planner II, introduced the application stating the applicant is requesting to establish a Public Utility Complex Facility on two parcels. The purpose of the request is to upgrade the existing legal non-conforming use, Cave Bay community wastewater treatment system to meet current DEQ standards. The wastewater collection system and lagoons were constructed in 1977 and have been serving the Cave Bay Community since that time. The existing wastewater treatment lagoons are located on parcel #2450 and parcel #2600 which is currently undeveloped. The public agencies had no adverse comments regarding this proposal. The applicant also provided a landscaping plan requesting the approval of an Alternative Method of Compliance from Section 9-17-4 of Kootenai County Zoning Ordinance #401. This request was reviewed and approved by the Director on July 26, 2011. The applicant has proposed to provide a graveled driveway and parking pad for limited monthly maintenance since parking needs and driveway use does not generate regular traffic. This request will benefit the community wastewater treatment needs and decrease the risk of environmental impact to the surrounding parcels of land. For the record two corrections to the staff report to dismiss any confusion 1) the statement regarding possible denial of the request in Section VII shall be placed after the proposed conditions of approval and 2) Page 2, paragraph 2.04 – the second sentence should refer to Preliminary Site Plan and not Plat. Scott Clark, Director, clarified that tribal land specified in the proposal is not in a trust and are still under Kootenai County jurisdiction.

**Applicant Presentation:** Scott McNee, applicant representative, stated the application request is adjacent to tribal land. A long term expansion would entail negotiation with the tribe. The lagoons have been in place and constructed about 1977 serving Carroll’s Cave Bay home sites. This proposal is simply to upgrade to current DEQ standards and address the needs of the existing community that they are committed to serve. This is setup in two phases, the first phase is to add an irrigation area wguwg will irrigate existing forest land and the second phase is to expand the lagoon or add another one. They will need to start looking at where they are going to expand and acquire additional property. Any additional land acquired would need to go through this similar Conditional Use Permit process. They are working closely with DEQ to comply and get the facility up to current standards.

**Exhibits:** None.

**Public Testimony:** Comment Sheets submitted: 2, Applicant/Representatives – 2; In Favor-2, Neutral-0, Opposed-0. The names and address of the individuals speaking or submitting comments are part of the record. The Public Testimony had comments regarding:

**Applicant’s Rebuttal:** None.

There being no further comments from the public, testimony was closed on this item at 7:12 p.m. The Hearing Examiner, Mike Tedesco, will review this case and submit her written report to the Board of County Commissioners within two weeks.

Submitted by,

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Kathryn Ford  
Recording Secretary