

NEAH KAH NIE WATER DISTRICT  
**ORDINANCE NO. 2020-1**

WHEREAS, the Neah Kah Nie Water District, formed by Tillamook County under Order No. 41 effective September 24, 1965, is a domestic water supply district formed pursuant to ORS Chapter 264 with the powers and authorities authorized under ORS Chapter 264 (the "District"); and

WHEREAS, the District's water supply for domestic water use consists of three naturally fed springs in the area served by the District. There is no other adequate source of water supply to serve the needs of the community served by the District. The District provides domestic water to 386 structures and an estimated 600 users within the area designated on attached Exhibit A; and

WHEREAS, the quality of the District's water supply from these three springs is pristine, pure, and does not contain any detectable contaminants or pollution. This fact has been confirmed by a Drinking Water Quality Protection Feasibility Study commissioned by the District as well as other water quality data; and

WHEREAS, the District's water supply, distribution and rate structure have all been designed and implemented to assure the pristine, non-contaminated water supply and not the risk of potential contamination. Water users have made it clear that they do not want any compromise that might jeopardize the District's unique pristine water supply; and

WHEREAS, the District adopted Ordinance No. 2018-1 (the "Ordinance"). The Ordinance provides: "F. Protection of the District's pristine water source(s) and preservation of water quality and quantity is of paramount concern to the District. The provisions in this Section F shall therefore be interpreted or construed as broadly as possible." The Ordinance further provides that the District may refuse to provide water service to any development "which threatens the quantity or pristine quality of the District's water sources"; and

WHEREAS, the real property described on attached Exhibit B (the "Development Site" is zoned Rural Residential 2 (RR-2) by Tillamook County and allows residential development with a minimum lot size of 2 acres. The Development Site is approximately 71 acres. The Development Site is not served by a piped sanitary sewer system and, therefore, any residential development will rely on septic systems for sewer service; and

WHEREAS, the Development Site is upgrade of and is in close proximity to the three natural springs that constitute the District's water supply. Grading, clearing, tree and vegetation removal, and the operation of construction related vehicles and machinery run the risk of contaminants seeping into the ground and ground water. Residential use of the Development Site is likely to result in discharges into the ground and ground water of septic tank effluent, herbicides and pesticides used on landscaped areas, run off containing hydrocarbons from roads and driveways and other potential contaminants. All of these constitute pollutants capable of adversely impacting the District's water supply and degrading its pristine quality. The District cannot control errors during the construction process that could lead to discharges into the ground and ground water. Further, the District cannot control the conduct and activities of the numerous owners of homes that might be built on the Development Site such as a prohibition on the use of pesticides and the maintenance of septic systems or identification of releases of septic tank effluents or breakage of a water pipe; and

WHEREAS, the Development Site has been acquired by Seventeen Enterprises LLC (the "Developer"). The Developer has filed an application with Tillamook County for a preliminary subdivision plat for 30 homes, which will be served by septic tanks. Once a preliminary subdivision plat has been approved, the Developer intends to proceed to final plat approval and the development and construction of infrastructure and 30 homes; and

WHEREAS, the County zoning of the Development Site makes it likely that the Developer or some future owner/developer will attempt to develop the Development Site which will be served by septic systems; and

WHEREAS, the District retained Real Estate Appraisal Services, LLC to appraise the fair market value of the Development Site, the appraisal was completed on January 14, 2020, the District offered to purchase the Development Site for the appraised value in a letter to the Developer's legal counsel dated January 29, 2020, and in a letter back from the Developer's legal counsel dated May 20, 2020, that offer was summarily rejected; and

WHEREAS, the District is authorized under ORS 264.240 to use the power of eminent domain to further the purposes of the District which clearly includes protecting the pristine quality of its water supply; and

WHEREAS, the District has determined that condemnation of the Development Site is necessary to insure that at no time in the future will residential development occur on the Development Site with the attendant risk of an adverse impact on the District's pristine water supply. Further, if contaminants were to impact the Districts' water supply it is entirely unpredictable as to whether or not the contaminants could be removed from the water supply and the costs and methods to do so; and

WHEREAS, the condemnation of the Development Site will result in the greatest good of forever protecting the quality of the District's water supply currently servicing over 600 users and future users, will give assurance to domestic water users that the quality of the District's water supply will not be degraded, and will prevent the District from having to monitor the potential adverse impacts from contamination from residential development and dealing with any actual contamination of the District's water supply; and

WHEREAS, the harm to the Developer's private interests will be minimized because the Developer will receive fair monetary compensation for the taking of the Development Site through the condemnation process,

NOW THEREFORE, based on the above determinations, the Board of Commissioners resolve as follows:

The Board ordains that the District condemn the Development Site and that the Board direct the District's legal counsel to cause the District's special counsel to initiate and pursue the condemnation of the Development site;

DATED: June \_\_\_\_, 2020.

Vote:  YES  NO

BOARD COMMISSIONERS SIGNATURES

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