

BOARD OF COUNTY COMMISSIONERS

93514

KLAMATH COUNTY, OREGON

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2
3 IN THE MATTER OF THE APPEAL)
4 FROM THE DECISION OF THE)
5 HEARINGS OFFICER APPROVING)
6 CONDITIONAL USE PERMIT NO.)
7 80-16 FOR J. N. S. EXCAVATION)
8 COMPANY)

FINDINGS OF FACT AND ORDER

9 The Conditional Use Permit application made by J. N. S.
10 Excavation Company was to allow for a solid waste disposal site
11 on property within the AF (Agricultural Forestry) zone. This
12 facility was to be used for the disposal of septic tank waste.

13 An application on this matter was first heard by James
14 Uerlings, Deputy Hearings Officer, on March 5, 1980. At the
15 close of that hearing Mr. Uerlings denied the application, citing
16 inadequate access, the possibility of adverse effects on abutting
17 property owners, the need to study the matter further, and the
18 possibility that some L. C. D. C. Goals may have been violated.

19 On May 16, 1980, J. N. S. Excavation Company submitted
20 a modified application which proposed a different access to the
21 site. This application was reviewed at a meeting before James
22 Spindor, Klamath County Hearings Officer, on June 11, 1980.

23 The hearing was left open for an additional fifteen days for
24 proponents and opponents to submit additional evidence. After
25 reviewing the testimony and exhibits, the Hearings Officer
26 granted the permit subject to following Findings of Fact and
27 Conditions:

FINDINGS OF FACT:

- 28 1. The site is adequate in size and shape to house the
proposed activity and will fit in with the neighborhood so long

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1 as the conditions set forth hereinbelow are followed.

2 2. The site has adequate access to the streets and
3 highways to carry the traffic flow generated by the proposed use.

4 3. There will be no adverse effect on the abutting
5 property owners so long as the conditions set forth hereinbelow
6 are followed.

7 4. The granting of this Conditional Use Permit is
8 consistent with the goals of the L. C. D. C.

9 5. This Conditional Use Permit is granted subject to
10 the following conditions.

11 CONDITIONS:

12 1. This Conditional Use Permit is granted for a period
13 of one year, subject to renewal after a review of applicant's
14 operation at a public hearing.

15 2. Applicant shall obtain approval from the Department
16 of Environmental Quality for his site prior to said site being
17 put into operation.

18 3. Applicant shall obtain approval from the Klamath
19 County Health Department for his site prior to said site being
20 put into operation.

21 4. The site shall be inspected and approved at least
22 once each month by the Department of Environmental Quality and
23 the Klamath County Health Department.

24 5. There shall be no more than two disposal pits active
25 at any one time.

26 6. The area of the site shall be fenced sufficiently to
27 keep persons, livestock, and deer off the site. The fence which
28 is built shall at least meet the specifications of the Oregon

1 State Department of Fish & Wildlife with regard to deer.
2

3 7. The applicant shall provide written proof of
4 permission to use an adequate access road to the site.

5 8. The applicant shall follow the direction of the
6 Klamath County Public Works Department with regard to the access
7 road from the private property to Lower Lake Road.

8 9. The applicant shall obtain liability insurance
9 sufficient to cover all prospective claims.

10 10. The applicant shall follow the plot plan which he
11 submitted to the Planning Department, Applicant's Exhibit No. 3
12 submitted with Conditional Use Permit No. 80-8.

13 The Hearings Officer's order was signed on August 4,
14 1980, and on August 13, 1980, the Midland-Worden-Lower-Lake
15 Area Committee appealed the decision to the Board of County
16 Commissioners. The appeal was based on the following nine points:

17 1. The question of runoff was not properly addressed
18 or answered at the hearing on June 11, 1980.

19 2. The site is not adequate in size and shape to house
20 the proposed activity as presented in written statistical evi-
21 dence to the Hearings Officer and will not fit in with the
22 neighborhood, regardless of any conditions of approval set.

23 3. Adequate access on roads is not the problem. The
24 private road leading to the site as proposed will create safety
25 hazards and potentially create an impossible approach during
26 adverse weather conditions due to the high percentage of slope.

27 4. The feasibility of the site is questioned in Klamath
28 County's proposed land use planning.

5. The proposal is in conflict with L. C. D. C. Goals

1 and Guidelines.

2 6. There will be a detrimental impact on abutting
3 property owners and other property owners in the area.

4 7. Consideration of alternative sites was not presented
5 or considered by the Department of Environmental Quality and
6 Public Health.

7 8. The Area Committee and the questions about the
8 proposed site were not adequately answered by the hearing or the
9 Hearings Officer.

10 9. The condition of liability insurance to cover any
11 damage or claims is termed "adequate", which is not satisfactory
12 as "adequate" needs to be defined.

13 The Board of County Commissioners reviewed the appeal at
14 a hearing held on September 18, 1980, which was continued to
15 October 7, 1980, and again to November 6, 1980. After taking the
16 testimony of proponents and opponents and reviewing the exhibits
17 and testimony submitted at the previous hearings, the Board of
18 County Commissioners voted on November 6, 1980, to deny the appeal
19 and uphold the permit as approved by the Hearings Officer.

20 Based on a review of the record, the Klamath County
21 Board of Commissioners makes the following Findings of Fact:

22 FINDINGS OF FACT:

23 1. The proposed disposal site would occupy ten acres.

24 2. The site is located off Lower Lake Road, a paved
25 county road.

26 3. Direct access to the site would be via a private
27 road which enters Lower Lake Road at a point approximately 1.2
28 miles south of Cross Road.

1 4. Testimony indicated that the intersection of
2 applicant's private road with Lower Lake Road has been constructed
3 to meet the requirements of the Klamath County Public Works
4 Department.

5 5. Testimony indicated that there are between five and
6 ten homes within a one-mile radius of the site, with the nearest
7 one being about one-quarter mile away.

8 6. The proposed disposal site would be screened from
9 the view of nearby residences by intervening ridges.

10 7. The site has been used for grazing and adjoining
11 properties are mainly range and crop land.

12 8. The present Comprehensive Land Use Plan for Klamath
13 County designates this area as agricultural and the zoning classi-
14 fication is AF (Agricultural Forestry). The AF (Agricultural
15 Forestry) zone allows for solid waste disposal facilities and
16 sewage treatment plants as conditional uses.

17 9. Testimony indicated that the Department of Environ-
18 mental Quality cannot issue a permit for a disposal site until
19 county approval is granted.

20 10. Testimony indicated that before the site is utilized
21 for sewage disposal, the facility would be subject to inspection
22 and approval by the Department of Environmental Quality.

23 11. Testimony indicated that county-owned sludge
24 lagoons on a site approximately one acre in size have been
25 operating near Grants Pass for about fifteen years with no
26 apparent health or other problems.

27 CONCLUSIONS OF LAW:

28 1. The site is adequate in size and shape to accommodate
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1 the proposed use along with the yards, fences, parking and other
 2 features required to make it fit into the neighborhood.

3 2. The site relates to streets and highways adequate to
 4 carry the traffic generated by the proposed use.

5 3. There will be no adverse effects on abutting
 6 properties.

7 4. The conditions placed on the permit by the Hearings
 8 Officer are adequate protection against any possible adverse
 9 effects of the proposed operation.

10 The Board of County Commissioners of Klamath County,
 11 Oregon, accordingly orders as follows:

12 The appeal of the Hearings Officer's decision on
 13 Conditional Use Permit No. 80-16 is hereby denied. The conditions
 14 placed by the Hearings Officer, as stated above, are reaffirmed.

15 DONE AND DATED THIS 8th DAY OF December, 1980.

18 Chairman

19 Neil Kuonen
 20 Member

21 Harold L. Myrnes
 22 Member

23 APPROVED AS TO FORM:
 24 Boivin & Boivin

25 BY Mark Boivin

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28 STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the
9th day of December A.D., 1980 at 3:34 o'clock P M.; and duly recorded in
 Vol M80, of Deeds on page 23858.

Fee \$ None

WM. D. MILNE, County Clerk
 By Bernetha H. Hetch deputy