

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

2865

In the Matter of Request for }
Conditional Use Permit No. 81-171 } KLAMATH COUNTY PLANNING
for J. N. S. Excavation Company } FINDINGS OF FACT AND ORDER

A hearing was held in this matter at Klamath Falls, Oregon, on July 8, 1981, pursuant to notice given in conformity with Ordinance No. 35, Klamath County, before the Klamath County Hearings Officer, Jim Spindor. The applicant was present and represented by Steven A. Zamsky, Attorney at Law. The Klamath County Planning Department was represented by Jonathan Chudnoff. The Hearings Reporter was Barbara Thomson.

Evidence was presented on behalf of the Department and on behalf of the applicant. There were adjacent property owners present who stated that they had objections to the proposed Conditional Use Permit requested by the applicant.

The following exhibits were offered, received, and made a part of the record:

Klamath County Exhibit A, the Staff Report

Klamath County Exhibit B-1 through B-5, photos

Klamath County Exhibit C, Klamath County Assessor's Map of subject property

Klamath County Exhibit D, letter from Rod Ingram, Department of Fish and Wildlife

Klamath County Exhibit E, letter from Russ Mull, Klamath County Department of Health Services

Applicant's Exhibit No. 1, plot plan

- 1 Applicant's Exhibit No. 2, Daily Dumping Log
- 2 Applicant's Exhibit No. 3, Department of Environmental
- 3 Quality Monthly Reports
- 4 Applicant's Exhibit No. 4, letter from Kent Mathiot, Water
- 5 Resources Department
- 6 Applicant's Exhibit No. 5, letter from Bob Paeth
- 7 Applicant's Exhibit No. 6, legal description
- 8 Applicant's Exhibit No. 7, letter from Gil Hargreaves,
- 9 Department of Environmental Quality
- 10 Applicant's Exhibit No. 8, Department of Environmental
- 11 Quality Monthly Inspection Reports
- 12 Applicant's Exhibit No. 9, letter from Steven Cheyne,
- 13 Klamath Vector Control District
- 14 Applicant's Exhibit No. 10, supporting statement
- 15 Applicant's Exhibit No. 11, letter to William M. Ganong
- 16 from John Nickelson
- 17 Opposition's Exhibit No. 1, two photos of lagoon dated
- 18 June 11, 1981
- 19 Opposition's Exhibit No. 2, three photos of road dated
- 20 January 31, 1981
- 21 Opposition's Exhibit No. 3, petition from property owners
- 22 Opposition's Exhibit No. 4, letter from Harry and Maria
- 23 Eghert
- 24 Opposition's Exhibit No. 5, article from the Herald and
- 25 News dated September 29, 1980
- 26 Opposition's Exhibit No. 6, article from Oregonian dated
- 27 September 4, 1980
- 28 Opposition's Exhibit No. 7, article from Frontier

1 Advertiser dated January 20, 1981

2 Opposition's Exhibit No. 8, article from Oregon Journal
3 dated May 12, 1981

4 Opposition's Exhibit No. 9, evaporation data, Klamath Falls
5 Airport

6 Opposition's Exhibit No. 10, letter from Lee Jordan, South
7 Suburban Sanitary District

8 Opposition's Exhibit No. 11, article from Herald and News
9 dated November 5, 1981

10 Opposition's Exhibit No. 12, well test results, Don T.
11 Berger

12 The hearing was then closed and the Hearings Officer stated
13 that he would render a decision within fifteen (15) days. Based
14 upon the evidence submitted at the hearing, the Hearings Officer
15 made the following Findings of Fact:

16 FINDINGS OF FACT:

17 1. The site is adequate in size and shape to house the
18 proposed activity and will fit in with the neighborhood so long
19 as the conditions set forth hereinbelow are followed.

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

22 3. There would be no adverse effect on the abutting
23 property owners so long as the conditions set forth hereinbelow
24 are followed.

25 4. The granting of this Conditional Use Permit is con-
26 sistent with the goals of the L. C. D. C. as follows:

27 a. Goal No. 1 - Notice of the hearing on this matter was
28 sent to neighboring property owners, the Midland Area Committee,
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1 and other concerned agencies, and to the Herald and News and
2 other media. There was testimony at the hearing both for and
3 against the applicant.

4 b. Goal No. 2 - The plan designation for this area is
5 Agricultural and a zoning designation of AF (Agricultural Forestry).
6 Disposal sites are among the conditionally permitted uses in the
7 AF (Agricultural Forestry) zone. There was testimony at the
8 hearing that although many other sewage disposal sites have been
9 suggested to the county, there have been no satisfactory sites
10 available to the county other than the site in question here.

11 c. Goal No. 3 - The soils in the vicinity are of the
12 Stukel series and are rated Class VII. The land has some grass
13 and is used for grazing part of the year; the septic disposal
14 operation does not interfere with grazing in that only the
15 lagoons themselves are fenced and the ten-acre parcel as a whole
16 remains open. This property is not identified as irrigated or
17 irrigable land on maps at the Planning Department. The nearest
18 crop line or improved pasture is over one-quarter mile away and
19 it does not appear that the lagoons would interfere with agri-
20 cultural operations on adjoining property.

21 d. Goal No. 4 - The area is in Timber Productivity Class
22 VII, capable of producing fewer than twenty cubic feet of timber
23 per acre annually. There is no marketable timber on ten acres
24 under review.

25 e. Goal No. 5 - A letter from Rod Ingram, District
26 Wildlife Biologist for the Oregon Department of Fish and Wild-
27 life, indicates that no adverse effects on wildlife are antici-
28 pated. Because of the area's topography and the low profile of

1 the lagoons, little or no negative scenic impacts are apparent.
2 The nearest dwelling from which the site is visible is over one
3 mile away. This property is not a known archeologically sensitive
4 area as indicated by the map available at the Planning Department.
5 Applicant's Exhibits Nos. 3, 4, and 5 do not indicate any actual
6 or potential natural resource contamination from this site.

7 f. Goal No. 6 - The site in question was in full operation
8 from January 5, 1981, to June 8, 1981, and during this time it
9 was subject to monthly Department of Environmental Quality and
10 Health Department inspections. The inspection reports filed in
11 this regard do not give any indication of air, water or land
12 resource contamination. No complaints have been received from
13 the Planning Department regarding odor or other problems. The
14 conditions imposed hereinbelow will assure that this goal is met.

15 g. Goal No. 7 - The area is not known to be subject to
16 natural hazards.

17 h. Goal No. 8 - The proposed disposal site does not
18 appear to interfere with recreational use of the area in general.

19 i. Goal No. 9.- Failure to have an operating disposal
20 system will have significant adverse effects on the local economy
21 and thus of the State. The lagoons have been and will continue
22 to be operated as a private business. No gains in employment
23 are evident as a result of the operation.

24 j. Goal No. 10 - The disposal site is not in an area
25 designated for residential use. As long as the conditions
26 imposed hereinbelow are met, surrounding dwellings will not be
27 adversely effected.

28 k. Goal No. 11 - The site is intended to serve residences

1 and businesses not currently served by sanitary sewer facilities.
2 The disposal site itself does not require special facilities or
3 services in order to operate.

4 1. Goal No. 12 - The site is reached via a private cinder
5 road from Lower Lake Road. The private road is approximately
6 .7 of a mile in length and when viewed by the Planning Department
7 on June 9, 1981, was in good condition.

8 m. Goal No. 13 - Little or no effect on energy conserva-
9 tion is apparent.

10 n. Goal No. 14 - The site is outside any urban or urban-
11 izing area.

12 5. This Conditional Use Permit is granted subject to the
13 following Conditions:

14 CONDITIONS:

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

18 2. Applicant shall obtain approval from the Department
19 of Environmental Quality for his site prior to said site being
20 put into operation.

21 3. Applicant shall obtain approval from the Klamath County
22 Health Department for his site prior to said site being put into
23 operation.

24 4. The site shall be inspected and approved at least
25 once a month by the Department of Environmental Quality and the
26 Klamath County Health Department.

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

1 6. The area of the site shall be fenced sufficiently to
2 keep persons, livestock, and deer off the site. The fence which
3 is built shall at least meet the specifications of the Oregon State
4 Department of Fish and Wildlife with regard to deer.

5 7. The applicant shall maintain permission to use an
6 adequate access road to the site and shall have written proof
7 thereof available to the Planning Department upon request.

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

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

13 10. The applicant shall follow the plot plan which he
14 submitted to the Planning Department, Applicant's Exhibit No. 1,
15 submitted with Conditional Use Permit No. 81-17.

16 The Hearings Officer, based on the foregoing Findings of
17 Fact, accordingly orders as follows:

18 That real property described as the

19 "parcel of land generally located in the Klamath
20 Hills east of Lower Lake Road approximately 1 1/4
21 miles south of its junction with Cross Road,
22 and more particularly described as a parcel of
23 land located in the NE 1/4 of Section 17, Township
24 40 South, Range 9 East, W.M., Klamath County,
25 Oregon, being more particularly described as:
26 Commencing at the 5/8" iron pin marking the
27 northeast corner of said Section 17; thence
28 South 28° 54' 40" West 569.63 feet to a point which
is the "True Point of Beginning" of this descrip-
tion; thence North 45° 00' 00" West 660.0 feet to
a point; thence South 45° 00' 00" West 660.00 feet
to a point; thence South 45° 00' 00" East 330.00
feet to a point which is South 45° 00' West 20.0
feet more or less from the southwesterly fence
corner around the southwesterly septic lagoon;
thence South 45° 00' 00" East 330.00 feet to a
point; thence North 45° 00' 00" East 660.00 feet

to a "True Point of Beginning", containing 10.0
acres, more or less."

is hereby granted a Conditional Use Permit in accordance with the
terms of the Klamath County Zoning Ordinance No. 35, and, hence-
forth, will be allowed a solid waste disposal site in the AF
(Agricultural Forestry) zone.

Entered at Klamath Falls, Oregon, this 3rd Day of
July, 1981.

KLAMATH COUNTY HEARINGS DIVISION

D. D. [Signature]
By: Hearings Officer

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Klamath County
this 4th day of August A.D. 19 81 at 1:31 o'clock P.M.
duly recorded in Vol. 481, of Deeds on Page 13908

EVELYN BIEHN, County Clerk
By *Bernard [Signature]*

No Fee

COMMISSIONERS JOURNAL