

40912

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In the matter of the request

of JNS EXCAVATION

CONDITIONAL USE PERMIT  
CUP NO. 2-92

This matter came before Neil D. Smith, Hearings Officer for Klamath County, Oregon on 28 June 1991 in the County Commissioners' Meeting Room in Klamath Falls Oregon. The Klamath County Planning Department was represented by Mr. Kim Lundahl the recording secretary was Ms. Mary Lu Talbert. The Klamath County Planning Department file and all the exhibits and other contents therein is incorporated by this reference into this matter.

The Hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related Statutes and Ordinances. The applicant for the above referenced Conditional Use Permit, was present and testified. Witnesses information was received and found to be in favor of the permit.

#### FINDINGS OF FACT

1. Those property descriptions and application information contained in exhibit A are hereby made a part of the record and by this reference incorporated herein as findings of fact.

2. The Applicant's requested Conditional Use Permit is permitted in this zone.

3. The operation of this proposed enterprise is to conform to all requirements consistent with Conditions set forth in the Board of County Commissioners Order dated 27 November 1991 and Section 12.010 of the LAND DEVELOPMENT CODE in all respects.

4. There was testimony both in favor and against this application.

#### IN FAVOR

5. When Mr. Nicholson was questioned about his application being too broad as set forth on page 4 item 5. of his application, he stated that specifically that he proposed to receive into his facility: 1. Glue waste water, 2. Car wash residue, 3. Heavy Equipment cleaning pit material ( similar to car wash waste. 4. Detergent water containing residue from cleaning transmission parts from the AAMCO business. There-

fore this decision will be inclusive of ONLY those specific materials and none other.

6. Mrs. Rutz, testified that the water they were required to dispose of was that resulting from the washing of transmission parts in a biodegradable detergent solution.

7. Mr. Ralph Opp of the Oregon Fish and Wildlife Department testified that there are golden eagle nests in the rock outcrops in the area of these ponds and that they have had them under casual observation for over 20 years and that no adverse effect upon their activities has been observed due to the proximity of the ponds. Exhibit D is a letter from Beth Waterbury Assistant District Wildlife Biologist. She testified that she saw no adverse effect of the operation but recommended that a fence be erected in conformance with a design enclosed in the exhibit.

#### OPPOSITION

8. Mr. Ken Wright testified regarding the placement of additional materials in the ponds alleging among other things that the hazardous materials would leach into the ground water supply.

9. Mr. Lord Maitrea testified and cited many sections of the LDC which will be specifically dealt with here. He alleges violation of the following sections of the Code.

##### 55.230 - CONDITIONAL USES (under FORESTRY/RANGE)

The following uses may be established subject to the criteria in Section 55.240 and the provisions of Article 44.

##### (A) Civic Use Types - "...sewage treatment facilities..."

It has already been established in numerous prior decisions that this use is permitted on this site, therefore I find that this operation is permitted in this location.

##### 57.040 - CONFLICTING USES (under "SIGNIFICANT RESOURCE OVERLAY")

##### (E) Eagle Nest Sites and Rookeries

There was uncontradicted testimony by officials of the Oregon Fish and Wildlife Division that this facility has had no adverse effect upon any wildlife on the land. They have made an on site examination and recommended steps to prevent any future harm by preventing access to the ponds by mammals through the construction of a fence. Furthermore, this facility has been in continuous operation since 1986, prior to this section being enacted. Under the circumstances, however nothing of a nature which will harm the wildlife must not be placed in the ponds, therefore only those which are classified as nontoxic should be placed on the site.

57.020 - see 57.040 above.

57.030 - see 57.040 above.

57.050 - The applicant has not met the requirements of this section in his application or any other documents submitted to the Planning Department

## 44.030 - REVIEW CRITERIA

A. The use complies with policies of the Comprehensive Plan;  
There has been cited no violation of the Comprehensive Plan nor has one been found.

B. The use is in conformance with all other required standards and criteria of this code;  
There is not compliance with Section 57.050.

C. The location, size, design, and operating characteristics of the proposed use will not have a significant adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area.

This facility has been in operation for over 5 years and has been examined by the Klamath County Health Department and the Oregon Department of Environmental Quality and the Oregon Department of Fish and Wildlife. None of those agencies has found and significant impact on the area.

D. Conditions - The review body may grant a Conditional use permit subject to such reasonable conditions based on findings of fact that it deems necessary to ensure compliance with the Klamath County Comprehensive Plan, Land Development code, and sound land use planning principles.

This operation was reviewed and the opinion of that review Appealed and Modified this issue has been considered and previously decided.

10. Mr. Gordon Cheyne testified as to the dangers to the ground water contamination hazards.

This issue was addressed in the Renewal application and decided only after extensive tests of wells in the area and detailed reports showing no adverse impact were submitted into evidence at those hearings.

11. Ms. Carol Yarbrough of the Citizens for Quality Life testified regarding the hazards of dumping the sludge on the ground. She quoted from several publications from the Washington State Department of Agriculture regarding the specifics of those hazards both soil and air borne. In addition, she expressed concern that a "third party" take the samples to be tested by the Health Department and/or DEC..

In regard to the disposal of the sludge from these ponds there has been no evidence that it has been placed upon pasture or range land. The responsibility of the disposal of

by-products from this operation is to be regulated by the State Department of Environmental Quality and the Klamath County Health Department.

Concerning the proposal that a "third party" take the samples for testing there is not a scintilla of evidence that there has been any fraud concerned with the sampling or inspection of the facility.

12. Ms. Anderson, of Keno Oregon expressed concern about heavy metals being introduced into the environment.

Ms. Anderson's concern regarding heavy metal contamination is well taken and was addressed previously when it was specifically Ordered that only nontoxic materials be deposited at the facility.

13. Ms. Judy Mathews presented some exhibits consisting of newspaper articles describing the effect of placing animal fecal and sludge material on pastures and the very negative effect upon the people and animals over a period of time. Her primary concern seemed to be what is to be done with the sludge from this operation.

That concern is addressed in # 11 above.

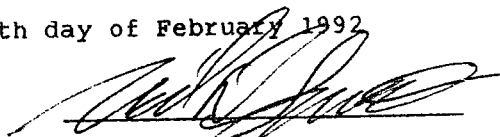
#### CONCLUSION

J&S's application does not conform to Section 57.050 and therefore cannot be granted at this time.

#### ORDER

Based upon the findings herein the Conditional Use Permit number NO. 2-92 is denied without prejudice pending compliance with 57.050 of the Land Development Code.

DATED this 10th day of February 1992



Neil D. Smith, Hearings Officer

KLAMATH COUNTY LAND DEVELOPMENT CODE SECTION 24.007 PROVIDES:

" An Order of the Hearings Officer shall be final unless appealed within seven (7) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of this Code"

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 11th day  
of Feb. A.D., 19 92 at 2:14 o'clock P M., and duly recorded in Vol. M92,  
of Deeds on Page 2876.

Evelyn Biehn County Clerk

By Paula Mulder

FEE none

Return: Commissioners Journal