BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 691

An Ordinance amending the Multnomah County Code Chapter 11.15 by amending regulations applicable to grading and land disturbing activities within the Balch Creek Drainage Basin.

(Language in brackets [ ] is to be deleted; underlined sections are new text.)

Multnomah County Ordains as follows:

Section I. Findings.

(A). In November, 1989, Portland City Commissioner Earl Blumenauer appointed the Balch Creek Task Force to recommend cost effective facilities for sewage treatment and an appropriate level of development within the Balch Creek Drainage Basin. The Task Force adopted its report and findings in March, 1990. The Portland Planning Commission held hearings on the proposed **Balch Creek Watershed Protection Plan** (BCWPP) in June, July, and August, 1990; the City Council adopted the plan at its December 19, 1990 hearing, with a second reading January 9, 1991. The plan became effective in the City portion of the basin on February 8, 1991.

(B). The Balch Creek Plan includes an inventory of Goal 5 resources in the basin, with Environmental, Social, Economic, and Energy (ESEE) analyses for the identified resources. The plan's objectives are to: maintain Balch Creek cutthroat trout; maintain a wildlife corridor between Forest Park and Pittock Acres Park; limit floods; and protect streams and forests in the basin (BCWPP, pg. 109).

(C). The Balch Creek Watershed Protection Plan calls for, among other things, seasonal restsrictions on grading activities and vegetated buffers along Balch Creek to avoid or

minimize adverse water quality and erosion effects to the stream. The Balch Creek plan seeks to protect *"...natural resource values of the Balch Creek Watershed through the application of special development standards..."*. The County Zoning Code does not include seasonal restrictions for grading activities. However, the County can impose such restrictions on development in the basin through text amendments to the *Hillside Development and Erosion Control* subsection of MCC 11.15.

(D). Multnomah County Ordinance Number 643 amended MCC 11.15 on February 20, 1990. These amendments added a *"Hillside Development and Erosion Control"* subsection to the Multnomah County Zoning Ordinance (MCC 11.15.6700 -.6735). The subsection requires a *"Grading and Erosion Control Permit"* for most land disturbing activities in unincorporated areas, including lands within the Balch Creek Drainage Basin. Ordinance Number 643 also amended the *"Significant Environmental Concern"* (SEC) subdistrict by requireing an SEC Permit for any building, structure or physical improvement within 100-feet of the normal high water level of a Class I stream [MCC 11.15.6404(C)]. Balch Creek is identified as a Class I stream by the Oregon Department of Forestry.

(E). One available means of addressing the BCWPP goals is to implement the ***Erosion Control Plans Technical Guidance Handbook*** (January, 1991) within the Balch Creek basin. The handbook is already used to review grading proposals within the Tualatin Basin (ref. C 2-91)

Section II. Amendments.

Multnomah County Code Chapter 11.15 is amended to read as follows:

11.15.6700 Purposes

The purposes of the Hillside Development and Erosion Control subdistrict are to promote the public health, safety and general welfare, and minimize public and private losses due to

earth movement hazards in specified areas and minimize erosion and related environmental damage in unincorporated Multnomah County, all in accordance with ORS 215, LCDC Statewide Planning Goal No. 7 and OAR 340–41–455 for the Tualatin River Basin, and the Multnomah County Comprehensive Framework Plan Policy No. 14. This subdistrict is intended to:

(A) Protect human life;

(B) Protect property and structures;

(C) Minimize expenditures for rescue and relief efforts associated with earth movement failures;

(D) Control erosion, production and transport of sediment; and

(E) Regulate land development actions including excavation and fills, drainage controls and protect exposed soil surfaces from erosive forces.

(F) Control stormwater discharges and protect streams, ponds, and wetlands within the Tualatin River and Balch Creek Drainage Basins.

11.15.6710 Permits Required

(A) **Hillside Development Permit:** All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the "Slope Hazard Map", or on lands with average slopes of 25 percent or more shall obtain a Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC .6715.

(B) **Grading and Erosion Control Permit:** All persons proposing site grading where the volume of soil or earth material disturbed, stored, disposed of or used as fill exceeds 50 cubic yards, or which obstruct or alter a drainage course, shall obtain a Grading and Erosion Control Permit as prescribed by this subdistrict, unless exempted by MCC .6715(B)(2) through (8) or .6715(C). Development projects subject to a Hillside

Development Permit do not require a separate Grading and Erosion Control Permit.

(C) **Grading and Erosion Control Permit:** All persons proposing land-disturbing activities within the Tualatin River and Balch Creek Drainage Basins shall first obtain a Grading and Erosion Control Permit, except as provided by MCC 11.15.6715(C) below.

11.15.6715 Exempt Land Uses and Activities

The following are exempt from the provisions of this Chapter:

(A) Development activities approved prior to February 20, 1990; except that within such a development, issuance of individual building permits for which application was made after February 20, 1990 shall conform to site-specific requirements applicable herein.

(B) General Exemptions – Outside the Tualatin River and Balch Creek Drainage Basins, all land-disturbing activities outlined below shall be undertaken in a manner designed to minimize earth movement hazards, surface runoff, erosion, and sedimentation and to safeguard life, limb, property, and the public welfare. A person performing such activities need not apply for a permit pursuant to this subdistrict, if :

(1) Natural and finished slopes will be less than 25 %; and,

(2) The disturbed or filled area is 20,000 square feet or less; and,

(3) The volume of soil or earth materials to be stored is 50 cubic yards or less; and,

(4) Rainwater runoff is diverted, either during or after construction, from an area smaller than 10,000 square feet; and,

(5) Impervious surfaces, if any, of less than 10,000 square feet are to be created; and,

(6) No drainageway is to be blocked or have its stormwater carrying capacities or characteristics modified; and,

(7) The activity will not take place within 100 feet by horizontal measurement from the top of the bank of a watercourse, the mean high watermark (line of vegetation) of a body of water ,or within the wetlands associated with a watercourse or water body, whichever distance is greater.

(C) Categorical Exemptions – Notwithstanding MCC .6715(A) and (B)(1) through (7), the following activities are exempt from the permit requirements:

(1) An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation, nor exempt any excavation having an unsupported finished height greater than five feet.

(2) Cemetery graves, but not cemetery soil disposal sites.

(3) Refuse disposal sites controlled by other regulations.

(4) Excavations for wells.

(5) Mineral extraction activities as regulated by MCC .7305 through .7335.

(6) Exploratory excavations under the direction of certified engineering geologists or geotechnical engineers.

(7) Routine agricultural crop management practices, residential gardening and landscape maintenance at least 100-feet by horizontal measurement from the top of the bank of a watercourse, or the mean high watermark (line of vegetation) of a body of water or wetland.

(8) Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazards.

(9) Forest practices as defined by ORS 527 (State Forest Practices Act) and approved by the Oregon Department of Forestry.

11.15.6730 Grading and Erosion Control Permit Standards

Approval of development plans on sites subject to a Grading and Erosion Control Permit shall be based on findings that the proposal adequately addresses the following standards. Conditions of approval may be imposed to assure the design meets the standards:

(A) Design Standards For Grading and Erosion Control

(1) Grading Standards

(a) Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The Director or delegate may require additional studies or information or work regarding fill materials and compaction;

(b) Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;

(c) Cuts and fills shall not endanger or disturb adjoining property;

(d) The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;

(e) Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced streamflow for a storm of 10-year design frequency;

(2)Erosion Control Standards

(a) On sites within the Tualatin River Drainage Basin, erosion and stormwater control plans shall satisfy the requirements of OAR 340. Land-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340 is approved for alterations within the buffer area.

(b) Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;

(c) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff;

(d) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

(e) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

(f) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;

(g) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;

(h) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized;

(i) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding;

(j) All drainage provisions shall be designed to adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural watercourses, drainage swales, or an approved drywell system;

(k) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion;

(l) Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:

(i) Energy absorbing devices to reduce runoff water velocity;

(ii) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

(iii)Dispersal of water runoff from developed areas over large undisturbed areas.

(m)Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures;

(n) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.

(o) On sites within the Balch Creek Drainage Basin, erosion and stormwater control features shall be designed to perform as effectively as those prescribed in the *Erosion Control Plans Technical Guidance Handbook* (January, 1991). All land disturbing activities within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.

(B) Responsibility

(1) Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project;

(2) It is the responsibility of any person, corporation or other entity doing any act on or across a communal stream watercourse or swale, or upon the floodplain or right-of-way thereof, to maintain as nearly as possible in its present state the stream, watercourse, swale, floodplain, or right-of-way during such activity, and to return it to its original or equal condition.

(C) Implementation

(1) Performance Bond – A performance bond may be required to assure the full cost of any required erosion and sediment control measures. The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the the control measures have or can be expected to perform satisfactorily. The bond may be waived if the Director determines the scale and duration of the project and the potential problems arising therefrom will be minor.

(2) Inspection and Enforcement. The requirements of this subdistrict shall be enforced by the Planning Director. If inspection by County staff reveals erosive conditions which exceed those prescribed by the Hillside Development Permit or Grading and Erosion Control Permit, work may be stopped until appropriate correction measures are completed.

(D) Final Approvals

A certificate of Occupancy or other final approval shall be granted for development subject to the provisions of this subdistrict only upon satisfactory completion of all applicable requirements.

Section III. Adoption.

This ordinance, being necessary for the health, safety, and general welfare of the people of Multnomah County, an emergency is declared and the Ordinance shall take effect upon its execution by the County Chair, pursuant to Section 5.50 of the Charter of Multnomah County.

ADOPTED THIS 9th day of July, 1991, being the date of its first reading before the Board of County Commissioners of Multnomah County.

By Gladys McCoy
Gladys McCoy, County Chair
MULTNOMAH COUNTY, OREGON

REVIEWED:

John L. DuBay
John DuBay, Deputy County Counsel
of Multnomah County, Oregon