

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1050

Amending the Howard Canyon Reconciliation Report of June 1996, a Part of the Comprehensive Framework Plan Findings, by Updating the Chapter Sections on the Aggregate Resource and Making the Decision to "Allow Conflicting Uses Fully" and Prohibit Expansion of Mining

(Language ~~stricken~~ is deleted; double-underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. Multnomah County exercises land use planning and permitting authority over land within the jurisdiction of Multnomah County lying outside the Portland Metropolitan Urban Growth Boundary. The County has adopted Comprehensive Framework Plans, Rural Area Plans, and implementing Codes that have been acknowledged by the State Land Conservation and Development Commission as being consistent with all of the State-wide Planning Goals, including Statewide Planning Goal 5.
- b. The Howard Canyon Quarry site is located in unincorporated Multnomah County and is an active rock quarry that is currently producing less than 5,000 cubic yards of rock per year under a permit from the Oregon Department of Geology and Mineral Industries. While evaluating the Howard Canyon Quarry under the Statewide Planning Goal 5 process in 1994, the Department of Land Conservation and Development directed the County, through a revised Periodic Review Work Program, to reconcile stream, wildlife, scenic view and aggregate resource issues in a "reconciliation report" that reconciled all the different Goal 5 resources and conflicting uses in the area of the Howard Canyon Quarry.
- c. Multnomah County adopted the Howard Canyon Reconciliation Report (HCRR) in 1996 that addressed the information known at that time about natural resources and residential and farm areas that could be impacted by a mining operation in the Howard Canyon Quarry. The HCRR assessed and evaluated the Economic, Social, Environmental and Energy consequences (ESEE analysis) of a particular type and level of aggregate rock mining operation in the Quarry. The particular type of mining operation proposed by the property owner and analyzed by Multnomah County in the HCRR was a construction concrete aggregate operation with a crusher and with a particular mix of machinery which generated a particular level of noise, and based on this noise generation, the surrounding "impact zone" analyzed in the HCRR was limited to 1,200 feet and did not include any analysis of impacts to recognized farm uses under state law or the county code.
- d. Based on the particular nature of the mining operation proposed by the Quarry owner at that time, the County's ESEE analysis concluded that the impacts from such a mining operation were acceptable and that the Quarry should be designated for resource extraction and protected from near-by conflicting uses. The HCRR then became an acknowledged part of Multnomah County's Comprehensive Plan and compliance program for complying with Statewide Planning Goal 5.
- e. Despite the specific assumptions and recommendations of the HCRR and the State's acknowledgment of the Report, neither the County nor the Quarry owner acted on the HCRR and neither sought to

apply the recommended zoning for Protected Aggregate Mineral (PAM) sites as provided by the County's land use regulations.

- f. In 1998, the National Marine Fisheries Service (NMFS) declared Lower Columbia River Steelhead, which is native to and still survives in east Multnomah County, as threatened under the Federal Endangered Species Act (ESA), and in 1999, NMFS listed 8 additional salmon populations in Oregon as threatened under the ESA. In February 2000, NMFS designated the critical habitat necessary for the survival of the species previously listed as threatened under the ESA, and declared the 300 feet on either side of the Sandy River and several of its tributaries to be critical habitat for the survival of these species, most notably Steelhead. The Sandy River lies approximately 1000 feet from the Howard Canyon Quarry property and three tributaries of the Sandy River, *i.e.*, Big Creek, Knieriem Creek and Howard Canyon Creek, either pass through or adjacent to the Howard Canyon Quarry property and stand to be severely impacted by mining operations in the Quarry. In response to the ESA listings of Lower Columbia River Steelhead and 8 other salmonid species and the designation of critical habitat for these species in east Multnomah County, both Metro and Multnomah County adopted extensive measures to protect these species and their critical habitat from incompatible development.
- g. In 2000, the County, acting on behalf of the Quarry owner, applied to change the zoning of the Howard Canyon Quarry and of the private property surrounding the Howard Canyon Quarry and by applying the County's Protected Aggregate Mining (PAM) overlay zoning district that has the purpose to protect aggregate and mineral sites and restrict conflicting uses on surrounding properties.
- h. On June 13, 2000, the Board of County Commissioners tabled indefinitely that zone change request and directed staff to reopen and revise the HCRR and the County's Goal 5 process regarding the Howard Canyon Quarry and "focus on several issues that would include the Endangered Species Act and the need for improved stream protections, the change in mining method and use of rock, associated noises and farm impact, and the lack of evidence for westerly one thousand foot extent of the resource."
- i. On June 7, 2004, the Planning Commission, based upon the following findings, that allowing conflicting uses fully and prohibiting mining under Goal 5 would resolve many of the negative impacts on the surrounding community while understanding that the Comprehensive Framework Plan policies will continue to allow the quarry to operate at existing levels of extraction under their DOGAMI Grant of Total Exemption:
 - The quarry has a significant negative impact on farms, primarily due to conflicts between truck noise and livestock despite noise mitigation measures and limiting the numbers of trucks including advance notification of blasting which would require change of accepted farming practices.
 - Potential quarry impacts to streams can be mitigated with erosion control and pollution plans so that the quarry is not likely to adversely impact water quality or ESA listed salmonid species in local streams.
 - The quarry will have no or minimal impact on the cost of mineral and aggregate rock products in the region or the county, because it represents less than one percent of the estimated regional demand for aggregate and therefore the quarry is expected to have minimal influence on the regional price of aggregate.

- The quarry will have minimal impact on the local market area because the demand for aggregate is expected to be low given the surrounding area is rural in character and outside the Urban Growth Boundary with the vast majority of land designated as resource land.
 - A decision to prohibit larger extraction operations at the quarry may have an adverse impact on the quarry owners by lost income from future extraction opportunities. However, mitigation costs associated with a larger scale extraction operation would be significant and might not result in a net benefit to the owner. In addition, a County determination to allow conflicting uses fully under Goal 5 does not prevent the quarry from continuing to operate under the terms of the Department of Geologic and Mineral Industries (DOGAMI) Grant of Total Exemption for a small scale quarry.
 - The quarry has been found to have a negative impact on surrounding property values due to noise impacts and application of the Protected Aggregate and Mineral overlay zoning.
 - Truck Traffic from the quarry adversely impacts Springdale, a rural center, where many dwellings are closer to the road and the associated setback used for truck noise calculations causes increased noise levels and adverse noise impacts, which in turn can decrease property values and decrease the attractiveness of Springdale for commercial development. A result that may threaten the viability of existing businesses or discourage new businesses from locating in Springdale.
 - DEQ noise standards do not fully account for the extended duration and long term effects of the quarry activity and truck traffic despite noise mitigation measures, including speed restrictions, time and days of operation, prohibiting the use of "Jake" brakes, and limits on the number of trucks, are all designed to meet the DEQ noise standard. That noise standard is an hourly standard that does not adequately account for the continuous operation and long-term effects of the quarry activity and truck traffic which subsequently impacts the quality of life to surrounding property owners.
 - The Hogback Ridge is comprised of similar aggregate material as that previously found to meet Goal 5 significance yet is relatively small and will have marginal loss of economic value for the region. The ridge also has the steepest and potentially unstable slopes that make erosion control difficult and results in increased risk of slope failure that would create environmental impacts that cannot be resolved. The ridge is nearest to residences and farm uses and yet has the most potential for adverse impacts from noise.
- j. The Board of County Commissioners agrees with the findings of the Planning Commission and with the need to amend the June 1996 Howard Canyon Reconciliation Report to "Allowing Conflicting Uses Fully" and prohibit all mining except as permitted under a Department of Geologic and Mineral Industries (DOGAMI) Grant of Total Exemption for a small scale quarry.

Multnomah County Ordains as follows:

Section 1. The Howard Canyon Reconciliation Report, June, 1996, a part of the County Comprehensive Plan Findings, is amended as follows:

- a. On page I-5, after the last paragraph in the Introduction add the following:

In 2004, the Planning Commission and Board of County Commissioners concluded that due to change in circumstances and new information that an amended decision was necessary in regard to the aggregate resource in this report. The decision was made to "Allow Conflicting Uses Fully" and prohibit expansion of mining except as allowed currently under a Department of Geology and Mineral Industries Grant of Total Exemption. See the history and documentation for this 2004 decision in the revised Chapter III of this report.

- b. Chapter III, Howard Canyon Aggregate Resource, Mineral and Aggregate Inventory Site #8, (pages III-1 through III-48), is replaced in its entirety by Exhibit A, Howard Canyon Reconciliation Report, Revised 2004.
- c. Pages IV-17 through IV-28 of Chapter IV, Conflict Resolution and Protection Program for Howard Canyon Area Goal 5 Resources, are deleted and replaced by the following:

2. AGGREGATE RESOURCE

Based upon the findings in Chapter III, particularly the ESEE Consequences parts of the chapter, the decision has been made to not protect the aggregate resource, allow conflicting uses fully (also referred to as a "3B" designation), and prohibit all mining except as permitted under a Department of Geology and Mineral Industries Grant of Total Exemption.

- d. Page IV-29 of Chapter IV is amended to delete paragraphs 3.a. and 3.c. and replace paragraph 3.a. with the following:

3. CONCLUSION

- a. The aggregate resource at the Howard Canyon site is being designated to not be protected, to allow conflicting uses fully (also known as a "3B" designation), and to prohibit all mining that is not done under a Department of Geology and Mineral Industries Grant of Total Exemption with its limitations.

Section 2. The East of Sandy River Rural Area Plan, adopted July 10, 1997, a part of the County Comprehensive Plan, is amended as follows:

- a. Policy 35, page 23 is amended to read:

Mineral and Aggregate Resource Policies

35. ~~Allow-Prohibit~~ mining on the Howard Canyon quarry site under the conditions set forth in the Howard Canyon Reconciliation Report, part of the County Comprehensive Plan.

~~STRATEGY: Multnomah County shall implement this policy when reviewing a conditional use permit proposing a quarry at the Howard Canyon mineral and aggregate site.~~

b. The findings on page 19 are amended to read:

"One of the Goal 5 resources ~~to be protected~~ is mineral and aggregate materials. The Howard Canyon quarry is a small operation located between Howard and Knieriem Roads which currently operates under an "exempt" permit. Under state law, any quarry which produces less than 5,000 cubic yards of material and disturbs less than five acres per year is exempt from state and county mining statutes. The owner of the Howard Canyon quarry has applied several times since the 1960's to expand the quarry beyond this level, always unsuccessfully. In 1990, the Multnomah County Board of Commissioners decided not to designate the Howard Canyon quarry site as a significant and protected Goal 5 aggregate resource. However, in 1993, the Oregon Land Conservation and Development Commission remanded this decision back to Multnomah County because the County's rationale for denying protection was not acceptable. In response, the Board of Commissioners granted protection of the aggregate resource for most of the site in 1994, but with significant conditions related to air quality and traffic mitigation (see Howard Canyon Reconciliation Report). The quarry owner objected to these conditions, and in response the matter was once again returned to Multnomah County by the state for more work. In 1995, the Board of Commissioners once again adopted protection for the quarry site, with some modifications in the conditions. On March 7, 1996, the Oregon Land Conservation and Development Commission (LCDC) approved the County's work, but with two exceptions, and ordered the County to make specific changes which would protect all of the site for mineral & aggregate mining and would also not allow the County to independently monitor ongoing air quality issues associated with quarry operations. Multnomah County adopted these changes in June, 1996.

~~The result of this complicated story is that the Howard Canyon quarry is now a protected mineral and aggregate site. In order to actually mine the site further, an applicant must receive approval from Multnomah County of a conditional use permit and receive approval from the Oregon Department of Geology and Mineral Industries for a reclamation plan to be implemented once mining is complete. The conditional use permit must meet all of the requirements set forth in the Howard Canyon Reconciliation Report.~~

In 1999, a conditional use permit application for mining this resource site was submitted to the County. This application proposed a level of mining activity that was dramatically different from the base assumptions in the Howard Canyon Reconciliation Report. Therefore, Multnomah County decided it necessary to revisit the HCRR and re-analyze the impacts of increased production levels and future quarry operations on the site and the surrounding community.

The results of the preliminary impact reports were reviewed in a public meeting on May 16, 2002 at the Corbett School. Based on public comments received at the meeting, the impact reports were finalized and a draft of the updated HCRR was prepared. A draft Howard Canyon Reconciliation Report was reviewed by the Planning Commission in 2002 and early 2003. In March, 2003, all parties agreed to try to resolve the conflicts through mediation. The mediation broke down because agreement between all parties would have required a higher level of trust than was likely to evolve in the requisite time.

In 2004, the Planning Commission held public hearings on proposed revisions to the Howard Canyon Reconciliation Report. The Planning Commission deliberated and recommended to not protect the resource and prohibit mining on the site. The Howard Canyon Reconciliation Report has been revised to reflect that recommendation.

FIRST READING:

September 9, 2004

CONTINUED FIRST READING:

September 30, 2004

SECOND READING:

October 7, 2004



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, Chair

REVIEWED:

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By

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