

ANNOTATED MINUTES

*Tuesday, October 11, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

BOARD BRIEFING

- B-1 Department of Community Corrections Supervision of Sex Offenders.
Presented by Tamara Holden and Michael Haines.*

**TAMARA HOLDEN, MICHAEL HAINES, MAGGIE MILLER, TOM GRINNELL AND CARY HARKAWAY
PRESENTATION AND RESPONSE TO BOARD
QUESTIONS AND DISCUSSION.**

- B-2 Early Childhood Development/Ready to Learn Benchmark Plan, Parents as Teachers Program. Presented by Multnomah Commission on Children and Families, Pauline Anderson, Cornetta Smith, and Helen Richardson.*

**HELEN RICHARDSON AND CAROL WIRE
PRESENTATION AND RESPONSE TO BOARD
QUESTIONS.**

*Tuesday, October 11, 1994 - 1:30 PM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:36 p.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present.

- P-1 CS 6-94 Review the August 24, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, a Change in Zone Designation from MUA-20 to MUA-20, C-S, (Multiple Use Agriculture-20, Community Service) for a Group Care Facility in an Existing Dwelling, for Property Located at 3745 SE 317TH AVENUE, TROUTDALE*

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-2 C 10-94 First Reading of a Proposed ORDINANCE Amending the Comprehensive Framework Plan Policies and Significant Environmental Concern (SEC) Section of the Zoning Code to Protect Significant Wildlife Habitat, Scenic Views and Streams in the West Hills and Howard Canyon*

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF FIRST READING. SCOTT PEMBLE PRESENTATION AND RESPONSE TO BOARD QUESTIONS. CHARLES CIECKO, DONNA MATRAZZO, JOHN SHERMAN, ARNOLD ROCHLIN AND THOMAS NASH TESTIMONY AND RECOMMENDATIONS CONCERNING VARIOUS AMENDMENTS TO PROPOSED ORDINANCE. JIM EMERSON TESTIMONY IN SUPPORT OF PROPOSED ORDINANCE. NANCY FICK, DONIS McARDLE AND JOSEPH KABDEBO TESTIMONY IN OPPOSITION TO PROPOSED ORDINANCE DUE TO ZONING LIMITATIONS FOR WEST HILLS PROPERTY OWNERS. CHAIR STEIN DIRECTED STAFF TO PROVIDE AREA MAPS AT FUTURE BOARD HEARINGS. AT THE SUGGESTION OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT SECTION 11.15.6412(C) BE AMENDED FROM 10 TO 30 DAYS. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT SECTION 11.15.6418 BE AMENDED TO ADD "LIGHTING, AND TIMING OF CONSTRUCTION AND RELATED ACTIVITIES." UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, IT WAS UNANIMOUSLY APPROVED THAT SECTION 11.15.6422(C) BE AMENDED TO ADD "THIS SECTION IS ONLY APPLICABLE FOR WETLAND RESOURCES DESIGNATED 3-C". UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT SECTION 11.15.6428 BE AMENDED TO ADD "THIS SECTION IS ONLY APPLICABLE FOR STREAM RESOURCES DESIGNATED 3-C". UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT SECTION 11.15.6428(F)(1) BE AMENDED TO ADD "...MINIMUM WIDTH NECESSARY TO ALLOW PASSAGE OF PEAK WINTER FLOWS...". BOARD COMMENTS AND DISCUSSION. JOHN DuBAY, GORDON HOWARD AND SANDY MATHEWSON

COMMENTS AND RESPONSE TO ISSUES RAISED DURING PUBLIC TESTIMONY. MR. HOWARD AND MS. MATHEWSON RESPONSE TO BOARD QUESTIONS AND DISCUSSION. COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, AN AMENDMENT TO PAGE 18, ADDING "AND SHALL BE CONSIDERED IN MAKING A DETERMINATION OF VISUAL SUBORDINATION INCLUDE:". BOARD COMMENTS. AMENDMENT UNANIMOUSLY APPROVED. MR. HOWARD AND MR. SHERMAN RESPONSE TO BOARD QUESTIONS CONCERNING FENCING. CHAIR DIRECTED STAFF TO PREPARE PROPOSED AMENDMENTS AND INFORMATION REGARDING FENCING; THE DEFINITION OF LOT OF RECORD; MINIMUM SETBACK; AND THE IF AVAILABLE FOR PURCHASE ISSUES. CHAIR STEIN DIRECTED MR. PEMBLE TO WORK WITH THE SOIL AND CONSERVATION SERVICE AND THE MULTNOMAH COUNTY SOIL AND WATER CONSERVATION DISTRICT AND TO PREPARE AN AGRICULTURE USES ACTION PLAN AND POSSIBLE FUNDING PACKAGE FOR BOARD BRIEFING WITHIN SIX WEEKS. FIRST READING UNANIMOUSLY APPROVED, AS AMENDED. SECOND READING SCHEDULED FOR TUESDAY, OCTOBER 18, 1994.

P-3

C 11-94 First Reading of a Proposed ORDINANCE Amending Comprehensive Framework Text Plan Policy 16 - B and MCC 11.15 Regarding the Regulation of Surface Mining and Nearby Surrounding Land Uses in Partial Fulfillment of Periodic Review Work Program Tasks Required to Bring Multnomah County's Land Use Program into Compliance with Statewide Planning Goal 5

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF FIRST READING. MR. PEMBLE PRESENTATION. CHARLES CIECKO, SKIP ANDERSON, ARNOLD ROCHLIN AND CHRIS FOSTER TESTIMONY AND RECOMMENDATIONS CONCERNING VARIOUS AMENDMENTS TO PROPOSED ORDINANCE. BOARD COMMENTS. GARY CLIFFORD RESPONSE TO ISSUES RAISED IN PUBLIC HEARING. STAFF DIRECTED TO PROVIDE SPECIFIC INFORMATION AND PREPARE PROPOSED AMENDMENTS PRIOR TO SECOND READING. MR. CLIFFORD RESPONSE TO BOARD QUESTIONS AND DISCUSSION. AT THE

REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT THE RECLAMATION PLAN BE AMENDED TO INCLUDE DOGAMI AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY. MR. CLIFFORD RESPONSE TO BOARD DISCUSSION REGARDING EXEMPTIONS, HILLSIDE AND EROSION CONTROL MEASURES. COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF PROTECTION CONCEPT IN FARM USE AND ZONES OTHER THAN FOREST. MR. CLIFFORD RESPONSE TO BOARD QUESTIONS. BOARD DISCUSSION. MOTION UNANIMOUSLY APPROVED, WITH STAFF DIRECTED TO PROVIDE SPECIFIC LANGUAGE PRIOR TO SECOND READING. STAFF DIRECTED TO DRAFT PROPOSED LANGUAGE CONCERNING QUARRY OPERATION IN RURAL RESIDENTIAL AND RURAL CENTER ZONED AREAS PRIOR TO SECOND READING. DISCUSSION REGARDING INVENTORY PROTECTION. PLANNING STAFF AND COUNTY COUNSEL DIRECTED TO RESPOND TO MR. CIECKO AND MR. ROCHLIN RECOMMENDED AMENDMENTS PRIOR TO SECOND READING. AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT PAGE 26 BE AMENDED TO INCLUDE "NOISE AND DUST SENSITIVE LAND USES". MR. FOSTER DISCUSSED THE PLANNING COMMISSION'S THOUGHTS REGARDING INVENTORY PROTECTION AND ESEE ANALYSIS. FIRST READING UNANIMOUSLY APPROVED, AS AMENDED. SECOND READING SCHEDULED FOR TUESDAY, OCTOBER 18, 1994.

There being no further business, the meeting was adjourned at 4:30 p.m.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**


Deborah L. Bogstad

Thursday, October 13, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

MERIT SYSTEM CIVIL SERVICE COUNCIL
APPEAL HEARING

Chair Beverly Stein convened the hearing at 9:32 a.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present.

PH-1 Pursuant to Personnel Rule 23.04 and Multnomah County Code Chapter 3.20.430, the Board of Commissioners Will Conduct a Hearing on the Appeal of the August 22, 1994 Merit System Service Council Remand Decision Concerning Judith May. Upon Conclusion of the Hearing, the Board May Affirm the Council's Decision, Deny the Appeal, or Grant the Appeal But Frame a Different Remedy.

CITY ATTORNEY ANNA KANWIT, LEGAL COUNSEL FOR THE BOARD OF COMMISSIONERS, INTRODUCED COUNSEL AND ADVISED EACH SIDE HAS 20 MINUTES, WITH 10 MINUTES FOR BOARD DELIBERATIONS. COUNTY COUNSEL STEVE NEMIROW, REPRESENTING RESPONDENT MULTNOMAH COUNTY, PRESENTED TESTIMONY IN OPPOSITION TO THE BOARD AFFIRMING THE COUNCIL'S DECISION. ATTORNEY DON WILLNER, REPRESENTING APPELLANT JUDITH MAY, PRESENTED TESTIMONY IN SUPPORT OF THE BOARD AFFIRMING THE COUNCIL'S DECISION. MR. NEMINROW AND MR. WILLNER REBUTTAL TESTIMONY. MS. KANWIT EXPLANATION IN RESPONSE TO BOARD QUESTIONS REGARDING THE PARAMETERS FOR A FINDING OF BIAS AND THE DEFINITION OF SUBSTANTIAL EVIDENCE. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, TO AFFIRM THE COUNCIL DECISION. BOARD COMMENTS AND DISCUSSION. MS. KANWIT RESPONSE TO BOARD QUESTION CONCERNING RETROACTIVITY ISSUE. MR. NEMINROW AND MR. WILLNER RESPONSE TO BOARD QUESTION REGARDING EVIDENCE OF BIAS. BOARD COMMENTS. MS. KANWIT RESPONSE TO BOARD QUESTION REGARDING SUBSTANTIAL EVIDENCE. MOTION AFFIRMING COUNCIL DECISION UNANIMOUSLY APPROVED.

There being no further business, the hearing was adjourned at 10:31 a.m.

*Thursday, October 13, 1994 - 10:30 AM
(Or Immediately Following Appeal Hearing)*

*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

REGULAR MEETING

Chair Beverly Stein convened the meeting at 10:40 a.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present.

CONSENT CALENDAR

**UPON MOTION OF COMMISSIONER KELLEY,
SECONDED BY COMMISSIONER HANSEN, THE
CONSENT CALENDAR (ITEMS C-1 THROUGH C-10)
WAS UNANIMOUSLY APPROVED.**

DEPARTMENT OF HEALTH

- C-1 *Ratification of Intergovernmental Agreement Contract 200825 Between the State of Oregon, Office of Medical Assistance Programs and Multnomah County, on Behalf of CareOregon, Providing CareOregon Direct Inquiry Only On Line Access to Oregon Health Plan Eligibility Data System to Confirm Client Eligibility, for the Period Upon Execution through June 30, 1999***

SHERIFF'S OFFICE

- C-2 *Ratification of Intergovernmental Agreement Contract 800515 Between Multnomah County and David Douglas School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in Eight Elementary Schools, for the Period September 12, 1994 through June 30, 1995***
- C-3 *Ratification of Intergovernmental Agreement Contract 800525 Between Multnomah County and Reynolds School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in Eight Elementary Schools, for the Period September 12, 1994 through June 30, 1995***
- C-4 *Ratification of Intergovernmental Agreement Contract 800535 Between Multnomah County and Orient School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in One Elementary School, for the Period September 12, 1994 through June 30, 1995***
- C-5 *Ratification of Intergovernmental Agreement Contract 800545 Between***

Multnomah County and Parkrose School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in Four Elementary Schools, for the Period September 12, 1994 through June 30, 1995

- C-6 *Ratification of Intergovernmental Agreement Contract 800555 Between Multnomah County and Corbett School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in Two Elementary Schools, for the Period September 12, 1994 through June 30, 1995*
- C-7 *Ratification of Intergovernmental Agreement Contract 800565 Between Multnomah County and Riverdale School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in One Elementary School, for the Period September 12, 1994 through June 30, 1995*
- C-8 *Ratification of Intergovernmental Agreement Contract 800575 Between the Oregon State Marine Board and Multnomah County, Providing Marine Board Funding for the Sheriff's Office River Patrol to Conduct Marine Law Enforcement Activities for the Period July 1, 1994 through June 30, 1995*

DEPARTMENT OF COMMUNITY CORRECTIONS

- C-9 *Ratification of Amendment 1 to Intergovernmental Agreement Contract 900374 Between the State of Oregon Department of Corrections and Multnomah County, Transferring the Responsibility of Subsidy Payments to the County, Including Transfer of the Related Funds, for the Period July 1, 1993 through June 30, 1995*
- C-10 *Budget Modification DCC 2, Requesting Authorization to Appropriate Revenue from the State of Oregon Department of Corrections to the DCC Program Development Budget, for the Purpose of Providing Financial Support to Inmates for Release Needs Which May Exceed the Funds They Have Accumulated*

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 *Presentation of "Director's Award" from Oregon Emergency Management Department of State Police, in Recognition of the Participation and Contribution of Multnomah County for Establishment and Support of the Regional Emergency Management Group*

**PENNY MALMQUIST PRESENTATION AND
SUBMITTAL OF PLAQUE AND CERTIFICATE.**

COMMUNITY AND FAMILY SERVICES DIVISION

- R-2 *PUBLIC HEARING to Consider Recommendations of the Technical Review Committee for the Multnomah County Affordable Housing Development Program and BOARD DECISIONS Regarding the Transfer of Tax Foreclosed Property at the Request of the Following Non-Profit Housing Agencies: Habitat for Humanity, Human Solutions, Inc., Christian Women Against Crime, HOST Development, Inc., Rose CDC, Portsmouth Project, Housing Our Families, Sabin CDC, Hacienda CDC and Miracle Revivals, Inc.*

COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF TECHNICAL REVIEW COMMITTEE RECOMMENDATIONS. H.C. TUPPER EXPLANATION. ROBERT HARDIES, DORIS SCOTT, NICK SAUVIE, VINCE CHIOTTI, GRETCHEN DURSCH, CHRIS PIERCE, MARINA VELASQUEZ (VIA INTERPRETER MARIA ORONA) AND LORA CRESWICK TESTIMONY IN SUPPORT OF TRANSFERS. MS. CRESWICK RESPONSE TO BOARD QUESTIONS CONCERNING PORTSMOUTH PROJECT. MR. TUPPER RESPONSE TO BOARD QUESTIONS. CHAIR STEIN ACKNOWLEDGED CONCERNS OF HACIENDA CDC AND ADVISED SHE WILL INITIATE A REVISIT OF THE CHAS GOALS. MOTION UNANIMOUSLY APPROVED. [ORDER 94-195]

DEPARTMENT OF COMMUNITY CORRECTIONS

- R-3 *Request for Approval of a Notice of Intent to Apply for a Cooperative Demonstration Program (Correctional Education) Grant from the U.S. Department of Education, to Provide Vocational Training, Placement Assistance, and Job Retention Services for Community Corrections Clients at the Donald H. Londer Center for Learning*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-3. CARY HARKAWAY EXPLANATION. NOTICE OF INTENT UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-4 *RESOLUTION in the Matter of Relinquishing Responsibility for the Multnomah County Fair to the Friends of the Multnomah County Fair*

COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-4. BETSY WILLIAMS EXPLANATION. RICK PAUL

**TESTIMONY. MS. WILLIAMS AND BOARD RESPONSE
TO ISSUES RAISED BY MR. PAUL. BOARD
COMMENTS. RESOLUTION 94-196 UNANIMOUSLY
APPROVED.**

NON-DEPARTMENTAL

**R-5 ORDER in the Matter of Property Tax Forgiveness for Real Property Donated
to the City of Portland for Park Purposes**

**COMMISSIONER HANSEN MOVED AND
COMMISSIONER SALTZMAN SECONDED, APPROVAL
OF R-5. SUSAN HATHAWAY-MARXER EXPLANATION
AND RESPONSE TO BOARD QUESTIONS. ORDER 94-
197 UNANIMOUSLY APPROVED.**

**R-6 RESOLUTION in the Matter of Adjusting Salaries for the County Chair and
Commissioners to Amounts Less Than Recommendations of the 1994 Salary
Commission**

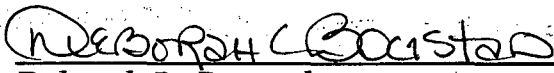
**COMMISSIONER SALTZMAN MOVED AND
COMMISSIONER COLLIER SECONDED, APPROVAL OF
R-6. DAVE WARREN EXPLANATION. BOARD
COMMENTS. RESOLUTION 94-198 UNANIMOUSLY
APPROVED.**

PUBLIC COMMENT

**R-7 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited
to Three Minutes Per Person.**

There being no further business, the meeting was adjourned at 11:47 a.m.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**


Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS		
BEVERLY STEIN •	CHAIR •	248-3308
DAN SALTZMAN •	DISTRICT 1 •	248-5220
GARY HANSEN •	DISTRICT 2 •	248-5219
TANYA COLLIER •	DISTRICT 3 •	248-5217
SHARRON KELLEY •	DISTRICT 4 •	248-5213
CLERK'S OFFICE •	248-3277 •	248-5222

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

OCTOBER 10, 1994 - OCTOBER 14, 1994

- Tuesday, October 11, 1994 - 9:30 AM - Board Briefings Page 2*
- Tuesday, October 11, 1994 - 1:30 PM - Planning Items Page 2*
- Thursday, October 13, 1994 - 9:30 AM - Appeal Hearing Page 3*
- Thursday, October 13, 1994 - 10:30 AM - Regular Meeting Page 3*
(Or Immediately Following Appeal Hearing)

FUTURE MEETING CHANGES/CANCELLATIONS

- Tuesday, 11/15/94 - Cancelled/AOC Conference*
- Thursday, 11/17/94 - Cancelled/AOC Conference*
- Tuesday, 11/22/94 - 9:30 AM Regular Meeting Scheduled*
- Thursday, 11/24/94 - Cancelled/Holiday*

Thursday Meetings of the Multnomah County Board of Commissioners are taped and can be seen by Paragon Cable subscribers at the following times:

- Thursday, 6:00 PM, Channel 30*
- Friday, 10:00 PM, Channel 30*
- Saturday, 12:30 PM, Channel 30*
- Sunday, 1:00 PM, Channel 30*

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

Tuesday, October 11, 1994 - 9:30 AM

*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

BOARD BRIEFING

- B-1 Department of Community Corrections Supervision of Sex Offenders. Presented by Tamara Holden and Michael Haines. (1 HOUR REQUESTED.)*
- B-2 Early Childhood Development/Ready to Learn Benchmark Plan, Parents as Teachers Program. Presented by Multnomah Commission on Children and Families, Pauline Anderson, Cornetta Smith, and Helen Richardson. (15 MINUTES REQUESTED.)*
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Tuesday, October 11, 1994 - 1:30 PM

*Multnomah County Courthouse, Room 602
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PLANNING ITEMS

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Thursday, October 13, 1994 - 9:30 AM

Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

MERIT SYSTEM CIVIL SERVICE COUNCIL
APPEAL HEARING

- PH-1 Pursuant to Personnel Rule 23.04 and Multnomah County Code Chapter 3.20.430, the Board of Commissioners Will Conduct a Hearing on the Appeal of the August 22, 1994 Merit System Service Council Remand Decision Concerning Judith May. Upon Conclusion of the Hearing, the Board May Affirm the Council's Decision, Deny the Appeal, or Grant the Appeal But Frame a Different Remedy. (1 HOUR REQUESTED.)
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(Or Immediately Following Appeal Hearing)

Multnomah County Courthouse, Room 602
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REGULAR MEETING

CONSENT CALENDAR

DEPARTMENT OF HEALTH

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DEPARTMENT OF COMMUNITY CORRECTIONS

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REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 *Presentation of "Director's Award" from Oregon Emergency Management*

Department of State Police, in Recognition of the Participation and Contribution of Multnomah County for Establishment and Support of the Regional Emergency Management Group

COMMUNITY AND FAMILY SERVICES DIVISION

- R-2 *PUBLIC HEARING to Consider Recommendations of the Technical Review Committee for the Multnomah County Affordable Housing Development Program and BOARD DECISIONS Regarding the Transfer of Tax Foreclosed Property at the Request of the Following Non-Profit Housing Agencies: Habitat for Humanity, Human Solutions, Inc., Christian Women Against Crime, HOST Development, Inc., Rose CDC, Portsmouth Project, Housing Our Families, Sabin CDC, Hacienda CDC and Miracle Revivals, Inc. (30 MINUTES REQUESTED.)*

DEPARTMENT OF COMMUNITY CORRECTIONS

- R-3 *Request for Approval of a Notice of Intent to Apply for a Cooperative Demonstration Program (Correctional Education) Grant from the U.S. Department of Education, to Provide Vocational Training, Placement Assistance, and Job Retention Services for Community Corrections Clients at the Donald H. Londer Center for Learning*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-4 *RESOLUTION in the Matter of Relinquishing Responsibility for the Multnomah County Fair to the Friends of the Multnomah County Fair*

NON-DEPARTMENTAL

- R-5 *ORDER in the Matter of Property Tax Forgiveness for Real Property Donated to the City of Portland for Park Purposes*
- R-6 *RESOLUTION in the Matter of Adjusting Salaries for the County Chair and Commissioners to Amounts Less Than Recommendations of the 1994 Salary Commission*

PUBLIC COMMENT

- R-7 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

TANYA COLLIER
Multnomah County Commissioner
District 3



1120 SW Fifth St, Suite 1500
Portland, OR 97204
(503) 248-5217

M E M O R A N D U M

TO: Chair, Beverly Stein
Commissioner Gary Hansen
Commissioner Sharron Kelley
Commissioner Dan Saltzman

FROM: Commissioner Tanya Collier

DATE: October 3, 1994

SUBJECT: Absence from Board Briefing

Due to a previously scheduled event, I will be unable to attend the Board Briefing on October 11, 1994. I will be present for the afternoon Planning Meeting

BOARD OF
COUNTY COMMISSIONERS
1994 OCT -3 PM 1:49
MULTNOMAH COUNTY
OREGON

MEETING DATE: October 11, 1994

AGENDA NO: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: CS 6-94 Hearings Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: October 11, 1994

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES **DIVISION:** Planning

CONTACT: R. Scott Pemble **TELEPHONE #:** 3182
BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

CS 6-94 - Review the August 24, 1994 Hearings Officer's Decision, approving, subject to conditions, change in zone designation from MUA-20 to MUA-20, C-S, community service, for a group care facility in an existing dwelling, for property located at 3745 SE 317th Avenue

CLERK OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1994 OCT -4 AM 10:20

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Betsy Williams

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222



Department of Environmental Services
Division of Planning and Development
2115 S.E. Morrison Street
Portland, Oregon 97214 (503) 248-3043

DECISION

This Decision consists of Conditions, Findings of Fact, and Conclusions

August 24, 1994

CS 6-94, #683D

Community Service Use
(Group Care Facility)

The Applicant seeks COMMUNITY SERVICE USE approval for a Group Care Facility to provide foster for six adults who live in an existing single-family dwelling on the subject site. The maximum number of foster care recipients that the dwelling could accommodate is ten.

Location: 3745 S.E. 317th Avenue

Legal: North 1/2 of Lot 47, Section Line Road Fruit Tract

Site Size: 5 acres

Applicant: Eunice Phillipi
3745 S.E. 317th Avenue, Troutdale, OR. 97060

Property Owner: Sunshine Family Services, Inc.
Post Office Box 553, Boring, OR. 97009

Comprehensive Plan: Multiple Use Agriculture

Zoning: MUA-20, Multiple Use Agricultural District.

Decision: Approve, subject to conditons, change in zone designation from MUA-20 to MUA-20, C-S, community service, for a group care facility in an existing dwelling, based on the following Findings and Conclusions.

Vicinity Map

CS 6-94 #683D



NORTH

Scale: 1 in. = 400 ft.

CU 21-80
LD 51-80

(3)
39.97 Ac.

RR

MUA-20

SITE →

ON LINE ROAD

RR

FRUIT TRACT

EFU

30.44 Ac.

(39)
2.73 Ac.
(36)
2.17 Ac.
(35)
2.00 Ac.

(4)
2.00 Ac.
(26)
1.00 Ac.
(27)
2.00 Ac.
(31)
1.00 Ac.

(15.01 Ac.)
(30.01 Ac.)

OXBOW DRIVE

VICTORY RD 1610-40

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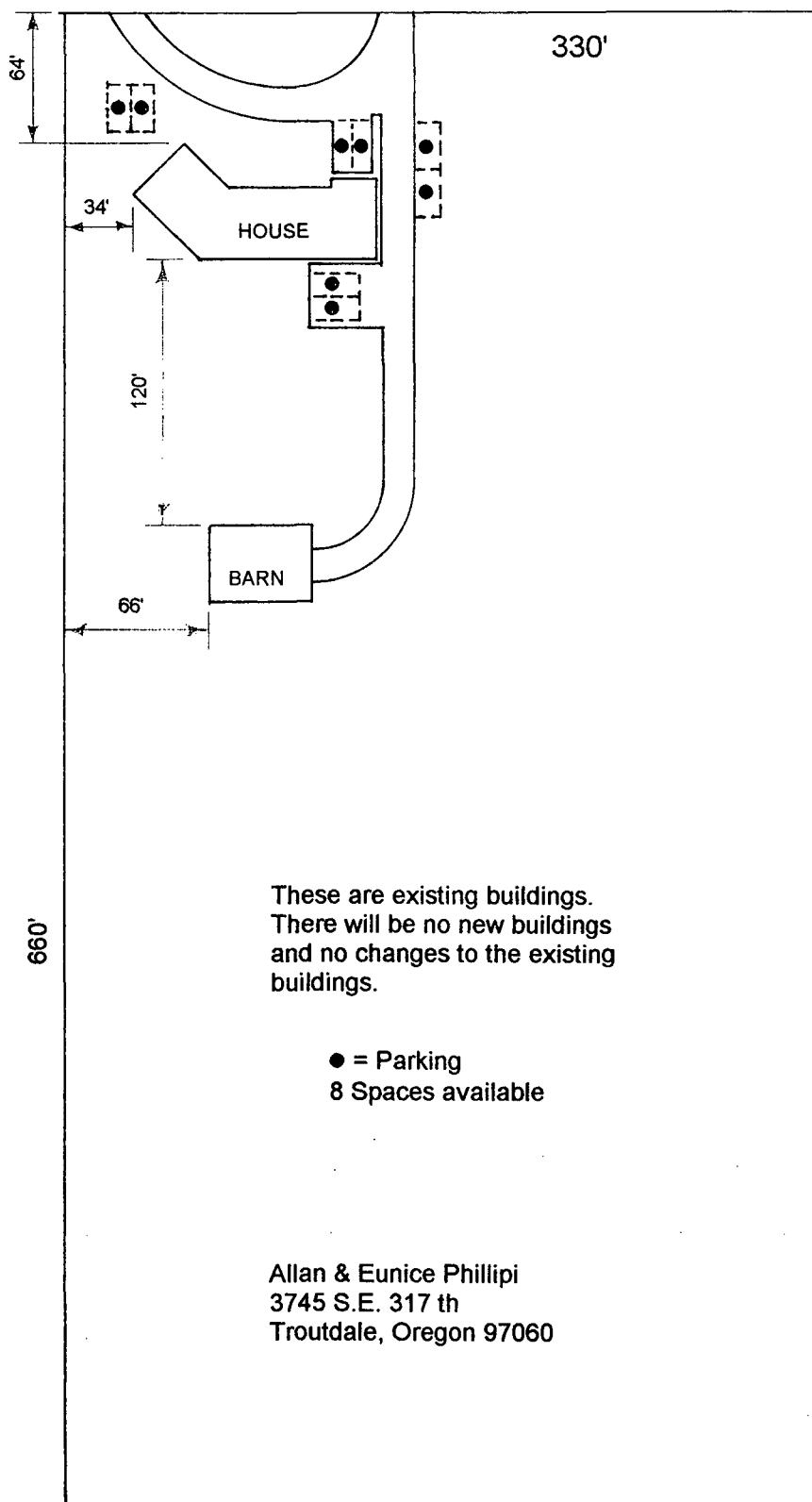
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317 th Ave.



CONDITIONS OF APPROVAL

1. *Both Applicant and* the property owner shall satisfy the following Transportation Division requirements:
 - A. Dedicate five (5) feet of additional right-of-way along SE 317th Avenue to provide a total of 25 feet from centerline where the site abuts SE 317th Avenue.
 - B. Commit to participate in future improvements within the right-of-way of SE 317th Avenue abutting the site through deed restrictions.
2. *Both Applicant and* the property owner shall comply with County Design Review requirements in accordance with MCC 11.15.7805-.7870 with respect to off-street parking and landscaping.
3. Applicant shall not construe anything in this Community Service Use approval as authorizing:
 - A. any alteration, remodeling, or expansion of the existing dwelling in the subject property so as to make said dwelling into a duplex; or
 - B. New construction of a duplex on the subject property.
4. The maximum number of persons receiving care in the facility authorized under this Community Service Use approval shall be ten. Any increase in the capacity of the facility beyond ten care recipients shall require separate Community Service Use approval. Applicant may take in emergency placements, as long as the maximum number of persons is not exceeded.
5. Applicant shall ensure, and shall take necessary precautionary and preventative measures in order to ensure, that the noise levels historically associated with or generated by the current residents will not increase. This approval is expressly conditioned upon Applicant's assurances that the need for the proposed use derives solely from the current residents' increase in age.

I. ANALYSIS OF THE PROPOSAL

A. BACKGROUND

Applicant requests COMMUNITY SERVICE USE approval to allow the provision of foster care to six adults living in a single-family dwelling owned by Sunshine Family Services, Inc. Applicant has operated a foster home for children at this location for the past six years. The six persons receiving foster care have lived with the Applicant since childhood.

The home and two and one-half acres of land located at 3745 SE 317th Ave in Troutdale, Oregon along with the adjoining two and one-half acre tract of land was purchased in December, 1988, by Foster Care Support, Inc., currently known as Sunshine Family Services, Inc. It was purchased for use as a foster home for disabled children.

Sunshine Family Services, Inc., currently leases the home to the Applicant, who moved in with six foster children placed with Applicant by Multnomah County Children's Services Division. Applicant also had one foster adult. Applicant is certified by Multnomah County Adult Housing.

The current structure has a maximum capacity of ten beds.

B. PROPOSAL SUMMARY

The home now houses six clients, all of whom have passed their eighteenth birthday and are considered adults. The fact that all the clients are now over eighteen changes Applicant's licensing requirements. However, the level of care needed will stay the same and the number of staff people and activity level will remain constant. Applicant has proposed two alternatives: *first*, convert the house into a duplex; *second*, become an adult group home.

Applicant prefers to create a duplex. The house was built with the intention of having a separate living area on each floor. The main floor has 2300 square feet consisting of a living room, family room, kitchen, laundry room, 5 bedrooms, 2 bathrooms and a 2-car garage. The daylight basement also has 2300 square feet consisting of a living room, kitchen, 2 bedrooms, 2 bathrooms, recreation room (which could be used as a bedroom) and a 2-car garage. There is a driveway along the side of the

house which goes to the downstairs garages and extra parking in back.

In 1989 a "one hour" fire wall was finished between the two floors and a solid core door was installed at the foot of the stairs between the two floors. The door does not have an automatic closer on it but it would be simple to install. This would then provide us with two independent living areas, each with a master bedroom for foster parents or staff to stay in.

If Applicant cannot convert the house to a duplex, she will obtain a license to operate as a group home under the 24-hour care rule. That process is being investigated at this time by the Developmental Disabilities office.

In either case, the care level that is provided at this house will remain the same. Nothing will change except for the amount of paperwork required by governing agencies.

C. SITE AND VICINITY DESCRIPTIONS

The 5-acre subject site is located on the east side of SE 317th Avenue, less than one-quarter mile south of SE Division Drive. Other lots in the vicinity range in size from one to ten acres. The area is zoned MUA-20, MULTIPLE USE AGRICULTURE.

The site abuts SE 317th Avenue, which is not fully improved to County Standards at this time. The County Engineer has determined that, in order to comply with the provisions of the Street Standards Ordinance, it will be necessary for the owner to commit to participate in future improvements to 317th Avenue through deed restrictions as a condition of approval.

II. APPLICABLE CRITERIA

The following criteria apply to the proposed development:

A. MULTIPLE USE AGRICULTURE DISTRICT [MCC 11.15.2122 ET SEQ.]

A duplex is neither a primary use under MCC 11.15.2128, nor a permitted use under MCC 11.15.2130, nor a conditional use under MCC 11.15.2132 in the MUA-20 district. Thus, Applicant's first choice is unavailable, and Applicant has chosen

to go forward with the Community Service Use request for a GROUP CARE FACILITY.

B. CONDITIONAL USE APPROVAL CRITERIA
[MCC 11.15.2132]
[MCC 11.15.7015 — 11.15.7120(A)]

Within the MUA-20 district, MCC 11.15.2132 provides, in pertinent part:

“The following uses may be permitted when found by the approval authority to satisfy the applicable ordinance standards:

“(A) *Community Service Uses* pursuant to the provisions of MCC [11.15].7005 through [11.15].7041[.]”

In turn, MCC 11.15.7020 provides, in pertinent part:

“(A) . . . [T]he following Community Service Uses and those of a similar nature, may be permitted in any district when approved at a public hearing by the approval authority.

“* * * * *

“(5) *Group care facility.*”

MCC 11.15.0010 defines “Group Care Facility” as

“[a] building or buildings on contiguous property used to house six or more handicapped or socially dependent persons. This definition includes the definitions of Residential Care Facility, Residential Training Facility, and Residential Treatment Facility contained in ORS 443.400(5), (7) and (9).”

Thus, Applicant’s proposed “Group Care Facility” constitutes a “Community Service Use” permitted as a conditional use within the MUA-20 district.

MCC 11.15.7120(A), which controls conditional uses in general, provides that:

"A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply."

Because MCC 11.15.2132(A) approves "Community Service" uses as conditional uses with the MUA-20 district, and because MCC 11.15.7015 already lists approval criteria for Community Service uses, the proposed use will be governed by the criteria in MCC 11.15.7015 (the "Community Service Approval Criteria"), as opposed to the general conditional use criteria in MCC 11.15.7120.^[1] The conditional use approval criteria for Community Service uses appears in the following section.

C. COMMUNITY SERVICE USE APPROVAL CRITERIA [MCC 11.15.7015]

MCC 11.15.7015 provides that

"[i]n approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria. . .

- "(A) Is consistent with the character of the area;
- "(B) Will not adversely affect natural resources;
- "(C) Will not conflict with farm or forest uses in the area;
- "(D) Will not require public services other than those existing or programmed for the area;
- "(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife[,] or that agency has certified that the impacts will be acceptable;

¹ The conditional use criteria in MCC 11.15.7015 and MCC 11.15.7120 are identical in any event.

- “(F) Will not create hazardous conditions;
- “(G) Will satisfy the applicable policies of the Comprehensive Plan[;] [and]
- “(H) Will satisfy such other applicable approval criteria as are stated in this Section.”

III. FINDINGS

The following findings apply the Community Service Use approval criteria in MCC 11.15.7015 to Applicant's proposal.

“(A) Is consistent with the character of the area”

Applicant's proposed conditional use appears consistent with the character of the area. The area is a farming community with a mix of single family 2-acre lots, larger plots with more than one home on it, and large plant nurseries and farms. Most of the families in the area have small gardens and/or livestock. Applicant likewise have farm animals, and some of Applicant's residents help with the care of those animals.

The only reason that the Applicant now seeks Community Service Use approval is because the six foster children who were placed in the home in 1988 are now over eighteen years of age and are therefore adults. Under the state licensing requirements and County zoning requirements for foster care for six or more adults, the Applicant must obtain approval as a GROUP CARE FACILITY. The level of care needed and the number of staff people and activity level will remain the same as they were before the six foster children became adults.

“(B) Will not adversely affect natural resources”

The proposed conditional use will have no affect on natural resources.

“(C) Will not conflict with farm or forest uses in the area”

The proposed conditional use will not conflict with any farm or forest uses. There exists no evidence suggesting that the provision of foster care for six children by the Applicant has historically conflicted in any way with farm or forest uses in the area. Again, the level of care received by the foster adults, and the staffing required to deliver that level of care, are the same as they were before the foster children became adults.

“(D) Will not require public services other than those existing or programmed for the area”

Applicant will require no additional public services beyond those already existing in the area. The service availability certificates have all been signed by the public services represented in this area. Public water service and fire and police protection are and will continue to be available to the site, as are electric and telephone service. No increase in level of service will be required as a result of Community Service use approval. The same clients are here with the same needs.

“(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife[,] or that agency has certified that the impacts will be acceptable”

The site is not in a big game winter habitat area.

“(F) Will not create hazardous conditions”

No hazardous conditions will be created because no physical change is being made. Nothing is being built, added, or changed. Only the clients' ages have changed.

A neighbor, Mr. VanZanten, voiced some concerns about increased traffic and the potential for hazardous conditions arising therefrom. He identified “school busses” and “nurses” as comprising a perceived increase in traffic. According to the Applicant, the number and frequency of the school busses will, in fact, *decrease* as the residents grow older and no longer need that mode of transportation. Also, although there are nurses who routinely visit the house, they attend to Applicant's own child and not any of the other residents.

Mr. VanZanten also mentioned some otherwise-unidentified traffic accident that he viewed as directly related to the current use. However, he provided no details whatsoever, and there exists no evidence that any of the historical traffic associated with Applicant's care of the residents has either created, or generated a propensity to create, any hazardous conditions.

“(G) Will satisfy the applicable policies of the Comprehensive Plan”

The following policies of the County's Comprehensive Plan are found applicable to this request:

- ◆ Policy 13 (Air, Water and Noise Quality);
- ◆ Policy 14 (Development Limitations);
- ◆ Policy 22 (Energy Conservation);
- ◆ Policy 36 (Transportation System Development Requirements);
- ◆ Policy 37 (Utilities);
- ◆ Policy 38 (Facilities); and
- ◆ Policy 40 (Development Requirements).

Policy 13 (Air, Water and Noise Quality): This policy seeks to maintain and improve air and water quality and reduce noise pollution in the County.

Based upon Applicant's representations concerning the historical use and the reason for this approval request, there will be no anticipated change in air, water, or noise quality. The Applicant's client's simply got older.

Mr. VanZanten voiced some concerns about recent increases in noise, described as yelling and screaming from some of the residents. Applicant acknowledged that, as the result of a recent emergency placement of one individual in her care, the noise levels have increased above the normal levels. However, Applicant provided assurances that the noise impacts were temporary and unusual.

Nevertheless, Mr. VanZanten raised a legitimate concern. Applicant has asked for approval of a Group Care Facility as a conditional use within the MUA-20 district upon the assurance that the only aspect of the existing care arrangement that has changed is the residents' ages. Notwithstanding the fact that the use itself has essentially been in place for a number of years, and notwithstanding the fact that Applicant does not anticipate any increase in the number of residents, nevertheless the application has been evaluated with the representation that any increase in noise levels that might materially impact adjacent neighbors will either be highly unlikely or, in the case of emergency placements, a very short-term, temporary predicament associated

with the emergency nature of such placements.

Thus, Condition #5 has been imposed in order to balance the needs of, and protections to be accorded to, both the Applicant and the neighbors.

Policy 14 (Development Limitations): This policy is concerned with mitigating or limiting the impacts of developing areas that have any of the following characteristics: slopes exceeding 20%; severe soil erosion potential; land within the 100-year floodplain; a high seasonal water table within 0-24 inches of the surface for three or more weeks of the year; a fragipan less than 30 inches from the surface; and land subject to slumping, earth slides or movement

Applicant will not be building any new buildings or adding to the existing building. Thus, there are no known development limitations on the site.

Policy 22 (Energy Conservation): Applicant's proposal will have no effect on the County policies to promote energy conservation as outlined in the comprehensive plan. The fact that the six persons receiving foster care are now adults instead of children does not affect the relationship between the use of the site and issues associated with energy conservation.

Policy 36 (Transportation System Development Requirements): The County Engineer has determined that, in order to comply with the provisions of the Street Standards Ordinance, it will be necessary for the owner to commit to participate in future improvements to 317th Avenue through deed restrictions as a condition of approval.

Both the Applicant and the property owner — who is not the Applicant — must agree in writing that, in the event that a major improvement of 317th Avenue were to be undertaken by the County at some time in the future, the property owner would pay his or her proportionate share of the cost of the improvement.

Policy 37 (Utilities): This policy requires a finding that the water, sanitation, drainage and communication facilities are available as follows:

"WATER AND DISPOSAL SYSTEM:

- "A. The proposed use can be connected to a public sewer and water system, both or which have adequate capacity; or
- "B. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or
- "C. There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or
- "D. There is an adequate private water system, and a public sewer with adequate capacity.

"DRAINAGE:

- "E. There is adequate capacity in the storm water system to handle the run-off; or
- "F. The water run-off can be handled on the site or adequate provisions can be made; and
- "G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

"ENERGY AND COMMUNICATIONS:

- "H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and
- "I. Communications facilities are available."

The proposed use meets Policy 37 for the following reasons:

- ◆ **Water And Disposal System:** The Lusted Water District has verified that public water is available from a 4-inch line in SE 317th Avenue. The house is served by an existing approved septic tank system as verified by the County Sanitarian.
- ◆ **Drainage:** Approval of the requested Community Service Use will result in no change in the existing drainage facilities on the site.
- ◆ **Energy And Communications:** Portland General Electric provides electric power and General Telephone provides telephone service.

Policy 38 (Facilities): This policy requires that public facilities be available to serve the use.

On the County Planning Division's School District Review form, the business manager for the Barlow-Gresham Union High School District had "no comment" regarding the proposed Community Service Use. Fire District #10 provides fire protection to the area and has confirmed that there is adequate water pressure and flow for fire fighting purposes. The Multnomah County Sheriff's Office has confirmed that the level of police service available to serve the proposed use is adequate.

Policy 40 (Development Requirements): This policy requires a finding, that:

- "A. Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the Bicycle Corridor Capital Improvements Program and Map.
- "B. Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.
- "C. Areas for bicycle parking facilities will be required in development proposals, where appropriate."

The proposed land use meets Policy 40 for the following reasons:

- ◆ The Multnomah County 1990 Master Bicycle Plan does not show any bikeway planned for SE 317th Avenue, including that portion of the road adjacent to the site. This provision of Policy 40 is not applicable.
- ◆ The proposal does not involve commercial, industrial, or multiple family developments.
- ◆ The scale of the proposal is the same as that of a single-family residence.

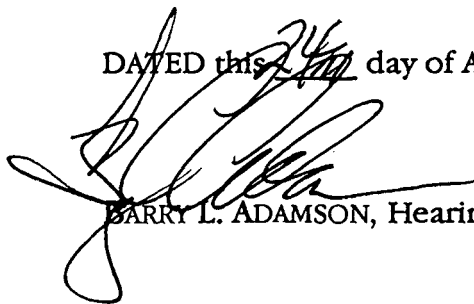
“(H) Will satisfy such other applicable approval criteria as are stated in this Section”

There are no other applicable Community Service Use approval criteria for the subject request.

IV. CONCLUSIONS

1. Based on the above Findings, the proposal, as conditioned, satisfies approval criteria for a Community Service Use.
2. Conditions of approval are necessary to: (1) assure that the proposal complies with applicable Zoning Code provisions and criteria, (2) that applicable policies of the Comprehensive Plan are addressed, and (3) minimize potential adverse impacts from the CS use and assure compatibility with surrounding land uses.

DATED this 24th day of August, 1994.



BARRY L. ADAMSON, Hearings Officer

Signed by the Hearings Officer:	August 24, 1994
Decision Mailed to Parties:	September 28, 1994
Decision Submitted to Board Clerk:	September 28, 1994
Last day to Appeal Decision:	October 10, 1994
Reported to Board of County Commissioners:	October 11, 1994

Appeal to the Board of County Commissioners

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$300.00 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)]. Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in Portland).

Failure to raise an issue by the close of the record at or following the final hearing, (in person or by letter), precludes appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to provide specificity on an issue sufficient for the Board to respond, precludes appeal to LUBA on that issue.

To appeal the Hearings Officer decision, a "Notice of Review" form and fee must be submitted to the County Planning Director. For further information call the Multnomah County Planning and Development Division at 248-3043.

#1

PLEASE PRINT LEGIBLY!

MEETING DATE

10-11-94

NAME

Charles Ciecko

ADDRESS

600 NE GRAND

STREET

PDX

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

C 10 P-2

SUPPORT

OPPOSE

X

SUBMIT TO BOARD CLERK

#2

PLEASE PRINT LEGIBLY!

MEETING DATE

10/11/94

NAME

DONNA MATRAZZO

ADDRESS

19300 NW SAUVIE IS. RD

STREET

PORTLAND

OR 97231

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

C 10-94

SUPPORT

✓ w/ comments

OPPOSE

SUBMIT TO BOARD CLERK

SCENIC
VALUES

WEST HILLS

#3

PLEASE PRINT LEGIBLY!

MEETING DATE

10/11/94

NAME

VONN SHERMAN

ADDRESS

1912 NW ASPEN

STREET

PORTLAND

OR

97210

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

A-2

SUPPORT

☒ **OPPOSE**

SUBMIT TO BOARD CLERK

#4

PLEASE PRINT LEGIBLY!

MEETING DATE 10-11-94

NAME JIM EMERSON

ADDRESS 13900 NW, OLD GERMANTOWN RD.

STREET

PORTLAND

CITY

97231

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # C 10-94

SUPPORT ✓ OPPOSE P-2

SUBMIT TO BOARD CLERK

#5

PLEASE PRINT LEGIBLY!

MEETING DATE

10/11/94

NAME

Arnold Rocklin

ADDRESS

PO Box 83645

STREET

Portland, OR 97283

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-2

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

☒

#6

PLEASE PRINT LEGIBLY!

MEETING DATE

10-11-94

NAME

Thomas K. Nash

ADDRESS

P.O. Box 729

STREET

Welches, OR 97067

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

C10-94

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

P-2

#7

PLEASE PRINT LEGIBLY!

MEETING DATE

10-11-94

NAME

Mane Fick

ADDRESS

P.O. Box 6844

STREET

Don't know 97224

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

C10-94

SUPPORT

OPPOSE

Not at CDC

SUBMIT TO BOARD CLERK

P-2

#8

PLEASE PRINT LEGIBLY!

MEETING DATE

10/11/94

NAME

Donis McArdle

ADDRESS

12405 NW Skyline Blvd

STREET

Portland

OR

97231

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

Overlap

SUPPORT

OPPOSE

X

SUBMIT TO BOARD CLERK

#9

PLEASE PRINT LEGIBLY!

MEETING DATE 10/11/94

NAME Joseph L. Kabdebo

ADDRESS 725 SW. Viewmont Dr.
STREET

Portland oreg. 97225
CITY ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-2

SUPPORT _____ OPPOSE X _____
SUBMIT TO BOARD CLERK

MEETING DATE: October 11, 1994

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: C 10-94 Proposed Ordinance - First Reading

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: October 11, 1994

Amount of Time Needed: 1 Hour

DEPARTMENT: DES

DIVISION: Planning

CONTACT: R. Scott Pemble

TELEPHONE #: 3182

BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

C 10-94 A proposed Ordinance amending the Comprehensive Plan Policies and Significant Environmental Concern (SEC) Section of the Zoning Code to protect significant wildlife habitat, scenic views and streams in the West Hills and Howard Canyon areas, in fulfillment of Periodic Review Remand Order requirements

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Betsy Wallia

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

1994 OCT -4 AM 10:20
MULTNOMAH COUNTY
OREGON

ORDINANCE FACT SHEET

Ordinance Title:

An Ordinance amending Comprehensive Framework Plan Policies 16, 16-D and 16-F and the Significant Environmental Concern (SEC) section of Multnomah County Code Chapter 11.15 to protect significant wildlife habitat, scenic areas and streams in the West Hills and Howard Canyon areas, in fulfillment of Periodic Review Remand Order requirements.

Give a brief statement of the purpose of the ordinance (include the rationale for adoption of ordinance, description of persons benefited, other alternatives explored):

The proposed amendments will reference the designation of wildlife habitat and the West Hills scenic area as significant Goal 5 resources in the Comprehensive Plan, and provide protection measures through SEC zoning code provisions. The amendments are necessary to comply with Goal 5 and OAR 660-16 and complete the requirements of the county's Periodic Review Remand Order. The persons benefited will be the public in general.

What other local jurisdictions in the metropolitan area have enacted similar legislation?

Every county and city in the state is subject to compliance with Statewide Planning Goal 5. The City of Portland has a number of Environmental zones to protect Goal 5 resources within city limits.

What has been the experience in other areas with this type of legislation?

Additional regulations governing development in order to provide environmental protections.

What is the fiscal impact, if any?

Costs to property owners/developers to submit an application (\$125 application fee). Costs to the county from additional staff workload to process applications (\$719 per 1994 estimate of staff time to process an SEC application). No anticipated budget impacts.

SIGNATURES

Person Filling Out Form: _____

Planning & Budget Division (if fiscal impact): _____

Department Manager/Elected Official:  Betty Williams

**DECISION OF THE
MULTNOMAH COUNTY PLANNING COMMISSION**

In the Matter of Amending Comprehensive Plan)
Policy 16-F and the SEC section of the Zoning)
Code to protect Scenic Views of the West Hills)

**RESOLUTION
C 14-94, C 20-94**

WHEREAS, Periodic Review Remand Order 93-RA-876 required Multnomah County to complete additional work related to Statewide Planning Goal 5 resources in the West Hills; and

WHEREAS, On August 9, 1994 the Board of County Commissioners decided that scenic views of the West Hills are a significant Goal 5 resource. Based on an analysis of conflicting uses and economic, social, environmental and energy (ESEE) consequences, the Board determined that the appropriate level of protection for the resource is "3-C" (allow conflicting uses in a limited manner that will give some protection to the resource). The analysis and reasons justifying the Board's decision are incorporated into the West Hills Reconciliation Report; and

WHEREAS, OAR 660-16 requires the county to amend its comprehensive plan and zoning designations to be consistent with the level of protection determined to be appropriate for the resource. These amendments are necessary in order to provide clear standards under which development can occur, so that the scenic value of the resource is protected from possible negative effects of development; and

WHEREAS, The Planning Commission conducted a public hearing on September 12, 1994, to accept public testimony on proposed amendments to Comprehensive Plan Policy 16-F and the proposed addition of MCC 11.15.6424 to the SEC section of the zoning code text concerning scenic protection. Additional meetings were held on September 19 and September 26, 1994 to discuss issues surrounding protection measures; and

WHEREAS, The Planning Commission recognizes that forest practices, including clear cutting, can legally occur on 95 percent of the significant scenic area, and that such forest practices cannot be regulated by the county, pursuant to ORS 527.722(1); and

WHEREAS, The Planning Commission recognizes that other types of development are usually more permanent in nature than forest practices, requiring regulation in siting and design to prevent disruption of the scenic appearance of the forested landscape; and

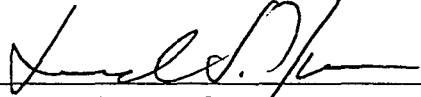
WHEREAS, The Planning Commission feels it would be overly burdensome to private property owners to impose strict regulations prohibiting visibility of other types of development in the West Hills, considering that neighboring properties could be clear cut; and

WHEREAS, The Planning Commission feels that the criteria found in MCC 11.15.6424 for approval of development in the West Hills scenic area provides a reasonable balance between protection of the scenic resource and development objectives; and

WHEREAS, The Planning Commission voted 7 in favor, 1 opposed and -0- abstain to approve the proposed revisions to Comprehensive Plan Policy 16-F and the adoption of MCC 11.15.6424.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission hereby recommends that the Board of County Commissioners amend the SEC section of the zoning code by adding a new subsection, numbered MCC 11.15.6424, as indicated in Exhibit A attached hereto, and revise the Comprehensive Plan, Policy 16-F, as indicated in Exhibit B attached hereto, in partial fulfillment of requirements of Periodic Review Remand WKPROG - 0038.

Approved this 26th day of September, 1994

By 
Leonard Yoon, Chair
Multnomah County Planning Commission

**DECISION OF THE
MULTNOMAH COUNTY PLANNING COMMISSION**

In the Matter of Amending the Zoning Code)
Text to provide Regulation of Development)
Adjacent to Protected Streams)

**RESOLUTION
C 15-94**

WHEREAS, Periodic Review Remand Order 93-RA-876 required Multnomah County to complete additional work related to Statewide Planning Goal 5 resources in the West Hills; and

WHEREAS, On August 9, 1994 the Board of County Commissioners decided that certain streams in the county are significant Goal 5 resources. Based on an analysis of conflicting uses and economic, social, environmental and energy (ESEE) consequences, the Board determined that the appropriate level of protection for the resource is "3-C" (allow conflicting uses in a limited manner that will give some protection to the resource). The analysis and reasons justifying the Board's decision are incorporated into the West Hills Reconciliation Report; and

WHEREAS, OAR 660-16 requires the county to amend its zoning designations to be consistent with the level of protection and protection programs determined to be appropriate for the resource. These amendments are necessary in order to provide clear standards under which development can occur, so that the streams are protected from possible negative effects of development; and

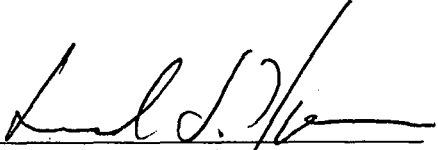
WHEREAS, The Planning Commission conducted a public hearing on September 12, 1994, to accept public testimony on proposed amendments to the SEC section of the zoning code text to protect streams, and held additional meetings on September 19 and September 26 to discuss issues surrounding stream protection; and

WHEREAS, The proposed SEC-s overlay within the Multnomah County Zoning Code (11.15.6428) will provide specific protections for streams by limiting, but not prohibiting, conflicting uses; and

WHEREAS, The proposed SEC-s overlay will accomplish this objective by allowing property owners to either limit development to the portion of their property where it will have the least impact to streams, or requiring offsetting enhancement measures to fully compensate for negative impacts to streams on the property.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission hereby recommends that the Board of County Commissioners amend the SEC section of the zoning code by adding a new subsection, numbered MCC 11.15.6428, as indicated in Exhibit A attached hereto in partial fulfillment of requirements of Periodic Review Remand WKPROG - 0038.

Approved this 26th day of September, 1994

By 
Leonard Yoon, Chair
Multnomah County Planning Commission

**DECISION OF THE
MULTNOMAH COUNTY PLANNING COMMISSION**

In the Matter of Amending Comprehensive)
Plan Policy 16 and MCC 11.15.6400 through)
.6422 in conjunction with Periodic Review)

**RESOLUTION
C 16-94, C 17-94**

WHEREAS, Periodic Review Remand Order 93-RA-876 required Multnomah County to complete additional work related to Statewide Planning Goal 5 resources in the West Hills and Howard Canyon areas; and

WHEREAS, On August 9, 1994 the Board of County Commissioners decided that wildlife habitat and scenic views in the West Hills, and streams in the West Hills and Howard Canyon area, are significant Goal 5 resources, and that the appropriate level of protection for these resources is "3-C" (allow conflicting uses in a limited manner that will give some protection to the resource); and

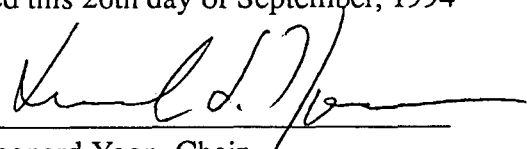
WHEREAS, OAR 660-16 requires the county to amend its comprehensive plan and zoning designations to be consistent with the level of protection determined to be appropriate for each significant Goal 5 resource. Proposed changes to the comprehensive plan and Significant Environmental Concern (SEC) section of the zoning code to protect wildlife habitat, scenic views and streams has resulted in the need for revisions to comprehensive plan Policy 16 and MCC 11.15.6400 through .6422 (general provisions of the SEC section); and

WHEREAS, The Planning Commission conducted a public hearing on September 12, 1994, to accept public testimony on proposed amendments to the SEC section of the zoning code text and comprehensive plan Policy 16. Additional Planning Commission meetings on the matter were held on September 19 and September 26, 1994; and

WHEREAS, The Planning Commission voted 6 in favor, 2 opposed and -0- abstain to approve the proposed revisions to comprehensive plan Policy 16 and MCC 11.15.6400 through 6422.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission hereby recommends that the Board of County Commissioners amend the SEC section of the zoning code, MCC 11.15.6400 through .6422, as indicated in Exhibit A attached hereto, and revise Comprehensive Framework Plan Policy 16, as indicated in Exhibit B attached hereto, to fulfill requirements of Periodic Review Remand WKPROG - 0038.

Approved this 26th day of September, 1994

By 
Leonard Yoon, Chair
Multnomah County Planning Commission

**DECISION OF THE
MULTNOMAH COUNTY PLANNING COMMISSION**

In the Matter of Amending the Comprehensive)
Plan and Zoning Code text to provide protection)
to Wildlife Habitat in the West Hills)

**RESOLUTION
C 18-94, C 19-94**

WHEREAS, Periodic Review Remand Order 93-RA-876 required Multnomah County to complete additional work related to Statewide Planning Goal 5 resources in the West Hills; and

WHEREAS, On August 9, 1994 the Board of County Commissioners decided that wildlife habitat in the West Hills is a significant Goal 5 resource. Based on an analysis of conflicting uses and economic, social, environmental and energy (ESEE) consequences, the Board determined that the appropriate level of protection for the resource is "3-C" (allow conflicting uses in a limited manner that will give some protection to the resource). The analysis and reasons justifying the Board's decision are incorporated into the West Hills Reconciliation Report; and

WHEREAS, OAR 660-16 requires the county to amend its comprehensive plan and zoning designations to be consistent with the level of protection and protection programs determined to be appropriate for the resource. These amendments are necessary in order to provide clear standards under which development can occur, so that the wildlife habitat is protected from possible negative effects of development; and

WHEREAS, The Planning Commission conducted a public hearing on September 12, 1994, to accept public testimony on proposed amendments to the Comprehensive Plan and SEC section of the zoning code text to protect wildlife habitat, and held additional meetings on September 19 and September 26 to discuss issues surrounding habitat protection; and

WHEREAS, The proposed amendments to Comprehensive Framework Plan Policy 16-D (Fish & Wildlife Habitat) will direct Multnomah County to protect its wildlife habitat ecosystems within rural areas of the County; and

WHEREAS, The proposed SEC-h overlay within the Multnomah County Zoning Code (11.15.6428) will provide specific protections for wildlife habitat within the West Hills by limiting, but not prohibiting, conflicting uses; and

WHEREAS, The proposed SEC-h overlay will accomplish this objective by allowing property developers to either limit development to the portion of their property where it will have the least impact to wildlife habitat, or provide offsetting wildlife enhancement measures to fully compensate for negative impacts to wildlife habitat on the property; and

WHEREAS, The proposed SEC-h overlay will restrict types and sizes of fencing adjacent to the public road right of way so as to decrease the mortality of wildlife along public

roads; and

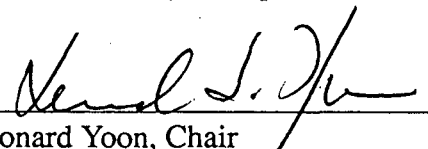
WHEREAS, The proposed SEC-h overlay includes a list of non-native plant species prohibited for use in property landscaping due to their invasive nature and resulting destruction of native wildlife habitat areas; and

WHEREAS, Although the Goal 5 ESEE analysis showed that forest practices have significant negative environmental effects upon wildlife habitat, current state law prohibits Multnomah County regulation of forest practices upon lands designated and zoned Commercial Forest Use, which constitute more than 76% of the significant wildlife habitat area;

NOW, THEREFORE BE IT RESOLVED that the Planning Commission hereby recommends that the Board of County Commissioners amend the SEC section of the zoning code by adding a new subsection, numbered MCC 11.15.6426, as indicated in Exhibit A attached hereto, and revise the Comprehensive Plan, Policy 16-D, as indicated in Exhibit B attached hereto, in partial fulfillment of requirements of Periodic Review Remand WKPROG - 0038.

Approved this 26th day of September, 1994

By


Leonard Yoon, Chair

Multnomah County Planning Commission

1 BEFORE THE BOARD OF COUNTY COMMISSIONERS

2 FOR MULTNOMAH COUNTY, OREGON

3 ORDINANCE NO. _____

4

5 An Ordinance amending the Comprehensive Framework Plan Policies and Significant
6 Environmental Concern (SEC) section of the Zoning Code to protect significant wildlife habitat, scenic
7 views and streams in the West Hills and Howard Canyon areas, in fulfillment of Periodic Review Remand
8 Order requirements.

9

10 Multnomah County Ordains as follows:

11

12 Section I. Findings:

13 (A) Periodic Review Remand Order 93-RA-876 required Multnomah County to complete addi-
14 tional work related to Statewide Planning Goal 5 resources in the West Hills.

15 (B) On August 9, 1994 the Board of County Commissioners (Board) decided that wildlife habitat
16 and scenic views in the West Hills and streams in the West Hills and Howard Canyon area are significant
17 Goal 5 resources, and based on an analysis of economic, social, environmental and energy (ESEE) conse-
18 quences, the appropriate level of protection for these resources is "3-C" (allow conflicting uses in a limited
19 manner that will give some protection to the resource). This analysis and recommendation are incorporat-
20 ed into the West Hills Reconciliation Report which was adopted by the Board on September 22, 1994.

21 (C) OAR 660-16 requires the county to amend its Comprehensive Plan and zoning designations to
22 be consistent with the level of protection determined to be appropriate for each resource. Revisions to
23 Comprehensive Plan Policies 16, 16-D and 16-F are necessary to reflect the county's decision to protect
24 wildlife habitat and scenic views of the West Hills. Proposed amendments to the Significant
25 Environmental Concern (SEC) section of the zoning code will provide specific standards under which
26 development can occur in areas which contain significant wildlife habitat, scenic landscapes or streams.

1 (D) Notice and the opportunity for public comment on the Comprehensive Plan Policy and SEC
2 code amendments was provided at a Planning Commission hearing on September 12, 1994. After deliber-
3 ation on September 19 and September 26, 1994, the Planning Commission recommended that the amend-
4 ments to the Comprehensive Plan Policies and SEC section of the zoning code be adopted by the Board.

5 (E) On October 11, 1994, the Board conducted a public hearing on the proposed Comprehensive
6 Plan and Zoning Code amendments and the Planning Commission recommendation.

7

8 Section II. Amendment of Framework Plan Text.

9

10 The Multnomah County Comprehensive Framework Plan is hereby amended to read as follows:

11 (Underlined sections are new or replacements; [~~bracketed~~] sections are deleted.)

12

13 POLICY 16: NATURAL RESOURCES

14

15 INTRODUCTION

16 The purpose of the Natural Resources policy is to implement statewide Planning Goal 5: "Open
17 Spaces, Scenic and Historic Areas, and Natural Resources". These resources are necessary to ensure
18 the health and well-being of the population, and include such diverse components as mineral and
19 aggregate reserves, significant wetlands, historic sites, and scenic waterways. The individual compo-
20 nents, as set forth by state law (OAR 660-16), are addressed below as subpolicies 16-A through 16-L.

21 Natural resources within the Columbia River Gorge National Scenic Area are not subject to statewide
22 Goal 5 and are addressed through Policy 41.

23

24 An overlay classification, "Significant Environmental Concern" will be applied to certain areas identi-
25 fied as having one or more of these resource values.

26

1 POLICY 16

2
3 THE COUNTY'S POLICY IS TO PROTECT NATURAL RESOURCES, CONSERVE OPEN
4 SPACE, AND TO PROTECT SCENIC AND HISTORIC AREAS AND SITES. THESE
5 RESOURCES ARE ADDRESSED WITHIN SUB-POLICIES 16-A THROUGH 16-L.
6

7 STRATEGIES

- 8 A. The county will maintain an inventory of the location, quality, and quantity of each of these
9 resources. Sites with minimal information will be designated "1B", but when sufficient informa-
10 tion is available, the County will conduct the necessary ESEE analysis.
- 11 B. Certain areas identified as having one or more significant resource values will be protected by the
12 designation Significant Environmental Concern (SEC). This overlay zone will require special pro-
13 cedures for the review of certain types of development allowed in the base zones. This review pro-
14 cess will ensure the minimum impact on the values identified within the various areas, and shall be
15 designed to mitigate any lost values to the greatest extent possible. [~~Areas designated SEC are~~
16 ~~generally depicted on the following map.~~]
- 17 C. The following areas shall be designated as "Areas of Significant Environmental Concern" based
18 on "Economic, Social, Environmental, and Energy" (ESEE) evaluations and designations of "2A",
19 "3A", or "3C" under Statewide Goal 5. Resource protection shall be provided by either the SEC or
20 WRG overlay provisions in the Multnomah County Zoning Code (MCC 11.15) applied on:
21
- 22 1. Resource sites designated "2A", "3A", or "3C" in the Multnomah County Goal 5 Inventory and
23 identified for SEC or WRG protections in SUB-POLICIES 16-A through ~~[D, 16 E, 16 G, or]~~
24 16-L.
 - 25 2. Hayden Island west of the Burlington Northern Railroad tracks,
 - 26 3. Blue Lake, Fairview Lake (Ord. 234), and Columbia River shore area and islands,

1 4. Johnson Creek,

2 5. Other areas as may be determined under established Goal 5 procedures to be suitable for this
3 "area" designation.

4
5 D. Those wetlands and water areas listed in C. above that are located within the Willamette River
6 Greenway (Policy 15) will be protected by development review procedures within the WRG over-
7 lay zone instead of the SEC zone.

8
9 POLICY 16-D FISH AND WILDLIFE HABITAT

10
11 IT IS THE COUNTY'S POLICY TO PROTECT SIGNIFICANT FISH AND WILDLIFE HABITAT,
12 AND TO SPECIFICALLY LIMIT CONFLICTING USES WITHIN NATURAL ECOSYSTEMS
13 WITHIN THE RURAL PORTIONS OF THE COUNTY AND SENSITIVE BIG GAME WINTER
14 HABITAT AREAS

15
16 STRATEGIES

17 A. Utilize information provided by the Oregon Department of Fish and Wildlife to identify significant
18 habitat areas, and to delineate sensitive big game winter habitat areas. If necessary, supplement
19 this information with additional professional analysis to identify additional significant habitat
20 areas and natural ecosystems within rural portions of the County.

21 B. Apply the SEC overlay zone to all significant habitat areas not already zoned Willamette River
22 Greenway.

23 C. Include provisions within the Zoning Ordinance to review development proposals which may
24 affect natural ecosystems within the rural portions of the County and sensitive big game winter
25 habitat areas.

POLICY 16-F SCENIC VIEWS AND SITES

IT IS THE COUNTY'S POLICY TO CONSERVE SCENIC RESOURCES AND PROTECT ~~[SUCH AREAS FROM INCOMPATIBLE AND CONFLICTING LAND USES]~~ THEIR AESTHETIC APPEARANCE FOR THE ENJOYMENT OF FUTURE GENERATIONS.

STRATEGIES

- A. Apply the SEC overlay zone to the ~~[Columbia River Gorge National Scenic Area and the]~~ Sandy River State Scenic Waterway and other significant scenic areas designated "2A", "3A", or "3C" under Statewide Goal 5 to assure the scenic resources of these areas are not diminished as new development occurs.
- B. Coordinate reviews of development proposals within SEC areas with other affected agencies (i.e., ~~[Columbia River Gorge Commission,]~~ National Forest Service, State Parks and Recreation Division Rivers Program, ~~[County Parks Division]~~ etc.).
- C. Enforce large lot zoning regulations in resource areas to conserve scenic qualities associated with farm and forest lands.
- D. Apply the WRG overlay zone to lands within the Willamette River Greenway. Review new development within the greenway to assure scenic values are not diminished.
- E. Administer Design Review provisions to enhance visual qualities of the built environment.
- F. Apply a scenic overlay to the West Hills significant ("3-C") scenic area. Review new development that would be visible from Sauvie Island and other viewing areas identified in the Goal 5 analysis to assure that the overall appearance of a natural forested landscape is retained.

1 Section III. Amendment of Zoning Code.

2

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

4 (Underlined sections are new or replacements; [bracketed] sections are deleted.)

5

6 **Significant Environmental Concern SEC**

7

8 **11.15.6400 Purposes**

9 The purposes of the Significant Environmental Concern subdistrict are to protect, conserve, enhance,
10 restore, and maintain significant natural and man-made features which are of public value, including
11 among other things, river corridors, streams, lakes and islands, domestic water supply watersheds,
12 flood water storage areas, natural shorelines and unique vegetation, wetlands, wildlife and fish habitats,
13 significant geological features, tourist attractions, archaeological features and sites, and scenic views
14 and vistas, and to establish criteria, standards, and procedures for the development, change of use, or
15 alteration of such features or of the lands adjacent thereto.

16

17 **11.15.6402 Area Affected**

18 Except as otherwise provided in MCC .6404 or MCC .6406, this subsection shall apply to those lands
19 designated SEC on the Multnomah County Zoning Map.

20

21 **11.15.6404 Uses – SEC Permit Required**

22 (A) All uses permitted under the provisions of the underlying district are permitted on lands designated
23 SEC; provided, however, that the location and design of any use, or change or alteration of a use,
24 except as provided in MCC .6406, shall be subject to an SEC permit. [~~The excavation of any~~
25 ~~archaeological site shall require an SEC permit, under MCC .6412, regardless of the zoning desig-~~
26 ~~nation of the site.]~~

(B) Any excavation or any removal of materials of archaeological, historical, prehistorical or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.

~~[(C) Any building, structure, or physical improvement within 100 feet of the normal high water level of a Class I stream, as defined by the State of Oregon Forest Practice Rules, shall require an SEC permit under MCC .6412, regardless of the zoning designation of the site.]~~

(C) Activities proposed for lands designated as scenic waterways under the Oregon Scenic Waterways System shall be subject to an SEC permit in addition to approval from the Oregon Parks and Recreation Department.

11.15.6406 Exceptions

An SEC permit shall not be required for the following:

(A) Farm use, as defined in ORS 215.203(2)(a), including buildings and structures accessory thereto on "converted wetlands" as defined by ORS 541.695(9) or on upland areas;

(B) Except as provided in MCC .6420(C), the propagation of timber or the cutting of timber for public safety or personal use or the cutting of timber in accordance with the State Forest Practices Act;

(C) Customary dredging and channel maintenance and the removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, levees, groins, riprap, drainage ditch, irrigation ditches and tile drain systems as allowed by ORS 196.905(6);

(D) The placing, by a public agency, of signs, markers, aids, etc., to serve the public;

(E) Activities to protect, conserve, enhance, and maintain public recreational, scenic, historical, and natural uses on public lands;

~~[(F) Activities regulated pursuant to the provisions of ORS 390.805 to 390.925 on lands designated as scenic waterways under the Oregon Scenic Waterways System;]~~

1 ~~[(G)]~~ (F) The expansion of capacity, or the replacement, of existing communication or energy distri-
2 bution and transmission systems, except substations;

3 ~~[(H)]~~ (G) The maintenance and repair of existing flood control facilities; and

4 ~~[(H)]~~ (H) Maintenance of u[U]ses legally existing on [the effective date of this Chapter] (effective
5 date of this ordinance); provided, however, that any change, expansion or alteration of such use
6 (except for changes to a structure which do not require any modification to the exterior of the
7 structure) shall require an SEC permit as provided herein. ~~[; and]~~

8 ~~[(J)] Those Class 1 streams located:~~

9 ~~(1) Within mineral and aggregate resource areas designated "2A", "3A" or "3C" by a Statewide~~
10 ~~Planning Goal 5 Economic, Social, Environmental and Energy analysis, or~~

11 ~~(2) Within the Willamette River Greenway.]~~

13 11.15.6408 Application for SEC Permit

14 An application for an SEC permit for a use or for the change or alteration of an existing use on land
15 designated SEC, shall address the applicable criteria for approval, under MCC .6420 through .6428 and
16 shall be filed as follows:

17
18 (A) For a Permitted Use or a Use Under Prescribed Conditions, in the manner provided in MCC
19 .8210(B); and

20 (B) For a Conditional Use as specified either in the underlying district or in MCC .7105 through .7640,
21 or for a Community Service Use as specified in MCC .7005 through .7030, or for a change of zone
22 classification or for any other action as specified in MCC .8205, the SEC permit application shall
23 be combined with the required application for the proposed action and filed in the manner provid-
24 ed in MCC .8210 and .8215.

1 (C) An application for an SEC permit shall include the following:

2 (1) A written description of the proposed development and how it complies with the applicable
3 approval criteria of MCC .6420 through .6428.

4 (2) A map of the property showing:

5 (a) Boundaries, dimensions, and size of the subject parcel;

6 (b) Location and size of existing and proposed structures;

7 (c) Contour lines and topographic features such as ravines or ridges;

8 (d) Proposed fill, grading, site contouring or other landform changes;

9 (e) Location and predominant species of existing vegetation on the parcel, areas where vege-
10 tation will be removed, and location and species of vegetation to be planted, including
11 landscaped areas;

12 (f) Location and width of existing and proposed roads, driveways, and service corridors.

13
14 **11.15.6409 Applicable Approval Criteria**

15
16 (A) The approval criteria in MCC .6420 shall apply to those areas designated SEC on the Multnomah
17 County zoning maps.

18 (B) The approval criteria that apply to uses in areas designated SEC-w, SEC-v, SEC-h and SEC-s on
19 Multnomah County zoning maps shall be based on the type of protected resources on the property,
20 as indicated by the subscript letter in the zoning designation, as follows:

<u>zoning</u>	<u>approval</u>
<u>designation</u>	<u>criteria</u>
<u>SEC-w</u> <u>(wetlands)</u>	<u>MCC .6422</u>
<u>SEC-v</u> <u>(scenic views)</u>	<u>MCC .6424</u>
<u>SEC-h</u> <u>(wildlife habitat)</u>	<u>MCC .6426</u>
<u>SEC-s</u> <u>(streams)</u>	<u>MCC .6428</u>

1 (C) An application for a use on a property containing more than one protected resource shall address
2 the approval criteria for all of the designated resources on the property. In the case of conflicting
3 criteria, approval shall be based on the ability of the proposed development to comply as nearly as
4 possible with the criteria for all designated resources that would be affected.

5 (D) For Goal 5 resources designated "2A" or "3A", a proposed development must comply with the
6 approval criteria in order to be approved.

7 (E) For Goal 5 resources designated "3-C", the approval criteria shall be used to determine the most
8 appropriate location, size and scope of a proposed development, in order to make the development
9 compatible with the purposes of this section, but shall not be used to prohibit a use or be used to
10 require removal or relocation of existing physical improvements to the property.

12 **11.15.6410 SEC Permit – Required Findings**

13 A decision on an application for an SEC permit shall be based upon findings of consistency with the
14 purposes of the SEC district and with the applicable criteria for approval specified in MCC .6420
15 through .6428.

17 **11.15.6412 Decision by Planning Director**

18 (A) A decision on an SEC permit application for a Permitted Use or a Use Under Prescribed
19 Conditions shall be made by the Planning Director.

20 (B) The Director may approve the proposal or approve it with such modifications and conditions as
21 may be consistent with the Comprehensive Plan and necessary to assure compatibility with appli-
22 cable criteria of MCC .6420 through .6428.

23 (C) Within ten business days following receipt of a completed application for an SEC permit, the
24 Planning Director shall file the decision with the Director of Environmental Services and shall
25 mail a copy of the decision to the applicant and to other persons who request the same.

(D) A decision by the Planning Director on an SEC permit application shall include written conditions, if any, and findings and conclusions. The conditions, findings, and conclusions shall specifically address the relationships between the proposal and the applicable criteria in MCC .6420 through .6428.

11.15.6414 Decision by a Hearings Officer

(A) A decision on an SEC permit application for a Conditional Use as specified either in the underlying district or in MCC .7105 through .7640, or for a Community Service use as specified in MCC .7005 through .7030, shall be made by the Hearings Officer in conjunction with the decision on the use proposal associated therewith.

(B) Action by the Hearings Officer on an SEC permit application shall be taken pursuant to MCC .8205 through .8250.

(C) The findings and conclusions made by the Hearings Officer and the conditions or modifications of approval, if any, shall specifically address the relationships between the proposal and the applicable criteria in MCC .6420 through .6428.

11.15.6416 Appeals

(A) A decision by the Planning Director on an application for an SEC permit may be appealed to the Hearings Officer in the manner provided in MCC .8290 and .8295.

(B) A decision by the Hearings Officer on an application for an SEC permit may be appealed to the Board of County Commissioners in the manner provided in MCC .8255.

11.15.6418 Scope of Conditions

(A) Conditions of approval of an SEC permit, if any, shall be designed to bring the application into conformance with the applicable [~~policies of the Comprehensive Plan~~] criteria of MCC .6420 through .6428 and any other requirements specified in the Goal 5 protection program for the

1 affected resource. Said conditions may relate to the locations, design, and maintenance of existing
2 and proposed improvements, including but not limited to buildings, structures and use areas, park-
3 ing, pedestrian and vehicular circulation and access, natural vegetation and landscaped areas, fenc-
4 ing, screening and buffering, excavations, cuts and fills, signs, graphics, and lighting.

5 (B) Approval of an SEC permit shall be deemed to authorize associated public utilities, including ener-
6 gy and communication facilities.

7
8 **11.15.6420 Criteria for Approval of SEC Permit**

9 The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas,
10 cultural areas and wild and scenic waterways that are designated SEC on Multnomah County sectional
11 zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:
12

13 (A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegeta-
14 tion shall be provided between any use and a river, stream, lake, or floodwater storage area.

15 (B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

16 (C) The harvesting of timber on lands designated SEC shall be conducted in a manner which will
17 insure that natural, scenic, and watershed qualities will be maintained to the greatest extent practi-
18 cable or will be restored within a brief period of time.

19 (D) A building, structure, or use shall be located on a lot in a manner which will balance functional
20 considerations and costs with the need to preserve and protect areas of environmental significance.

21 (E) Recreational needs shall be satisfied by public and private means in a manner consistent with the
22 carrying capacity of the land and with minimum conflict with areas of environmental significance.

23 (F) The protection of the public safety and of public and private property, especially from vandalism
24 and trespass, shall be provided to the maximum extent practicable.

25 (G) Significant fish and wildlife habitats shall be protected.

26 (H) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to

1 the maximum extent practicable to assure scenic quality and protection from erosion, and continu-
2 ous riparian corridors.

3 (I) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protect-
4 ed from vandalism or unauthorized entry.

5 ~~[(J) Extraction of aggregates and minerals, the depositing of dredge spoils, and similar activities per-~~
6 ~~mitted pursuant to the provisions of MCC .7105 through .7640, shall be conducted in a manner~~
7 ~~designed to minimize adverse effects on water quality, fish and wildlife, historical or archaeologi-~~
8 ~~cal features, vegetation, erosion, stream flow, visual quality, noise, and safety, and to guarantee~~
9 ~~necessary reclamation.]~~

10 ~~[(K)]~~ (J) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their
11 natural state to the maximum possible extent to preserve water quality and protect water retention,
12 overflow, and natural functions.

13 ~~[(L) Significant wetland areas shall be protected as provided in MCC .6422.]~~

14 ~~[(M)]~~ (K) Areas of erosion or potential erosion shall be protected from loss by appropriate means,
15 ~~which are compatible with the environmental character~~ Appropriate means shall be based on cur-
16 rent Best Management Practices and may include restriction on timing of soil disturbing activities..

17 ~~[(N)]~~ (L) The quality of the air, water, and land resources and ambient noise levels in areas classified
18 SEC shall be preserved in the development and use of such areas.

19 ~~[(O)]~~ (M) The design, bulk, construction materials, color and lighting of buildings, structures and
20 signs shall be compatible with the character and visual quality of areas of significant environmen-
21 tal concern.

22 ~~[(P)]~~ (N) An area generally recognized as fragile or endangered plant habitat or which is valued for
23 specific vegetative features, or which has an identified need for protection of the natural vegeta-
24 tion, shall be retained in a natural state to the maximum extent possible.

25 ~~[(Q)]~~ (O) The applicable policies of the Comprehensive Plan shall be satisfied.

1 **11.15.6422 Criteria for Approval of SEC-w Permit - Significant Wetlands**

2

3 *Significant wetlands* consist of those areas designated as *Significant* on aerial photographs of a scale
4 of 1"=200' made a part of the supporting documentation of the Comprehensive Framework Plan. Any
5 proposed activity or use requiring an SEC permit which would impact those wetlands shall be subject
6 to the following:

7

8 (A) In addition to other SEC Permit submittal requirements, the application shall also include:

9 (1) A site plan drawn to scale showing the wetland boundary as determined by a documented
10 field survey, the location of all existing and proposed [~~structures, roads,~~] watercourses,
11 drainageways, stormwater facilities, utility installations, and topography of the site at a con-
12 tour interval of no greater than five feet;

13 (2) A description and map of the wetland area that will be affected by the proposed activity. This
14 documentation must also include a map of the entire wetland, an assessment of the wetland's
15 functional characteristics and water sources, and a description of the vegetation types and fish
16 and wildlife habitat;

17 (3) A description and map of soil types in the proposed development area and the locations and
18 specifications for all proposed draining, filling, grading, dredging, and vegetation removal,
19 including the amounts and methods;

20 (4) A study of any flood hazard, erosion hazard, or other natural hazards in the proposed develop-
21 ment area and any proposed protective measures to reduce such hazards;

22 (5) Detailed Mitigation Plans as described in subsection (D), if required;

23 (6) Description of how the proposal meets the approval criteria listed in subsection (B) below.

24

25 (B) [~~In addition to the criteria listed in MCC 6372 +~~] The applicant shall demonstrate that the propos-
26 al:

- (1) Is water-dependent or requires access to the wetland as a central element of its basic design function, or is not water dependent but has no practicable alternative as described in subsection (C) below;
- (2) Will have as few adverse impacts as is practical to the wetland's functional characteristics and its existing contour, vegetation, fish and wildlife resources, shoreline anchoring, flood storage, general hydrological conditions, and visual amenities. This impact determination shall also consider specific site information contained in the adopted wetlands inventory and the economic, social, environmental, and energy (ESEE) analysis made part of the supporting documentation of the comprehensive plan;
- (3) Will not cause significant degradation of groundwater or surface-water quality;
- (4) Will provide a buffer area of not less than 50 feet between the wetland boundary and upland activities for those portions of regulated activities that need not be conducted in the wetland;
- (5) Will provide offsetting replacement wetlands for any loss of existing wetland areas. This Mitigation Plan shall meet the standards of subsection (D).

(C) A finding of no practicable alternative is to be made only after demonstration by the applicant that:

- (1) The basic purpose of the project cannot reasonably be accomplished using one or more other practicable alternative sites in Multnomah County that would avoid or result in less adverse impact on a wetland. An *alternative site* is to be considered *practicable* if it is available for purchase and the proposed activity can be conducted on that site after taking into consideration costs, existing technology, infrastructure, and logistics in achieving the overall project purposes;
- (2) The basic purpose of the project cannot be accomplished by a reduction in the size, scope, configuration, or density of the project as proposed, or by changing the design of the project in a way that would avoid or result in fewer adverse effects on the wetland; and
- (3) In cases where the applicant has rejected alternatives to the project as proposed due to con-

1 strains, a reasonable attempt has been made to remove or accommodate such constraints.

2
3 (D) A Mitigation Plan and monitoring program may be approved upon submission of the following:

- 4 (1) A site plan and written documentation which contains the applicable information for the
5 replacement wetland as required by MCC .6372 and .6376 (A);
6 (2) A description of the applicant's coordination efforts to date with the requirements of other
7 local, State, and Federal agencies;
8 (3) A Mitigation Plan which demonstrates retention of the resource values addressed in MCC
9 .6376 (B)(2);
10 (4) Documentation that replacement wetlands were considered and rejected according to the fol-
11 lowing order of locational preferences:
12 (a) On the site of the impacted wetland, with the same kind of resource;
13 (b) Off-site, with the same kind of resource;
14 (c) On-site, with a different kind of resource;
15 (d) Off-site, with a different kind of resource.

16
17 11.15.6424 Criteria for Approval of SEC-v Permit - Significant Scenic Views

18
19 Significant scenic resources consist of those areas designated SEC-v on Multnomah County sectional
20 zoning maps.

21
22 Identified Viewing Areas are public areas that provide important views of a significant scenic
23 resource, and include both sites and linear corridors. Identified Viewing Areas include:

24
25 Bybee-Howell House

26 Virginia Lakes

1 Sauvie Island Wildlife Refuge

2 Kelly Point Park

3 Smith and Bybee Lakes

4 Highway 30

5 The Multnomah Channel

6 The Willamette River

7 Public roads on Sauvie Island

8
9 Visually subordinate means development does not noticeably contrast with the surrounding landscape,
10 as viewed from an identified viewing area. Development that is visually subordinate may be visible,
11 but is not visually dominant in relation to its surroundings.

12
13 (A) In addition to the information required by MCC .6408(C), an application for development in an
14 area designated SEC-v shall include:

15 (1) Details on the height, shape, colors, outdoor lighting, and exterior building materials of any
16 proposed structure;

17 (2) Elevation drawings showing the appearance of proposed structures when built and surround-
18 ing final ground grades;

19 (3) A list of identified viewing areas from which the proposed use would be visible; and

20 (4) A written description and drawings demonstrating how the proposed development will be
21 visually subordinate as required by (B) below, including information on the type, height and
22 location of any vegetation or other materials which will be used to screen the development
23 from the view of identified viewing areas.

24
25 (B) Any portion of a proposed development (including access roads, cleared areas and structures) that
26 will be visible from an identified viewing area shall be visually subordinate. Guidelines which

1 may be used to attain visual subordination include:

2 (1) Siting on portions of the property where topography and existing vegetation will screen the
3 development from the view of identified viewing areas.

4 (2) Use of nonreflective or low reflective building materials and dark natural or earthtone colors.

5 (3) No exterior lighting, or lighting that is directed downward and sited, hooded and shielded so
6 that it is not highly visible from identified viewing areas. Shielding and hooding materials
7 should be composed of nonreflective, opaque materials.

8 (4) Use of screening vegetation or earth berms to block and/or disrupt views of the development.
9 Priority should be given to retaining existing vegetation over other screening methods. Trees
10 planted for screening purposes should be coniferous to provide winter screening. The appli-
11 cant is responsible for the proper maintenance and survival of any vegetation used for screen-
12 ing.

13 (5) Siting in a manner so that grading, cuts or fill are minimized and accomplished in a manner so
14 that the topography after completion of the development will blend with the surrounding land-
15 scape.

16 (6) Limiting structure height to remain below the surrounding forest canopy level.

17 (7) Siting and/or design so that the silhouette of buildings and other structures remains below the
18 skyline of bluffs or ridges as seen from identified viewing areas. This may require modifying
19 the building or structure height and design as well as location on the property, except:

20 (a) New communications facilities (transmission lines, antennae, dishes, etc.), may protrude
21 above a skyline visible from an identified viewing area upon demonstration that:

22 (i) The new facility could not be located in an existing transmission corridor or built
23 upon an existing facility;

24 (ii) The facility is necessary for public service; and

25 (iii) The break in the skyline is the minimum necessary to provide the service.
26

1 (C) Mining of a protected aggregate and mineral resource shall be done in accordance with any stan-
2 dards for mining identified in the protection program approved during the Goal 5 process.

3 (D) The approval authority may impose conditions of approval on an SEC-v permit in accordance with
4 MCC .6418, in order to make the development visually subordinate. The extent and type of condi-
5 tions shall be proportionate to the potential adverse visual impact of the development as seen from
6 identified viewing areas, taking into consideration the size of the development area that will be
7 visible, the distance from the development to identified viewing areas, the number of identified
8 viewing areas that could see the development, and the linear distance the development could be
9 seen along identified viewing corridors.

10
11
12 **11.15.6426 Criteria for Approval of SEC-h Permit - Wildlife Habitat**

13
14 (A) In addition to the information required by MCC .6408(C), an application for development in an
15 area designated SEC-h shall include an area map showing all properties which are adjacent to the
16 proposed development, with the following information:

17 (1) Location of primary, secondary, and impacted wildlife habitat areas as per the adopted refer-
18 ence map within the Multnomah County Comprehensive Plan;

19 (2) Location of all existing forested areas (including areas cleared pursuant to an approved forest
20 management plan) and non-forested "cleared" areas;

21 (3) Location of existing structures;

22 (4) Location and width of existing and proposed public roads, private access roads, driveways,
23 and service corridors on the subject parcel and within 200 feet of the subject parcel's bound-
24 aries on all adjacent parcels;

25 (5) Proposed type and location of all fencing on the subject property.

1 (B) Approval shall be based on the ability of the proposal to meet the following standards:

2 (1) Where a parcel to be developed contains any combination of primary, secondary, and impact-
3 ed wildlife habitat areas, development activities shall be limited to the less valuable of the
4 wildlife habitat areas, except as necessary to provide access.

5 (2) The proposed development shall be located so as to maintain existing forested areas which are
6 broadly contiguous with forested areas or areas being reforested on adjacent properties.

7 (3) The proposed development shall satisfy either (a) or (b) below:

8 (a) Development location and fencing standards:

9 (i) The development shall be within 200 feet of any public road abutting the site

10 (ii) Access road/driveway and service corridor serving the development shall not exceed
11 500 feet in length

12 (iii) Access road/driveway shall be located within 100 feet of the property boundary if
13 adjacent property has an access road or driveway within 200 feet of the property
14 boundary.

15 (iv) The development shall be within 300 feet of the property boundary if adjacent prop-
16 erty has structures and developed areas within 200 feet of the property boundary.

17 (v) Fencing within a required setback from a public road shall be designed so as to allow
18 the passage of wildlife. Such fencing shall meet the following criteria:

19 (A) Fences shall have a maximum height of 48 inches.

20 (B) Fences may be constructed of rail, woven wire, and barbed or barbless wire.
21 Fences may be electrified. Cyclone and chain link fences are prohibited.

22 (C) Solid fencing which acts as a visual barrier to wildlife is not permitted.
23

24 (b) Wildlife Conservation Plan

25 The applicant shall prepare a wildlife conservation plan for the proposed development
26 which shall demonstrate that the proposed development has either:

- (i) Fully mitigated any adverse impacts to wildlife habitat on the site, or
(ii) Provided for wildlife enhancement measures which compensate for the loss of any
wildlife habitat values on the site.

(4) The following nuisance plants shall not be included within landscape plans:

<u>Scientific Name</u>	<u>Common Name</u>
<u>Chelidonium majus</u>	<u>Lesser celandine</u>
<u>Cirsium arvense</u>	<u>Canada Thistle</u>
<u>Cirsium vulgare</u>	<u>Common Thistle</u>
<u>Clematis ligusticifolia</u>	<u>Western Clematis</u>
<u>Clematis vitalba</u>	<u>Traveler's Joy</u>
<u>Conium maculatum</u>	<u>Poison hemlock</u>
<u>Convolvulus arvensis</u>	<u>Field Morning-glory</u>
<u>Convolvulus nyctagineus</u>	<u>Night-blooming Morning-glory</u>
<u>Convolvulus sepium</u>	<u>Lady's nightcap</u>
<u>Cortaderia selloana</u>	<u>Pampas grass</u>
<u>Crataegus sp. except C. douglasii</u>	<u>hawthorn, except native species</u>
<u>Cytisus scoparius</u>	<u>Scotch broom</u>
<u>Daucus carota</u>	<u>Queen Ann's Lace</u>
<u>Elodea densa</u>	<u>South American Waterweed</u>
<u>Equisetum arvense</u>	<u>Common Horsetail</u>
<u>Equisetum telemateia</u>	<u>Giant Horsetail</u>
<u>Erodium cicutarium</u>	<u>Crane's Bill</u>
<u>Geranium robertianum</u>	<u>Robert Geranium</u>
<u>Hedera helix</u>	<u>English Ivy</u>
<u>Hypericum perforatum</u>	<u>St. John's Wort</u>

1	<u>Ilex aquafolium</u>	<u>English Holly</u>
2	<u>Laburnum watereri</u>	<u>Golden Chain Tree</u>
3	<u>Lemna minor</u>	<u>Duckweed, Water Lentil</u>
4	<u>Loentodon autumnalis</u>	<u>Fall Dandelion</u>
5	<u>Lythrum salicaria</u>	<u>Purple Loosestrife</u>
6	<u>Myriophyllum spicatum</u>	<u>Eurasian Watermilfoil</u>
7	<u>Phalaris arundinacea</u>	<u>Reed Canary grass</u>
8	<u>Poa annua</u>	<u>Annual Bluegrass</u>
9	<u>Polygonum coccineum</u>	<u>Swamp Smartweed</u>
10	<u>Polygonum convolvulus</u>	<u>Climbing Binaweed</u>
11	<u>Polygonum sachalinense</u>	<u>Giant Knotweed</u>
12	<u>Prunus laurocerasus</u>	<u>English, Portugese Laurel</u>
13	<u>Rhus diversiloba</u>	<u>Poison Oak</u>
14	<u>Rubusdiscolor</u>	<u>Himalayan Blackberry</u>
15	<u>Rubus laciniatus</u>	<u>Evergreen Blackberry</u>
16	<u>Senecio jacobaea</u>	<u>Tansy Ragwort</u>
17	<u>Solanum dulcamara</u>	<u>Blue Bindweed</u>
18	<u>Solanum nigrum</u>	<u>Garden Nightshade</u>
19	<u>Solanum sarrachoides</u>	<u>Hairy Nightshade</u>
20	<u>Taraxacum otficinale</u>	<u>Common Dandelion</u>
21	<u>Ultricularia vuigaris</u>	<u>Common Bladderwort</u>
22	<u>Utica dioica</u>	<u>Stinging Nettle</u>
23	<u>Vinca major</u>	<u>Periwinkle (large leaf)</u>
24	<u>Vinca minor</u>	<u>Periwinkle (small leaf)</u>
25	<u>Xanthium spinoseum</u>	<u>Spiny Cocklebur</u>
26	<u>various genera</u>	<u>Bamboo sp.</u>

1 **11.15.6428 Criteria for Approval of SEC-s Permit : Streams**

2
3 Protected Streams consist of those streams which have been found through a Goal 5 ESEE analysis to
4 be either "2-A", "3-A", or "3-C", are identified as protected in the Comprehensive Framework Plan,
5 and are designated SEC-s on the Multnomah County Sectional Zoning Maps.

6
7 Development = Any act requiring a permit stipulated by Multnomah County Ordinances as a prerequi-
8 site to the use or improvement of any land, including a building, land use, occupancy, sewer connec-
9 tion or other similar permit, and any associated grading or vegetative modifications.

10
11 Stream Conservation Area = An area extending 300' upslope from and perpendicular to the centerline
12 of a protected stream. Any development proposed within a Stream Conservation Area shall be
13 required to demonstrate that the development satisfies the standards of MCC 11.15.6428(A) through
14 (D).

15
16 (A) Except for the following exempt uses, no development shall be allowed within a Stream
17 Conservation Area unless approved by the Approval Authority pursuant to the provisions of MCC
18 11.15.6428(B) through (D).

19 (1) Forest practices conducted under the Forest Practices Act

20 (2) Planting of native vegetation

21 (3) Agricultural uses, except structures

22 (4) Maintenance, but not expansion, of existing developments

23 (5) Right-of-way widening for existing rights-of-way when additional right-of-way is necessary to
24 ensure continuous width

25 (6) Single utility poles necessary to provide service to the local area

1 (B) In addition to other SEC Permit submittal requirements, any application to develop in a Stream
2 Conservation Area shall also include:

3 (1) A site plan drawn to scale showing the Stream Conservation Area boundary, the location of all
4 existing and proposed structures, roads, watercourses, drainageways, stormwater facilities, util-
5 ity installations, and topography of the site at a contour interval equivalent to the best available
6 U.S. Geological Survey 7.5' or 15' topographic information;

7 (2) A detailed description and map of the Stream Conservation Area including that portion to be
8 affected by the proposed activity. This documentation must also include a map of the entire
9 Stream Conservation Area, an assessment of the Stream Conservation Area's functional char-
10 acteristics and water sources, and a description of the vegetation types and fish and wildlife
11 habitat;

12 (3) A description and map of soil types in the proposed development area and the locations and
13 specifications for all proposed draining, filling, grading, dredging, and vegetation removal,
14 including the amounts and methods;

15 (4) A study of any flood hazard, erosion hazard, and/ or other natural hazards in the proposed
16 development area and any proposed protective measures to reduce such hazards as required by
17 (F)(5) below;

18 (5) A detailed Mitigation Plan as described in subsection (E), if required; and

19 (6) A description of how the proposal meets the approval criteria listed in subsection (C) below.
20

21 (C) The applicant shall demonstrate that the proposal:

22 (1) Has no practicable alternative as described in subsection (D) below;

23 (2) Will have no impacts on the Stream Conservation Area's functional characteristics and its
24 existing contour, vegetation, fish and wildlife resources, shoreline anchoring, flood storage,
25 general hydrological conditions, and visual amenities. This impact determination shall also
26 consider specific site information contained in the adopted Stream Conservation Areas inven-

1 tory and the economic, social, environmental, and energy (ESEE) analysis made part of the
2 supporting documentation of the comprehensive plan; and

3 (3) Will not cause measurable degradation of groundwater or surface water quality; or

4 (4) Will provide offsetting replacement Stream Conservation Area for any loss of existing Stream
5 Conservation Areas and will significantly enhance the functional characteristics of the stream.
6 This Mitigation Plan shall meet the standards of subsection (E) below.

7
8 (D) A finding of no practicable alternative is to be made by the Approval Authority only after demon-
9 stration by the applicant that:

10 (1) For uses listed by the underlying zone as Primary Uses and Uses Under Prescribed Conditions
11 or utilities and facilities necessary to serve Conditional Uses outside of the Stream
12 Conservation Area, there is no alternative site on the Lot of Record for the development out-
13 side of the Stream Conservation Area, or

14 (2) For uses listed by the underlying zone as Conditional Uses, there is neither an alternative site
15 on the Lot of Record for the development outside of the Stream Conservation Area, nor can the
16 basic purpose of the project reasonably be accomplished using one or more other practicable
17 alternative sites in Multnomah County that would avoid or result in less adverse impact on a
18 Stream Conservation Area. An alternative site is to be considered practicable if it is available
19 for purchase and the proposed activity can be conducted on that site after taking into consider-
20 ation costs, existing technology, infrastructure, and logistics in achieving the overall project
21 purposes.

22
23 (E) A Mitigation Plan and monitoring program may be approved by the Hearings Officer upon sub-
24 mission of the following:

25 (1) A site plan and written documentation which contains the applicable information for the
26 replacement Stream Conservation Area as required by MCC .6428(B);

1 (2) A description of the applicant's coordination efforts to date with the requirements of other
2 local, State, and Federal agencies;

3 (3) A Mitigation Plan which demonstrates retention of the resource values addressed in MCC
4 .6428 (C)(2);

5 (4) Documentation that replacement Stream Conservation Areas were considered and rejected
6 according to the following order of locational preferences;

7 (a) On the site of the impacted Stream Conservation Area, with the same kind of resource;

8 (b) Off-site, with the same kind of resource;

9 (c) On-site, with a different kind of resource;

10 (d) Off-site, with a different kind of resource.

11
12 (5) A five year annual monitoring plan which insures an 80 percent annual survival rate of any
13 required plantings.

14
15 (F) Design Specifications

16 The following design specifications shall be incorporated, as appropriate, into any developments
17 within a Stream Conservation Area:

18 (1) A bridge or arched culvert which does not disturb the bed or banks of the stream and are of the
19 minimum width necessary shall be utilized for any crossing of a protected streams.

20 (2) All storm water generated by a development shall be collected and disposed of on-site into dry
21 wells or by other best management practice methods which emphasize groundwater recharge
22 and reduce peak stream flows.

23 (3) Any exterior lighting associated with a proposed development shall be placed, shaded or
24 screened to avoid shining directly into a Stream Conservation Area

25 (4) Any trees over 6" in caliper that are removed as a result of any development shall be replaced
26 by any combination of native species whose combined caliper is equivalent to that of the trees

1 removed.

2 (5) Satisfaction of the erosion control standards standards of MCC .6730.

3 (6) Soil disturbing activities within a Stream Conservation Area shall be limited to the period
4 between June 15 and September 15. Revegetation/soil stabilization must be accomplished no
5 later than October 15. Best Management Practices related to erosion control shall be required
6 within a Stream Conservation Area.

7 (7) Demonstration of compliance with all applicable state and federal permit requirements.

8
9
10 Section III. Adoption.

11
12 ADOPTED THIS _____ day of _____, 1994, being the date of its _____
13 reading before the Board of County Commissioners of Multnomah County.

14
15
16 (S E A L)

17
18 By _____

19 Beverly Stein

20 Multnomah County Chair

21
22 REVIEWED:

23
24 By  _____

25 JOHN DUBAY, CHIEF ASSISTANT COUNTY COUNSEL

26 for MULTNOMAH COUNTY, OREGON

RECEIVED SEP 23 1994

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1797

This letter ^{is} superseded
by enclosed 9/19
letters. JAH



METRO

September 12, 1994

Multnomah County Planning Commission
C/O Mr. Scott Pemble, Director
Multnomah County Div. of Planning and Development
2115 SE Morrison
Portland, OR 97214

SUBJECT: Comments on preliminary draft protection program for Goal 5 resources in the West Hills and Howard Canyon areas.

Dear Commissioners:

We applaud the efforts of the County planning staff in drafting a preliminary protection program that responds to the August 9, 1994 decision of the Multnomah County Board of Commissioners to protect Goal 5 resources in the West Hills and Howard Canyon areas. At the same time, we have some serious concerns with the proposed zoning code amendments that were distributed at the August 22, 1994 Planning Commission meeting. At the suggestion of Scott Pemble, the Metro Parks and Greenspaces Department has prepared this letter to provide input on the proposed zoning code amendments. Since you will be seeing this letter for the first time just prior to the start of the September 12 Planning Commission meeting, we will be brief and summarize our recommendations in this cover letter. Some of our specific comments are attached and the remainder will be mailed to you within a day for your review.

Our recommendations are based on the assumption that the objective of the SEC subdistrict amendments is to provide a program which protects the significant streams, wildlife habitat, wetlands and scenic views within a context of clear, measurable standards. In the spirit of upholding the Board of County Commissioner's determination to protect significant streams, wildlife, and scenic views in the West Hills area and significant streams in the Howard Canyon area we recommend the following:

1. **Convene a short-term task force (no more than two work sessions) of experts to propose specific standards for an SEC subdistrict that will guarantee protection for significant streams, natural areas, wildlife habitat, wetlands and scenic views, and their associated impact areas, in the West Hills and Howard Canyon areas.** This recommendation follows up on a one-time meeting between the planning staff and Emily Roth (SCS), Lyn Mattei (ONRC), Duncan Brown (City of Portland) and other experts to discuss generic background information on a draft streams ordinance (pers. comm., Emily Roth, 9/9/94). **We suggest the following be asked to participate: Oregon Trout/Bill Bakke; US Forest Service, Jeff Uebel; ODFW/Tom Mertaugh; DEQ/Paul Keiran; Soil Conservation Service/Emily Roth; PGE/Doug Cramer.**

Regarding the draft streams ordinance, as we have previously suggested, the ordinance should include a "no-build" zone of 100 feet from both banks of a significant stream and 50 feet from both banks of their tributaries. The ordinance should also provide clear parameters for "exceptions" and agricultural activities.

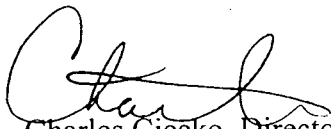
2. In our review of the proposed changes to the SEC subdistrict, we find that the criteria for natural areas, wetlands, streams and wildlife habitat are extremely subjective so as to be unenforceable and will not provide specific guidance for staff or decision makers. The result is no certainty for the land owners, or for protection of the resource.

3. Based on our review, it would appear that there is a double standard when it comes to protecting aggregate and mineral resource sites. For example, according to the proposed Protected Aggregate and Mineral Site (PAM) subdistrict, an aggregate site can be nominated to the County planning staff for protection. An individual need only provide basic information to the County upon which a determination of significance could be made and a subsequent Economic, Social, Environmental and Energy ESEE analysis conducted. There is no similar process available for consideration other goal 5 resources such as wetlands. Why is it that other goal 5 resources do not get the same level of protection as aggregates?

4. We Strenuously object to other goal 5 resources being designated conflicting uses in a Protected Aggregate and Mineral Site.

5. The remainder of our comments are specific to passages in the draft amendments. As mentioned above, some of our comments are attached and the remainder will follow within a day. Thank you for considering our concerns and recommendations.

Yours truly,



Charles Ciecko, Director
Metro Regional Parks and Greenspaces Department

attachment

CC: Multnomah County Board of Commissioners
Rena Cusma, Metro
Merrie Waylett, Metro
Andy Cotugno, Metro
Betsy Williams, Multnomah County
Scott Pemble, Multnomah County
Steve Oulman, DLCD

At the suggestion of Scott Pemble, we have prepared this attachment to provide comments and recommendations regarding the draft amendments (printed August 22, 1994) to the following sections of the Multnomah County Zoning Code:

- Section 11.15.6400, Significant Environmental Concern (SEC)
- Section 11.15.6750 - 95, Protected Aggregate and Mineral Sites (PAM)
- Section 11.15.7305 -35, Mineral-Extraction CU

As previously recommended in the attached cover letter, a task force of experts should be convened to consider the following comments:

I. Section 11.15.6400 - Significant Environmental Concern (SEC)

See 11.15.6406 Exceptions, (A) - Add the word existing in front of 'Farm use', in the beginning of the clause.

See 11.15.6420 - Criteria for Approval of SEC-n Permit- Natural areas, (A) thru (M) - The majority of items (A) thru (M) are very subjective in nature. Neither clear criteria nor measurable standards are provided for 9 of the 13 items. For example, in (A), what does 'maximum possible' mean? In (C), what does 'greatest extent practicable' or 'restored within a brief period of time' mean? In (D), what does 'will balance functional considerations and costs with the need to preserve and protect areas' mean? In (E), how does one determine 'satisfied' or 'carrying capacity', or 'minimum conflict'? The recommended task force should define clear criteria and measurable standards that will provide protection for natural areas.

See 11.15.6422 - Criteria for Approval of SEC-w Permit - Significant Wetlands

See (B)(2) - The wording 'as few adverse impacts as is practical' is too subjective and is not a measurable standard. Change the wording to **Will have no adverse impacts to the wetland's functional characteristics....**

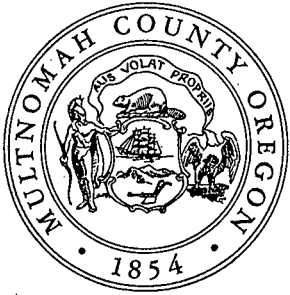
See (B)(3) - Change the wording to **Will not degrade groundwater or surface-water quality;**

See (B)(4) - Change the wording to **Will provide a no-build buffer area of not less than 100 feet....**

See (B)(5) - Add to the end of the first sentence **which meets or exceeds state and federal law.**
Delete the second sentence.

See (C)(1) - The statement 'reasonable be accomplished' is too subjective.

Note: The remainder of our comments will follow in the mail on September 13.

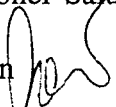


Beverly Stein, Multnomah County Chair

Room 1410, Portland Building
1120 S.W. Fifth Avenue
P.O. Box 14700
Portland, Oregon 97204
(503) 248-3308

MEMORANDUM

TO: Commissioner Collier
Commissioner Hansen
Commissioner Kelley
Commissioner Saltzman

FROM: Chair Stein 

DATE: October 10, 1994

RE: October 11 Planning Items

On Tuesday, the Board will consider the first reading of the proposed ordinances implementing the protection plans outlined in the West Hills and Howard Canyon Reconciliations Reports to the Board. Board staff met last week to discuss possible amendments to the proposed planning ordinances.

Sharon Timko informed me that the discussion focused on a few key issues and several minor changes. The purpose of this memorandum is to present the issues that might be raised during the Board meeting and to summarize proposed amendments that Board staff thinks we might all agreed on for your review.

I. SIGNIFICANT ENVIRONMENTAL CONCERN (SEC) ORDINANCE

KEY ISSUES

1) Scope of Review

There appears to be a disagreement on the scope of the proposed changes to the Comprehensive Plan and Zoning Code. Several public comment letters suggest changes to the proposed ordinances that are not directly relate to the Remand Order requirements while other public comment letters focus only on changes necessary to fulfill the Remand Order. Planning staff states the proposed amendments only reflect changes necessary for the County to fulfill the Remand



Order. Leonard Yoon, Chair of the Planning Commission, states the Planning Commission considered all proposed changes whether they were a result of the Remand Order or not.

However, everyone does appear to agree that there will be another opportunity during the rural area planning program to further amend the Comprehensive Plan and the Zoning Code.

Due to the confusion regarding the scope of the review, I recommend we focus only on the Remand Order requirements. There will be another opportunity through the rural area planning process to address additional concerns.

2) Agricultural Uses

Currently, the County exempts agricultural uses from the provisions in the Significant Environmental Concern (SEC) section of the Zoning Code. Metro has requested that the County only exempt existing agricultural uses and regulate new agricultural uses. Metro asserts that agricultural uses have a significant negative impact on streams. The reconciliation reports support this conclusion.

However, when the Board adopted the Reconciliation Report, we agreed the County should not, at this time, regulate agricultural use. We supported the concept of taking a proactive approach to the issues by first attempting to educate the farmers about appropriate agricultural practices necessary to protect streams and water quality. In the Reconciliation Report we stated that the County should work cooperatively with the U.S. Soil Conservation Service and the Multnomah Soil and Water Conservation Districts to promote agricultural practices which protect streams.

However, we need to consider formalizing a working agreement or action plan with the Soil Conservation Service to adopt and possibly fund a program of education and assistance to farmers to avoid negative impacts to streams and water quality.

I will ask Scott to work with the interested parties to draft an action plan and funding package for our review.

3) No-Build Zones

Metro has requested a no-build zone extending 100 feet from the centerline of protected streams. Planning staff asserts that since measurement of the riparian

zones were very generalized in the ESEE analysis, not specifically mapped, that it is impossible to defend a 100 foot no-build zone. Planning staff asserts that each case needs to be review on an individual basis.

Sharon Timko raised this issue with John Dubay, and he agrees with staff. He did, however, state that planning staff has presented the most defensible approach and there maybe other alternatives. He did not have any alternative approaches to recommend at this time.

PROPOSED AMENDMENTS:

- 1) See 11.15.6412 (C) - Replace ten with **thirty**. It will be difficult to review all the applicable criteria and make a decision in ten days.
- 2) See 11.15.6418 Scope of Conditions (A) - Add to 'conditions'; *timing of construction and related activities*.
- 3) See 11.15.6422 (C) - Add *This section is only applicable for wetland resources designated "3-C"*.
- 4) See 11.15.6428 (G) - Add *This section is only applicable for stream resources designated "3-C"*.
- 5) See 11.15.6428 (F)(1) - Insert after ...minimum width necessary to allow passage of peak winter flows...

II. SURFACE MINING ORDINANCE

KEY ISSUES

- 1) The proposed Mining Ordinance exempts from approval requirements:
 - * Mining auxiliary to forest practices;
 - * In the Exclusive Farm Use (EFU) zone, mining less than 1,000 cubic yards of material or mining an area less than one acre;
 - * In all other zones, mining less than 5,000 cubic yards of material of disturbing less than one acre of land within a period of 12 consecutive months until mining affects five or more acres;

The Forest Practices Act prohibits counties from regulating mining activities on forest lands.

The rest of the exemptions may have the potential to create situations similar to Howard Canyon in which the operations went virtually unregulated. Currently exemptions are allowed in all the above state zones.

Howard Canyon is the only quarry in the County that falls in the exemption category. DOGAMI focuses its monitoring efforts on operation extracting more than 5,000 cubic yards of material. DOGAMI does requires an annual exempt application that limits use to under 5,000 cubic yards. DOGAMI does not actual monitor the site unless there is a complaint.

The Board may want to have a discussion about the exemptions and receive input from staff.

PROPOSED AMENDMENTS:

- 1) See Section II. Amendments to Framework Plan Text (R) - Insert after ... **DOGAMI and Department of Environmental Quality.**
- 2) See 11.15.7325 (C)(7)(a)(ii) - Omit the word *a* before the word noise; insert **and dust sensitive**, after the word and make land use plural.
- 3) See 11.15.7325 (C)(7)(c)(ii) - Omit the word *a* before the word noise; insert **and dust sensitive**, after the word and make land use plural.

If we all agree on the proposed amendments, a Board member will have to be prepared to make a motion to adopt the proposed amendments.

Sharon Timko stated that there were other proposed amendments raised at the Board staff meeting, however, there was not consensus among Board staff. I anticipate that Board members will raise these amendments for the Board's consideration at the meeting.

If you have any questions, please contact Sharon at X-3960.



METRO

October 10, 1994

The Board of County Commissioners
Multnomah County Courthouse
1021 SW Fourth Avenue
Portland, Oregon 97204

Re: Testimony Regarding Agenda Item C10-94 (Multnomah
County Comprehensive Framework Plan and Zoning code Amendments
relating to :Significant: and "Protected" Wildlife Habitat,
Scenic Views, and Streams.

Dear Commissioners,

Thank you for this opportunity to present testimony regarding
the proposed ordinance related to significant wildlife habitat,
wetlands, scenic views and streams.

Previous to this testimony, we have submitted detailed comments
and recommendations to the Planing Commission and Land Use and
Development staff. We are grateful that some of our
recommendations have been incorporated into the draft before
you today. However, we are disappointed that our major
recommendations relating to significant streams and wetlands
remain unaddressed at this time. In its current form, it is
doubtful that this ordinance will achieve long term protection
of these valued natural resources.

In summary, our recommendations include:

- a) Establish a "no build" zone within 100 feet of
significant wetlands and streams.

Complex conditions are typically subject to inconsistent
follow-up and poor inter-agency coordination. The result,
in too many cases, is the discovery of significant damage
only after its too late. The approach described in this

ordinance assumes that major construction activities are compatible uses within riparian zones. We don't believe they are.

A recent example involves a County approved development, the 1995 Street of Dreams, which is being constructed in the headwaters area of Fanno Creek.

In this case, the conditions were intended to avoid or at least minimize the impacts of a twenty lot subdivision. Apparently, the conditions were violated and subsequently, the stream has been damaged. (see Exhibit "A"). At this point, the matter has been referred to the DEQ Enforcement Division and fines may be imposed. Unfortunately, fines will not restore the damage.

b) Establish a protected "buffer" along tributaries to significant streams.

The streams you have found to be significant reflect nothing more than the sum total of their tributaries. If we are not mindful of tributaries direct relationship to significant streams, we should expect continued deterioration of water quality and reductions in other functional values.

c) Establish provisions which restrict, at a minimum, new agricultural uses within 100 feet of significant wetlands and streams and within 50 feet of their tributaries.

We cannot claim that we have even modestly protected significant streams and wetlands until agriculture is addressed.

Throughout the Country, non point pollution from agricultural lands contributes approximately 46% of the sediment, 47% of the total phosphorus and 52% of the total nitrogen entering surface waters (EPA 1983). These discharges are often facilitated by the removal of riparian vegetation which typically functions as sediment and nutrient traps. Livestock trample and consume riparian vegetation, erode banks and defecate in and near surface water. The Howard Canyon Reconciliation Report documents this type of agricultural impact.

"Technical Memorandum No. 5, Johnson Creek
Resources Management Plan" (Woodward-Clyde,
1993/94) concludes:

" direct discharges of municipal and industrial
wastewater are not a major problem for Johnson Creek."

and

"...with the exception of polluted sediments, urban runoff
is judged to be of minor consequence for Johnson Creek."

and

"Rural and agricultural runoff are a significant source of
pollutants (in Johnson Creek)".

and

"The RMP needs to encourage a more systematic approach to
water pollution control in the non-urban portions of the
(Johnson Creek) watershed including erosion control for
in-ground cultivation of crops and grazing in the riparian
corridor."

Preliminary results from Phase I of a major water quality
report for the Willamette River and its tributaries indicates
that 70% - 80% of the pollutants enter the river from nonpoint
sources, particularly agricultural activity (Barbara Priest,
DEQ, pers. com.)

The 1993 Legislature passed S. B. 1010 to begin dealing with
water quality problems associated with agriculture. The
Tualatin River is a good example. Although the remediation
plan for this basin is not yet complete, it is expected to
include provisions related to both cultivation and grazing in
riparian areas.

Fortunately, the streams which will be immediately effected by
the ordinances you're considering today have not yet become as
degraded as the Tualatin River or Johnson Creek. You have the
ability and authority to keep them off the list and thereby
avoid the expenditure of public resources for their
restoration.

Land use need not be synonymous with stream abuse. A considerable portion of the functional values of significant streams can be protected by simply avoiding unnecessary activity in riparian areas. The Planning Commission's initial work on these ordinances is commendable and timely. However, additional work is needed to improve their effectiveness.

Thank you again for the opportunity to share our views on this important issue.

Warm regards,



Charles Ciecko
Director, Regional Parks and Greenspaces

oppcclet.
CC/mb

CC: Rena Cusma
Judy Wyers
Betsy Williams
Merrie Waylett
Andy Cotugno
Jane Hart
Rosemary Furfey
Steve Oulman, DLCD



Exhibit "A" Page 1

1995 Street of Dreams
near the headwaters of
Fanno Creek



1995 Street of Dreams
near the headwaters of
Fanno Creek



*FOREST PRACTICE
REFORESTATION RULES
(Provisional version)*

*ADOPTED BY
THE OREGON BOARD OF FORESTRY
SEPTEMBER 7, 1994*

(Note: These rule changes have not yet been filed with the Secretary of State's Office and should be considered provisional. Minor edits and numbering changes may still occur. Rule language deleted by Board of Forestry on September 7 is not included.)

629-610-080 REVEGETATION WHEN REFORESTATION IS NOT REQUIRED

When reforestation is not required or planned, the landowner shall ensure sufficient revegetation of the site to provide continuing soil productivity and stabilization within 12 months of the completion of the operation. Revegetation required by this rule may be planted or naturally established, and shall consist of trees, shrubs, grasses, or forbs suitable for soil stabilization and productivity protection. Landowners are encouraged to revegetate the operation area with native plants.

629-610-090 EXEMPTION FROM REFORESTATION FOR LAND USES NOT COMPATIBLE WITH FOREST TREE COVER

(1) A landowner may request all, or portions of, an operation area be exempted from the reforestation requirements for the purpose of developing forestland for a use that is not compatible with the maintenance of forest cover. Prior approval shall be obtained for such an exemption from the State Forester and shall only be granted for the smallest land area necessary to carry out the intended change in land use. Reforestation shall be required on the portions of operation areas not directly involved in the land use change.

(2) In seeking prior approval, the landowner shall provide written documentation to the State Forester which establishes:

- (a) The specific portion of the operation area necessary for the proposed change in land use;
- (b) The intended change in land use and the incompatibility of the land use with forest tree cover;
- (c) The intended change in land use is authorized under local land use and zoning ordinances, and all necessary permits and approvals have been obtained, or will be obtained within 12 months following the reduction in tree stocking; and
- (d) The county assessor and local planning department have been notified in writing of the proposed change in land use.

(3) Reasonable progress towards the change in land use, as determined by the State Forester, shall be made within 12 months of the completion of the operation. Evidence of reasonable progress towards a change to an agricultural use may include activities such as stump removal, cultivation, fencing, and planting or seeding of crops or pasture. Evidence of reasonable progress towards a change to use involving building a structure may include activities such as stump removal, excavation, and construction.

(4) The change in land use shall be completed and continuously maintained within 24 months of the completion of the operation.

(5) If the change in land use cannot be accomplished within the specified time due to

circumstances beyond the landowner's control, the State Forester shall extend the time to accomplish the change in land use. Such circumstances may include, but are not limited to, governmental delays in reviewing and processing permits and approvals, but do not include delays where a landowner is appealing the denial of a permit or approval if the State Forester does not have reason to believe the landowner will prevail on appeal. Extensions shall be made only upon a determination by the State Forester, based on written evidence provided by the landowner, that the landowner made reasonable attempts to comply. Landowners who need extensions are encouraged to contact the State Forester as soon as possible after the circumstances occur.

(6) The State Forester shall determine if the change in land use has been completed by:

- (a) The presence or absence of improvements necessary for use of the land for the intended purpose; and
- (b) Evidence of established and continuously maintained use of the land for the intended purpose.

(7) To remain exempt from the reforestation requirements the landowner shall continuously maintain the land in the new use for at least six calendar years following the completion of the operation.

October 11, 1994

Arnold Rochlin
P.O. Box 83645
Portland, OR 97283-0645
(503) 289-2657

Multnomah County Board of Commissioners

C 10-94 Natural Resources Framework Plan and Zoning Code Amendments.

PROPOSED AMENDMENTS

Page 10. 11.15.6412(C): Increase to 21 calendar days.

Reason: Two weeks is too short. The complexity has been increased. Also, always use calendar days, because it leads to fewer mistakes.

Page 20. 11.15.6426(B)(3)(a)(i): Change to maximum setback to equal the minimum setback of the zone.

Reason: Of all development, the road is generally the most harmful to resources. Next in impact is a long driveway. Development close to the road is in the area already seriously impacted and it avoids the long driveway.

Page 20. 11.15.6426(B)(3)(a)(v)(B): Eliminate electrified fences and set minimum dimensions of opening for woven wire or minimum clearance from the ground.

Reason: Allow small and large wildlife to pass safely.

Page 25. 11.15.6428(D)(1) and (2): "Lot of Record" must be defined. To move quickly, the definition in 11.15.2062(A) can be used.

Reason: The MCC includes different definitions of Lot of Record, and there is no standard legal definition.

Page 25. 11.15.6428(D)(2): "if it is available for purchase" should be deleted.

Reason: Virtually all real estate is available for purchase if a good price is offered. And, almost invariably, when there is a claim that no suitable site is available for purchase, it is because a high enough price was not offered.



#4

PLEASE PRINT LEGIBLY!

MEETING DATE

10-11-94

NAME

Charles Cucko

ADDRESS

600 NE GRAND

STREET

PDX

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

C11 P-3

SUPPORT

☒ CONCERN ☐ OPPOSE

~~OPPOSE~~

SUBMIT TO BOARD CLERK

#2

PLEASE PRINT LEGIBLY!

MEETING DATE

10/11/94

NAME

Skip Anderson

ADDRESS

P.O. Box 83449

STREET

Portland Or.

CITY

97283

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

~~P-2~~ P-3

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

#3

PLEASE PRINT LEGIBLY!

MEETING DATE

10/11/94

NAME

Arnold Rocklin

ADDRESS

PO Box 83645

STREET

Portland, OR

CITY

97263

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-3

SUPPORT

OPPOSE

X

SUBMIT TO BOARD CLERK

#4

PLEASE PRINT LEGIBLY!

MEETING DATE

10/11/94

NAME

Chris Foster

ADDRESS

15400 NW McNamee Rd.

STREET

Portland OR 97231

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-3

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

MEETING DATE: October 11, 1994

AGENDA NO: P-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: C 11-94 Proposed Ordinance - First Reading

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: October 11, 1994

Amount of Time Needed: 1 Hour

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182
BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

C 11-94 A proposed Ordinance, amending Comprehensive Framework Text Plan Policy 16-B and MCC 11.15 regarding the regulation of surface mining and nearby surrounding land uses in partial fulfillment of Periodic Review Work Program tasks required to bring Multnomah County's land use program into compliance with Statewide Planning Goal 5. - First Reading

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: 

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

1994 OCT - 4 10 20
MULTNOMAH COUNTY
CREECH

ORDINANCE FACT SHEET

Ordinance Title:

An Ordinance amending Comprehensive Framework Text Plan Policy 16-B and MCC 11.15 regarding the regulation of surface mining and surrounding land uses in partial fulfillment of Periodic Review Work Program tasks required to bring Multnomah County's land use program into compliance with Statewide Planning Goal 5.

Give a brief statement of the purpose of the ordinance (include the rationale for adoption of ordinance, description of persons benefited, other alternatives explored):

The Comprehensive Plan and Zoning Code amendments will provide the land use regulation tools to carry out the concluding programs in the West Hills and Howard Canyon Area Reconciliation Reports. The ordinance will make the necessary amendments to provide clear standards to protect from future conflicts those mineral and aggregate sites determined to be appropriate for mining, while also providing standards applicable to mining that will reduce the impacts of mining activities on surrounding land uses. The amendments are necessary to comply with Statewide Planning Goal 5 and OAR 660-16.

What other local jurisdictions in the metropolitan area have enacted similar legislation?

Every county and city in the state is subject to compliance with Statewide Planning Goal 5 and OAR 660-16. Washington County has a similar mining overlay zoning district.

What has been the experience in other areas with this type of legislation?

Additional regulations and reviews of land uses surrounding a mining site and mining operation proposals. The overlay zone concept is the method recommended by the Department of Land Conservation and Development for regulating mining and surrounding land uses.

What is the fiscal impact, if any?

Future mining proposals not on the list of "Protected Sites" will encounter new application costs of \$500.00 for a Plan Revision and \$1,000 plus \$50.00 per acre for a Zone Change in addition to the present \$800.00 Conditional Use fee. New nearby land uses, after a mining operation permit is approved, could be required to expend more money in construction to lessen conflicts with mining activities (ie. a new homeowner constructing a sound berm between a proposed house and the mine). Additional staff time will be needed in review of surrounding regulated land uses. No anticipated budget impacts.

SIGNATURES

Person Filling Out Form: _____

Planning & Budget Division (if fiscal impact): _____

Department Manager/Elected Official:  _____

**DECISION OF THE
MULTNOMAH COUNTY PLANNING COMMISSION**

In the Matter of amending the Comprehensive)
Framework Plan and Zoning Code to protect)
Aggregate and Mineral Goal 5 resources)

**RESOLUTION
C 11-94**

WHEREAS, Periodic Review Remand Order 93-RA-876 required Multnomah County to complete additional work related to certain Statewide Planning Goal 5 resources; and

WHEREAS, On August 9, 1994 the Board of County Commissioners decided that the Howard Canyon aggregate site is a significant Goal 5 resource. Based on an analysis of conflicting uses and economic, social, environmental and energy (ESEE) consequences, the Board determined that the appropriate level of protection for the resource should be "3-C" (allow conflicting uses in a limited manner that will give some protection to the resource). The analysis and reasons justifying the Board's decision are incorporated in the Howard Canyon Reconciliation Report; and

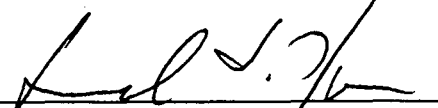
WHEREAS, OAR 660-16 requires the county to amend its comprehensive plan and zoning designations to be consistent with the level of protection and protection programs determined to be appropriate for each resource. These amendments are necessary in order to provide clear standards under which development can occur, so that the aggregate resources are protected from possible negative effects of development; and

WHEREAS, The Planning Commission held open workshops for drafting of the proposed amendments to the zoning code text and Comprehensive Framework Plan on August 22, 1994, September 19, 1994, and September 26, 1994; and

WHEREAS, The Planning Commission conducted a public hearing on September 12, 1994, to accept public testimony on proposed amendments to the zoning code text and Comprehensive Framework Plan; and

NOW, THEREFORE BE IT RESOLVED that the Planning Commission hereby recommends that the Board of County Commissioners amend the zoning code and revise the Comprehensive Framework Plan, as indicated in the attached Ordinance, to fulfill requirements of the LCDC Periodic Review Remand Order.

Approved this 26th day of September, 1994

By 
Leonard Yoon, Chair
Multnomah County Planning Commission

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON
ORDINANCE NO. _____

An Ordinance amending Comprehensive Framework Text Plan Policy 16 - B and MCC 11.15 regarding the regulation of surface mining and nearby surrounding land uses in partial fulfillment of Periodic Review Work Program tasks required to bring Multnomah County's land use program into compliance with Statewide Planning Goal 5.

(Underlined sections are new or replacements; [~~bracketed~~] sections are deleted.)

Multnomah County Ordains as follows:

Section I. Findings.

(A) Periodic Review Remand Order 93-RA-876 required Multnomah County to complete additional work related to protection and regulation of aggregate and mineral resources to be in compliance with the requirements of Statewide Planning Goal 5 and associated Oregon Administrative Rules (OARs).

(B) On March 9, 1994, the Land Conservation and Development Commission approved the county's Work Program (WKPROG - 0038) which indicated work tasks that must be completed to fulfill the requirements of the Remand Order.

(C) On August 9, 1994 the Board of County Commissioners decided on the appropriate level of protection of the Angell Brothers and Howard Canyon aggregate resource sites.

(D) OAR 660-16 requires the county to amend its Comprehensive Plan and zoning code to be consistent with the adopted protection programs for each Goal 5 resource. This ordinance will make the necessary amendments to provide clear standards to protect mining operations from future conflicts while providing standards applicable to mining which will reduce the impacts of mining on surrounding land uses.

1 (E) On August 22, 1994 the Planning Commission held open workshops for drafting of the
2 amendments. On September 12, 1994 the Planning Commission held a public hearing. On September 26,
3 1994 the Planning Commission held an additional open workshop for review of the amendments.
4 Hearings before the Board of County Commissioners followed on _____ and
5 _____, 1994. At each of the hearings all interested persons were given an opportunity to
6 appear and be heard.

7

8 Section II. Amendment of Framework Plan Text.

9 Multnomah County Comprehensive Framework Plan Policy 16-B is amended to read as follows:

10 POLICY 16 - B: MINERAL AND AGGREGATE RESOURCES

11 IT IS THE COUNTY'S POLICY TO PROTECT AND ENSURE APPROPRIATE USE [AREAS] OF
12 MINERAL AND AGGREGATE RESOURCES OF THE COUNTY, [FROM INAPPROPRIATE LAND
13 USES WHICH COULD LIMIT THEIR FUTURE USE] AND MINIMIZE CONFLICT BETWEEN SUR-
14 FACE MINING ACTIVITIES AND SURROUNDING LAND USES.

15 STRATEGIES

16 A. The county shall protect significant gravel and mineral resources consistent with Statewide Planning
17 Goal 5 and Oregon Administrative Rules Chapter 660, Division 16.

18 B. ~~[A.]~~ As a part of the ongoing planning program the County will maintain ~~[engage in]~~ an inventory of
19 mineral and aggregate resource[s] sites within the County ~~[utilizing data, criteria and standards from~~
20 ~~the most recent study of rock material resources compiled by the State Department of Geology and~~
21 ~~Mineral Industries]~~. The comprehensive plan inventory is to include four classifications of sites:

- 22 1. "Potential sites" are sites for which information about the location, quality, and quantity of a
23 resource site is not adequate to allow a determination of significance (Goal 5 Process Flow Chart
24 designation of "1B"):
25 2. "Not significant sites" are sites for which information about the location, quality, and quantity of a
26 resource site shows that the site is not a significant resource (Goal 5 Process Flow Chart designa-

tion of "1A");

3. "Protected sites" are significant resource sites which are identified through the Goal 5 process as resources that the county will protect from conflicting uses (Goal 5 Process Flow Chart designations "2A," "3A," and "3C"); and

4. "Not protected sites" are significant resource sites for which the decision of the ESEE analysis is to not protect the resource from conflicting uses (Goal 5 Process Flow Chart designation of "3B").

C. A resource site may include all or portions of a parcel, and may include contiguous parcels in different ownerships.

~~D. [B During County initiated Comprehensive Plan updates, the County will utilize information made available from other sources regarding the location, quality and quantity of mineral and aggregate resources when that information is verified by such qualified professionals as certified engineering geologists and recognized testing laboratories]~~ For sites on the "potential sites" inventory, the county shall review available information about aggregate and mineral resources, and if the information on location, quantity, and quality is adequate, determine if the site is significant. Initiation of this process shall occur either:

1. As part of the next scheduled periodic review; or

2. When a landowner or operator submits information concerning the potential significance of a resource site and applies for a comprehensive plan amendment.

~~E. [C Determination that a particular mineral and aggregate resource site is both "Important" and should be included in the plan inventory is to be based upon the site's proven ability to yield more than 25,000 cubic yards of resource]~~ The county will consider aggregate resources significant if the resource meets Oregon Department of Transportation specifications for concrete aggregate rock, and the site contains a minimum of one million cubic yards of mineable reserves.

F. The county will judge the significance of non-aggregate mineral resources on a case by case basis. Resources shall be judged by the commercial or industrial value of the resource, and the relative quality and relative abundance of the resource within at least the county.

- 1 G. ~~[D. "Important" sites should be reviewed using the Statewide Planning Goal 5 "Economic, Social,~~
2 ~~Environmental, and Energy analysis" (ESEE) procedure as outlined in OAR 660-16-000 through 660-~~
3 ~~16-025 and only those sites receiving a "2A", "3A", or "3C" designation should be considered for con-~~
4 ~~ditional use approval for mineral and aggregate extraction.] For each site determined to be significant,~~
5 ~~the county shall complete the remainder of the Goal 5 process of identifying conflicting uses, analyz-~~
6 ~~ing the Economic, Social, Environmental, and Energy (ESEE) consequences of the conflicting use(s),~~
7 ~~and designating a level of protection from conflicting uses. If the final decision concerning the site is~~
8 ~~to preserve fully or partially protect the resource from conflicting uses, the county shall zone the site~~
9 ~~and the designated ESEE impact area with the Protected Aggregate and Mineral Resources Overlay~~
10 ~~Zoning Subdistrict (PAM).~~
- 11 ~~[E. In between scheduled plan updates, additional sites may be added to the plan inventory of "Important"~~
12 ~~sites and receive an ESEE designation by means of the standard plan amendment process initiated by~~
13 ~~the owner of the resource.]~~
- 14 H. Mining and the associated processing of aggregate and mineral materials, in excess of the limited
15 exemptions, may only be allowed at sites included on the "protected sites" inventory. Approval of a
16 mining operation at a "protected site" shall be reviewed as a conditional use. The general conditional
17 use provisions regarding time limits, conditions, restrictions, and approval criteria, (MCC .7110(C),
18 .7110(E), .7115, .7120, .7122, and .7125, September, 1994), shall not apply.
- 19 I. The following activities are exempt from the approval requirements and development standards of this
20 policy:
- 21 1. Mining auxiliary to forest practices;
22 2. In the Exclusive Farm Use (EFU) zone, mining less than 1,000 cubic yards of material or mining
23 an area of less than one acre;
24 3. In all other zones, mining less than 5,000 cubic yards of material or disturbing less than one acre
25 of land within a period of 12 consecutive months until mining affects five or more acres.
- 26 J. To approve surface mining at a site zoned Exclusive Farm Use (EFU) the county shall find, as part of

1 the conditional use approval criteria, that the proposed activity:

2 1. Will not force a significant change in accepted farm or forest practices on surrounding lands devot-
3 ed to farm or forest use; and

4 2. Will not significantly increase the cost of accepted farm or forest practices on lands devoted to
5 farm or forest use.

6 K. To approve surface mining at a site zoned Commercial Forest Use (CFU), the county shall find, as part
7 of the conditional use approval criteria, that:

8 1. The proposed mining will not force a significant change in, or significantly increase the cost of,
9 accepted farming or forest practices on agriculture or forest lands;

10 2. The proposed mining will not significantly increase fire hazard or significantly increase fire sup-
11 pression costs or significantly increase risks to fire suppression personnel; and

12 3. A written statement recognizing the rights of adjacent and nearby property owners to conduct
13 accepted forest practices has been recorded with the property deed in accordance with OAR 660-
14 06-025 (1994).

15 L. The county shall not independently apply the Protected Aggregate and Mineral Resources Overlay
16 Subdistrict (PAM) to land within another county, or within a city or its urban growth boundary. The
17 county shall encourage protection of significant sites through cooperative agreements with another
18 county or a city where the resource or its impact area extends across jurisdictional boundaries.

19 M. The county shall require increased setbacks, insulation, screening, or similar measures as conditions of
20 approval for any new conflicting use within an impact area surrounding an aggregate or mineral
21 resource site when such measures are necessary to resolve conflicts identified in a site-specific Goal 5
22 analysis.

23 N. The county shall impose conditions on surface mining when necessary to lessen conflicts identified as
24 part of a site-specific Goal 5 analysis. Where such conditions conflict with criteria and standards in
25 the Protected Aggregate and Mineral Resources Overlay, the conditions developed through the Goal 5
26 process shall control.

- 1 Q. Based upon the Goal 5 ESEE analysis and the existing base zoning district, the county shall determine
2 the appropriate post-mining use of the site.
- 3 P. The county recognizes the jurisdiction of the Department of Geology and Mineral Industries (DOGA-
4 MI) over mined land reclamation pursuant to ORS 517.750 to 517.900 (1994) and the rules adopted
5 thereunder.
- 6 Q. Unless specifically determined on a case by case basis, it shall be the policy of the county, that
7 DOGAMI delay its final decision on approval of a reclamation plan and issuance of an operating per-
8 mit until the county decides all comprehensive plan amendments and/or conditional use approvals.
- 9 R. No surface mining or processing activity, as defined by the zoning ordinance, shall begin without land
10 use approval from the county, and approval of a reclamation plan and issuance of an operating permit
11 by DOGAMI.
- 12 S. When the aggregate or mineral site has been reclaimed, the county may rezone land to remove the
13 Protected Aggregate and Mineral Resources Overlay Subdistrict (PAM) without revising the ESEE
14 Analysis for the site. Rezoning shall not relieve requirements on the part of the owner or operator to
15 reclaim the site in accordance with ORS 517.750 through 517.900 and the rules adopted thereunder.
- 16 ~~[F. The Zoning Code should include provisions for:~~
- 17 ~~1. Mineral and aggregate extraction, processing, and distribution as a special conditional use with~~
18 ~~performance oriented criteria of approval for those sites receiving a "2A", "3A", or "3C" designa-~~
19 ~~tion as part of the ESEE analysis.]~~
- 20 ~~2. Associated processing and distribution activities as a conditional use that must meet all conditional~~
21 ~~use requirements if the site is not a "2A", "3A", or "3C" resource location.~~
- 22 ~~3. The exemption of small scale and farm and forest practice extraction sites from conditional use~~
23 ~~review.~~
- 24 ~~4. The establishment of extraction and rehabilitation standards for mineral and aggregate resources in~~
25 ~~compliance with DOGAMI regulations as applicable.~~
- 26 ~~5. Protection of natural resources.~~

1 ~~6. A standard setback buffer between "noise sensitive" land uses and extraction activities.~~

2 ~~(a). The location of proposed extraction activities should be setback from existing "noise sensitive"~~
3 ~~uses.~~

4 ~~(b). The location of "noise sensitive" land uses should be setback from both existing mining activi-~~
5 ~~ties and designated ESEE "2A", "3A", and "3C" resource site boundaries.~~

6 ~~(c). Some reduction in the setback buffers may be appropriate if the "noise sensitive" land use~~
7 ~~property owner agrees to record a non remonstrance deed restriction agreeing to the reduced~~
8 ~~distance.]~~

9 Section III. Repeal of certain Zoning Code subsections.

10 The following subsections of Multnomah County Code Chapter 11.15 regarding setbacks between
11 land uses and mining operations are repealed:

12 .2016(F); .2058(G); .2096(K); .2138(F); .2218(F); .2258(F); .2360(H); .2480(I); .2692(K);
13 .2834(J); .2844(J); .2854(J); .2864(J); .2874(J); .2884(J); .2894(I); and .7025(H).

15 Section IV. Amendment of Zoning Code.

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

18 **Classification of Districts, Zoning Map & References to Other Sections**

19 **11.15.1005 Districts**

20 The County of Multnomah, outside incorporated cities, is hereby divided into the following districts:

21 * * *

22 (B) Special Districts:

23 * * *

24 SPA - Special Plan Area District

25 PAM - Protected Aggregate and Mineral District

26 * * *

1
2 **Protected Aggregate and Mineral Resources PAM**

3 **11.15.6750 Purposes**

4 The purposes of the Protected Aggregate and Mineral Resources Overlay Subdistrict are:

5 (A) To provide a mechanism to identify and, where appropriate, protect significant aggregate and min-
6 eral resource sites;

7 (B) To allow surface mining subject to uniform operating standards; and

8 (C) To regulate conflicts with surface mining activities.
9

10 **11.15.6755 Area Affected**

11 This subsection shall apply to those lands designated PAM on the Multnomah County Zoning Map.
12 On the Zoning Map shall also be a reference to the relevant site-specific Comprehensive Plan docu-
13 ments.
14

15 Exemption activities as described in MCC .6760 are allowed in all districts, not only those designated
16 PAM.
17

18 **11.15.6760 Exemptions**

19 The following activities are exempt from the requirements of this section. Operators or land owners
20 have the burden of qualifying for any exemption.

21 (A) In exclusive farm use zones, mining less than 1,000 cubic yards of material or mining an area of
22 less than one acre;

23 (B) In all other zones, mining less than 5,000 cubic yards of material or disturbing less than one acre
24 of land within a period of 12 consecutive months until mining affects five or more acres;

25 (C) Mining on forest lands auxiliary to forestry operations occurring in compliance with the Forest
26 Practices Act as administered by the Oregon Department of Forestry.

1
2 **11.15.6765 Definitions**

3 As used in this subdistrict and MCC .7305 through .7335, unless otherwise noted, the following words
4 and their derivations shall have the following meanings:

5 (A) *Conflicting Use* – A use authorized in the underlying zone which, if allowed, could adversely
6 affect operations at a protected aggregate and mineral resource site. As used in this subsection, a
7 *conflicting use* is also another inventoried significant Goal 5 resource located on or adjacent to a
8 protected aggregate or mineral site if that resource could force a change in mining or processing at
9 the site.

10 (B) *Dust Sensitive Use* – A *conflicting use* which is primarily used for habitation. Residential struc-
11 tures, churches, hospitals, schools, public libraries, and campgrounds are considered dust sensitive
12 uses during their period of use. Forest uses and farm uses are not *dust sensitive uses* unless deter-
13 mined through the *Goal 5 process*.

14 (C) *ESEE Analysis* – The analysis of Economic, Social, Environmental and Energy consequences of
15 allowing mining at a *significant site*, and allowing *conflicting uses* to displace mining at a *signifi-*
16 *cant site*. The *ESEE analysis* is the basis for determining the level of protection to be given the
17 resource.

18 (D) *Extraction Area* – The area of a *protected* aggregate and mineral resource site in which mining and
19 associated processing is permitted.

20 (E) *Goal 5 Process* – The planning process required by Oregon Administrative Rules Chapter 660,
21 Division 16. The *Goal 5 process* involves identifying resource sites, determining their signifi-
22 cance, identifying conflicting uses, analyzing the economic, social, environmental and energy con-
23 sequences of *conflicting uses*, determining the level of protection given to a resource site, and
24 implementing a program to protect *significant sites*.

25 (F) *Impact Area* – The area surrounding the *extraction area* in which direct conflicts between mining
26 and other land uses are found. The *impact area* is the area in which ESEE consequences of *con-*

1 flicting uses are analyzed, and conflicting uses are regulated.

2 (G) Mining – The excavation of sand, aggregate (gravel), clay, rock, or other similar surface or subsur-
3 face resources. Mining does not include:

4 (1) Excavations conducted by a landowner or tenant on the landowner or tenant's property for the
5 primary purpose of reconstructing or maintaining access roads.

6 (2) Excavation or grading conducted in the process of farm or cemetery operations.

7 (3) Excavation or grading conducted within a road right-of-way or other easement for the primary
8 purpose of road construction, reconstruction or maintenance, or

9 (4) Removal, for compensation, of materials resulting from on-site construction for which a devel-
10 opment permit and a construction time schedule have been approved by the county.

11 (H) Noise Sensitive Use – A conflicting use which is primarily used for habitation. Residential struc-
12 tures, churches, hospitals, schools, public libraries, and campgrounds are considered noise sensi-
13 tive uses during their period of use. Forest uses and farm uses are not noise sensitive uses unless
14 determined through the Goal 5 process.

15 (I) PAM Overlay Subdistrict – A special purpose zoning designation for the purposes of MCC .6750
16 that is placed on a zoning map over a base zoning district (ie. CFU). The provisions of the PAM
17 subdistrict shall apply to land uses as specified, notwithstanding the provisions of the underlying
18 zone district.

19 (J) Processing – The washing, crushing, screening, and handling of aggregate and mineral resources.
20 Batching and blending of asphalt or portland cement concrete are included in the definition of pro-
21 cessing.

22 (K) Protected Site – Significant resource sites which are identified through the Goal 5 Process as
23 resources that the county will protect from conflicting uses. The special district designation
24 Protected Aggregate and Mineral Resources (PAM) shall only be applied to protected sites.

25 (L) Restrictive Covenant – An enforceable promise, given by the owner of a parcel whose use and
26 enjoyment of that parcel may be restricted in some fashion by mining occurring on another parcel.

1 not to object to the terms of a permit issued by a local government, state agency or federal agency.
2 The restrictive covenant shall be recorded in the real property records of the county, shall run with
3 the land, and is binding upon the heirs and successors of the parties. The covenant shall state that
4 obligations imposed by the covenant shall be released when the site has been mined and reclama-
5 tion has been completed.

6 (M) Significant Site – A site containing either significant aggregate resources or significant mineral
7 resources.

8 (1) A significant aggregate resource is a site that contains aggregate or stone materials which meet
9 Oregon Department of Transportation specifications for construction grade material and is
10 located within an ownership or long-term lease containing more than one million cubic yards
11 of reserves. The burden shall be upon the applicant for designation to demonstrate to the
12 Approval Authority that the samples tested for grading are representative of the entire area of
13 the site.

14 (2) A significant mineral resource site is a site that contains metallic and non-metallic minerals
15 other than aggregate and stone materials. The significance of a mineral resource is based upon
16 the resource's use for commercial or industrial purposes, and the relative quality and abun-
17 dance of the resource within the county. The burden shall be upon the applicant for designation
18 to demonstrate to the Approval Authority that the samples tested for grading are representative
19 of the entire area of the site.

21 11.15.6770 PAM Overlay Special Subdistricts

22 The Protected Aggregate and Mineral Resource Subdistrict (PAM) comprises two areas, the *Extraction*
23 *Area* (PAM-EA) and the *Impact Area* (PAM-IA).

24 (A) The *Extraction Area* shall be applied to the portion of *protected sites* where mining and associated
25 processing is to occur. The *Extraction Area* may consist of one or more parcels or portions of
26 parcels, and may be applied to contiguous properties under different ownership. The *Extraction*

1 Area boundary may be modified through the Goal 5 process to reduce conflicts with conflicting
2 uses existing when the overlay is applied. The Extraction Area shall be shown on the zoning map
3 with the designation PAM-EA.

4 (B) The Impact Area shall be applied to parcels or portions of parcels adjacent to the Extraction Area
5 and within the Impact Area deemed appropriate through the Goal 5 process. The Impact Area shall
6 be shown on the zoning map with the designation PAM-IA.

7
8 **11.15.6775 Procedure For Applying The PAM Subdistrict**

9 (A) A PAM subdistrict shall be established by amendment of the Comprehensive Framework Plan and
10 Zoning Map. The relevant factors for the establishment of the subdistrict are within the Oregon
11 Administrative Rules Chapter 660, Division 16; Comprehensive Plan Policy 16-B; MCC
12 11.05.290(1) and (2); and the applicable provisions of MCC 11.15.8205 through .8295. The factors
13 in MCC 11.15.8230(D) and (E) shall not apply.

14 (B) Under the applicable provisions of OAR Chapter 660, Division 16 and Comprehensive Plan Policy
15 16-B and based upon the analysis of information about the location, quality, and quantity of the
16 aggregate and mineral resource, the county shall make the following determinations regarding the
17 inventory status of the resource site and, if appropriate, continuation of the Goal 5 process:

18 (1) If the information about the location, quality, and quantity of a resource site is not adequate to
19 allow a determination of significance, the site shall be placed on a plan inventory of "poten-
20 tial sites" and shall remain on that inventory until information is available to determine
21 whether or not the site is significant, or

22 (2) If the resource site does not meet the definition of a significant site, the site shall be placed on
23 a plan inventory of "not significant sites", or

24 (3) If the resource site meets the definition of a significant site, the Goal 5 process shall be con-
25 tinued.

1 (C) Under the applicable provisions of OAR Chapter 660, Division 16 and Comprehensive Plan Policy
2 16-B and based upon the *ESEE analysis*, the county shall determine the amount of protection to be
3 given each *significant* site. Each determination shall be incorporated into the comprehensive plan,
4 and shall be reflected on the zoning maps. One of the following determinations shall be made:

5 (1) Protect the site fully and allow surface mining as a conditional use. The county shall place the
6 site on the *Protected Sites* inventory, apply the Protected Aggregate and Mineral Resources
7 Subdistrict, specify the planned use of the site following reclamation, and prohibit the estab-
8 lishment of *conflicting uses* within the *Extraction Area* and the *Impact Area*. Conditional use
9 approval of surface mining shall be pursuant to MCC .7305 through .7335 and shall not be
10 subject to the conditional use provisions of MCC .7110(C), .7110(E), .7115, .7120, and .7125.

11 (2) Balance protection of the site and conflicting uses, allow surface mining as a conditional use.
12 The county shall place the site on the *Protected Sites* inventory, apply the Protected
13 Aggregate and Mineral Resources Subdistrict, specify the planned use of the site following
14 reclamation, and identify which uses in the underlying zone are allowed outright, allowed
15 conditionally, or prohibited. Conditional use approval of surface mining shall be pursuant to
16 any site-specific requirements developed through the *Goal 5 process* and MCC .7305 through
17 .7335. Review criteria and conditions shall not include the conditional use provisions of
18 MCC .7110(C), .7110(E), .7115, .7120, and .7125. Site-specific requirements developed
19 through the *Goal 5 process*, MCC .6780, and .6785 shall govern development of *conflicting*
20 uses.

21 (3) Allow *conflicting uses* fully and do not allow surface mining except as exempted in MCC
22 .6760. The county shall then place the site on the "Not Protected Sites" inventory in accor-
23 dance with Framework Plan Policy 16-B, not apply the Protected Aggregate and Mineral
24 Resource Subdistrict, and not protect the site from *conflicting uses*.

1 **11.15.6780 Extraction Area (PAM-EA) - Allowed Uses**

2 Notwithstanding the use provisions of the underlying district, the following use provisions shall apply
3 in the PAM-EA Subdistrict:

4 (A) Primary Uses, Uses Permitted Outright, Uses Permitted Under Prescribed Conditions, and
5 Conditional Uses allowed in the underlying district may be permitted subject to the underlying dis-
6 trict provisions and criteria of approval, except as provided for in this subsection.

7 (1) Uses identified through the Goal 5 process to be prohibited within the Extraction Area shall
8 not be permitted.

9 (2) Noise or dust sensitive uses not prohibited in (1) may be permitted under the conditional use
10 procedural provisions of MCC .7105 through .7140 when found by the Hearing Authority to
11 satisfy the approval criteria of MCC .6790 and the approval criteria of the underlying district.

12 (3) Conflicting uses required by the Goal 5 process to be conditionally approved may be permit-
13 ted under the procedural provisions of MCC .7105 through .7140 when found by the Hearing
14 Authority to satisfy the approval criteria of MCC .6790 and the approval criteria of the under-
15 lying district.

16 (B) The following uses may be permitted subject to a finding by the Hearing Authority that all stan-
17 dards adopted as part of the Goal 5 process and the provisions of MCC .7305 through .7335 are
18 met. Review by the Hearing Authority shall be under the procedural provisions of MCC .7105,
19 .7107, .7110(A), .7110(B), .7110(D), .7130 and .7135.

20 (1) Mining;

21 (2) Processing, except the batching or blending of aggregate and mineral materials into asphalt
22 concrete within two miles of a planted commercial vineyard existing on the date of condition-
23 al use approval;

24 (3) Stockpiling of aggregate and mineral materials;

25 (4) Sale of mineral products excavated and processed on-site;

26 (5) Storage of equipment or vehicles used in on-site mining or processing;

1 (6) Buildings, structures, and activities necessary and accessory to mining or reclaiming aggregate or mineral resources.

4 **11.15.6785 Impact Area (PAM-IA) - Allowed Uses**

5 Notwithstanding the use provisions of the underlying district, the following use provisions shall apply
6 in the PAM-IA Subdistrict. Primary Uses, Uses Permitted Outright, Uses Permitted Under Prescribed
7 Conditions, and Conditional Uses allowed in the underlying district may be permitted subject to the
8 underlying district provisions and criteria of approval, except as follows:

9 (A) Uses identified through the Goal 5 process to be prohibited within the Impact Area shall not be
10 permitted;

11 (B) Noise or dust sensitive uses not prohibited in (A) may be permitted under the conditional use pro-
12 cedural provisions of MCC .7105 through .7140 when found by the Hearing Authority to satisfy
13 the approval criteria of MCC .6790 and the approval criteria of the underlying district; and

14 (C) Conflicting uses required by the Goal 5 process to be conditionally approved may be permitted
15 under the procedural provisions of MCC .7105 through .7140 when found by the Hearing
16 Authority to satisfy the approval criteria of MCC .6790 and the approval criteria of the underlying
17 district.

19 **11.15.6790 Use Approval Criteria**

20 (A) In acting to approve a Conditional Use subject to these provisions, the Hearing Authority shall find
21 that:

22 (1) The proposed use will not interfere with or cause an adverse impact on lawfully established
23 and lawfully operating mining operations;

24 (2) The proposed use will not cause or threaten to cause the mining operation to violate any
25 applicable standards of this chapter, or the terms of a state agency permit. The applicant for a
26 new noise sensitive use shall submit an analysis prepared by an engineer or other qualified

1 person, showing that applicable DEQ noise control standards are met or can be met by a
2 specified date by the nearby mining operation; and

3 (3) Any setbacks or other requirements imposed through the Goal 5 process have been met, or
4 can be met by a specified date.

5 **(B) Approval Conditions.**

6 (1) Compliance with the use approval criteria may be satisfied through the imposition of clear
7 and objective conditions of approval.

8 (2) Approval of any conflicting use in the extraction area or impact area shall be conditioned
9 upon execution of a restrictive covenant in favor of the mining operator. The restrictive
10 covenant shall incorporate all approval conditions, and an agreement not to object to the con-
11 duct of lawful operations conducted at the nearby surface mine.

12
13 **11.15.6795 Termination of the Protected Aggregate and Mineral Resources Subdistrict**

14 When the aggregate or mineral site has been reclaimed, the county may rezone land to remove the
15 Protected Aggregate and Mineral Resources Overlay Subdistrict (PAM) without revising the ESEE
16 Analysis for the site. Rezoning shall not relieve requirements on the part of the owner or operator to
17 reclaim the site in accordance with ORS 517.750 through 517.900 and the rules adopted thereunder.

18
19 * * *

20
21 **Conditional Uses CU**

22 **11.15.7105 Purposes**

23 Conditional uses as specified in a district or described herein, because of their public convenience,
24 necessity, unique nature, or their effect on the Comprehensive Plan, may be permitted as specified in
25 the district or described herein, provided that any such conditional use would not be detrimental to the
26 adjoining properties or to the purpose and intent of the Comprehensive Plan.

1
2 Certain conditional use provisions of time limits, conditions, restrictions, and approval criteria shall not
3 apply to Mineral Extraction conditional uses.
4

5 **11.15.7107 Mineral Extraction Exemptions from Standards**

6 Mineral Extraction conditional uses are exempted from the provisions of MCC .7110(C), .7110(E),
7 .7115, .7120, .7122, and .7125.
8

9 **11.15.7110 General Provisions**

10 (A) Application for approval of a Conditional Use shall be made in the manner provided in MCC
11 .8205 through .8280.

12 (B) The Approval Authority shall hold a public hearing on each application for a Conditional Use,
13 modification thereof, time extension or reinstatement of a revoked permit.

14 (C) [~~Except as provided in MCC .7330, t~~] The approval of a Conditional Use shall expire two years
15 from the date of issuance of the Board Order in the matter, or two years from the date of final reso-
16 lution of subsequent appeals, unless:

17 (1) The project is completed as approved, or

18 (2) The Approval Authority establishes an expiration date in excess of the two year period, or

19 (3) The Planning Director determines that substantial construction or development has taken
20 place. That determination shall be processed as follows:

21 (a) Application shall be made on appropriate forms and filed with the Director at least 30
22 days prior to the expiration date.

23 (b) The Director shall issue a written decision on the application within 20 days of filing.
24 That decision shall be based on findings that:

25 (i) Final Design Review approval has been granted under MCC .7845 on the total pro-
26 ject; and

(ii) At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined by MCC .9025(A) or .9027(A).

(c) Notice of the Planning Director decision shall be mailed to all parties as defined in MCC .8225.

(d) The decision of the Planning Director shall become final at the close of business on the tenth day following mailed notice unless a party files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions of MCC .8290 and .8295.

(D) A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the Approval Authority. Any change of use or modification of limitations or conditions shall be subject to approval authority approval after a public hearing.

(E) The findings and conclusions made by the approval authority and the conditions, modifications or restrictions of approval, if any, shall specifically address the relationships between the proposal and the approval criteria listed in MCC .7120 and in the district provisions.

11.15.7115 Conditions and Restrictions

~~[Except as provided for Mineral Extraction and Processing activities approved under MCC .7305 through .7325 and .7332 through .7335,]~~ The approval authority may attach conditions and restrictions to any conditional use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, off-street parking, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

1 **11.15.7120 Conditional Use Approval Criteria**

2 (A) A Conditional Use shall be governed by the approval criteria listed in the district under which the
3 conditional use is allowed. If no such criteria are provided, the approval criteria listed in this sec-
4 tion shall apply. In approving a Conditional Use listed in this section, the approval authority shall
5 find that the proposal:

- 6 (1) Is consistent with the character of the area;
7 (2) Will not adversely affect natural resources;
8 (3) Will not conflict with farm or forest uses in the area;
9 (4) Will not require public services other than those existing or programmed for the area;
10 (5) Will be located outside a big game winter habitat area as defined by the Oregon Department of
11 Fish and Wildlife or that agency has certified that the impacts will be acceptable;
12 (6) Will not create hazardous conditions; and
13 (7) Will satisfy the applicable policies of the Comprehensive Plan.

14 ~~[(B) Except for off site stockpiling, subpart (A) of this subsection shall not apply to applications for~~
15 ~~mineral extraction and processing activities. Proposals for mineral extraction and processing shall~~
16 ~~satisfy the criteria of MCC .7325.]~~

17
18 * * *

19
20 **Mineral Extraction CU**

21 **11.15.7305 Definitions**

22 As used in this section, the words and their derivations defined in MCC .6765 shall have the meanings
23 given therein.

24 ~~[(A) Mining means the removal of minerals or aggregate material, whether extracted from land or~~
25 ~~water, by any method, including but not limited to, shoveling, blasting, scraping, and dredging.~~

26 ~~(B) Minerals include any and all solid mineral products, metallic and non-metallic, extracted for com-~~

mercerial, industrial or construction use from natural deposits.

~~(C) Aggregate material includes crushed or uncrushed gravel, crushed stone, or sand from natural deposits.~~

~~(D) Reclamation Plan shall have the meaning contained in ORS 517.750.~~

~~(E) Noise Sensitive Uses include dwellings, schools, public parks, churches, hospitals, public libraries, offices or other similar uses determined to be noise sensitive uses by the Department of Environmental Quality.~~

~~(F) Dust Sensitive Uses include dwellings, schools, public parks, churches, hospitals, public libraries, offices, food service or other similar uses determined to be dust sensitive uses by the Department of Environmental Quality.~~

~~(G) ESEE is an abbreviation for the "Economic, Social, Environmental, and Energy" analysis procedure for Goal 5 resources described in OAR 660-16-000 through 660-16-025 and which is adopted as a part of the Comprehensive Plan.]~~

11.15.7310 Board Findings

(A) There is a need to conserve and protect known mineral and aggregate resources for present and future generations.

(B) There is a need to plan and make allowances for interim, transitional, and secondary use utilization of mineral and aggregate resource extraction areas.

(C) There is a need to promote healthy and visually attractive environments, and to reduce conflicts between different land uses.

(D) There is a need to provide regulations in accordance with LCDC Statewide Planning Goals.

11.15.7315 Purposes

The purposes of the Mineral Extraction section are to promote the public health, safety and general welfare[,] through the protection of mineral and aggregate resources [##] in accordance with [ORS

~~215, ORS 517, and 522,~~] LCDC Statewide Planning Goal #5, and the Multnomah County Comprehensive Plan. The regulations ~~[of uses within this district]~~ are designed to:

- (A) Recognize mineral and aggregate resource extraction as a land use influenced largely by the location of the natural resource and the location of the market;
- (B) Provide maximum flexibility for location of the extraction process within a variety of underlying zones, while at the same time minimizing potentially adverse effects on the public and property surrounding the extraction site;
- (C) Recognize mineral and aggregate resource sites which receive an ESEE designation for protection ~~of "2A", "3A", or "3C"~~ as being appropriate for extraction operations when in compliance with MCC .7325 - .7332; and
- (D) Recognize mineral extraction as a temporary use dependent to a large degree upon market conditions and resource size and that reclamation and the potential for future use of the land for other activities must also be considered.

~~11.15.7320~~ Uses

- ~~(A) Extraction of materials including the storage, stockpiling, distribution, and sale thereof;~~
- ~~(B) Installation and operation of plants or apparatus for rock crushing and cement treatment of minerals excavated at the site for which the Conditional Use is being requested, including screening, blending, washing, loading, and conveying of materials.~~
- ~~(C) Mining and processing of geothermal resources.~~
- ~~(D) Activities utilizing the extracted minerals such as mixing or batching plants, or manufacturing the extracted minerals into finished products.~~
- ~~(E) Structures, facilities and mobile homes for the repair, maintenance, and storage of equipment or supplies, office spaces or watchmen, as are reasonably necessary for the conduct of the proposed use.~~

1 **11.15.7322 Exceptions**

2 Exempted from the requirements of this section are those mineral extraction sites and activities as
3 given in MCC .6760. [which:

- 4 ~~(A) If zoned EFU, produce less than 1,000 cubic yards of material and affect less than one acre, or~~
5 ~~(B) Produce less than 5,000 cubic yards of material and affect less than one acre in any consecutive 12~~
6 ~~month period, and which over time affect less than a total of five acres, or~~
7 ~~(C) Produce materials which are used by the owner or tenant for construction and maintenance of on-~~
8 ~~site access roads, and farming or forest practices.]~~

10 **11.15.7325 Criteria for Approval**

11 The approval authority shall find that:

- 12 (A) The site is ~~[designated "2A", "3A", or "3C" through an ESEE analysis]~~ included on the inventory
13 of protected aggregate and mineral resource sites in the Comprehensive Plan.
14 (B) There is a proposed reclamation plan which will allow the property to be utilized as envisioned by
15 the Comprehensive Plan and the underlying district.
16 (C) ~~[The following general operation requirements and standards have been, or will be met:]~~ The
17 applicant has shown that the standards of this section, or site-specific requirements adopted as part
18 of a comprehensive plan amendment, can or will be met by a specified date.

19 (1) Access and traffic.

20 (a) Prior to any surface mining activity, all on-site roads used in the mining operation and all
21 roads from the site to a public right-of-way shall be designed and constructed to accom-
22 modate the vehicles and equipment which will use them.

23 (b) All on-site and private access roads shall be paved or adequately maintained to minimize
24 dust and mud generation within 100 feet of a public right-of-way or 250 feet of a *dust*
25 *sensitive* land use

26 (c) No material which creates a safety or maintenance problem shall be tracked or discharged

1 in any manner onto any public right-of-way.

2 (d) The applicant shall submit a traffic management plan which identifies [y] the most com-
3 monly used routes of travel from the site and contains the following components: Traffic
4 Study Section, Operational Study Section, Pavement and Other Structures Study Section,
5 System Condition Conclusions and Improvement Alternatives Analysis Section, and
6 Economy/Cost Responsibility Study Section. [and t] The County Engineer shall review
7 the Traffic Management Plan and shall certify, based on findings relating to the
8 Multnomah County Rules for Street Standards, that those roads:

9 (i) Are adequate to safely accommodate any additional traffic created by the extraction
10 operation for the duration of the activity, or

11 (ii) Are inadequate to safely accommodate any additional traffic created by the extraction
12 operation for the duration of the activity, but the applicant has committed to finance
13 installation of the necessary improvements under the provisions of 02.200(a) or (b)
14 of the *Multnomah County Rules for Street Standards*.

15 (iii) Satisfy any requirements that may be contained in the site-specific Comprehensive
16 Plan Program.

17 (2) Screening, landscaping and visual appearance.

18 (a) All existing vegetation and topographic features which would provide screening and
19 which are within 50 feet of the boundary of the proposed area of extraction shall be pre-
20 served.

21 (b) If the site-specific Goal 5 analysis determines that existing ~~[natural]~~ vegetation and
22 topography is ~~[found to be]~~ insufficient to obscure ~~[views of]~~ the site from existing noise
23 and dust sensitive conflicting uses, the site shall be screened with landscape berms,
24 hedges, trees, walls, fences or similar features. Required screening shall be in place prior
25 to commencement of the extraction activities.

26 (c) The Approval Authority shall grant exceptions to the screening requirements ~~[only upon~~

1 ~~finding that~~ if:

- 2 (i) The proposed extraction area is not visible from any [~~dwelling, school, public park,~~
3 ~~church, hospital, public library, or publicly maintained road~~] noise and dust sensitive
4 conflicting uses existing on the date of application, or
- 5 (ii) Screening will be ineffective because of the topographic location of the site with
6 respect to surrounding properties, or
- 7 (iii) The area is part of the completed portion of a reclamation plan.

8 (3) **Signing.**

9 Signing shall be controlled by the standards of MCC .7932(A)-(D), except that only one sign
10 for each point of access to each differently named improved street may be allowed for any
11 operation not in a GC, EC, LM, GM, HM, C-2, M-4, M-3, M-2, and M-1 district.

12 (4) If no {H} hours and days of operation are contained in the site-specific Comprehensive Plan
13 Program, the following shall apply: [.]

14 (a) Operating hours shall be ~~allowed~~ from 7:00 am to 6:00 pm. No operation shall be allowed
15 on Sundays or on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving
16 Day, and Christmas Day.

17 (b) [~~(a) The Approval Authority may allow alternative hours on sites for which the ESEE anal-~~
18 ~~ysis has identified other potential operating time periods.~~] Blasting shall be restricted to
19 the hours of 9:00 am to 5:00 pm. No blasting shall be allowed on Saturdays, Sundays or
20 on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and
21 Christmas Day.

22 (c) [~~(b)~~] Short-term exceptions to the hours and days of operation may be approved pursuant to
23 the provisions of MCC .8705.

1 (5) Air, water, and noise quality.

2 (a) ~~[The discharge of airborne contaminants and dust created by the extraction operation shall~~
3 ~~comply with the air quality standards established by the Department of Environmental~~
4 ~~Quality.]~~ The applicant shall obtain and comply with the standards of all applicable emis-
5 sion discharge permits from the Department of Environmental Quality. Copies of all
6 required permits shall be provided to the county prior to beginning mining.

7 (b) ~~[Sedimentation and erosion resulting from the extraction operation shall comply with the~~
8 ~~standards established by the Department of Environmental Quality.]~~ The applicant shall
9 obtain and comply with the standards of all applicable waste water discharge permits
10 from the Department of Environmental Quality. Copies of all required permits shall be
11 provided to the county prior to beginning mining.

12 (c) Sound generated by an operation shall comply with the noise control standards of the
13 Department of Environmental Quality. Compliance with the standards can be demonstrat-
14 ed by the report of a certified engineer. Methods to control and minimize the effects of
15 sound generated by the operation on ~~[off-site locations]~~ noise sensitive uses existing or
16 approved (valid action or administrative decision) on the date of application may include,
17 but not be limited to, the installation of earth berms, equipment location, limitations on
18 the hours of operation, and relocation of access roads.

19 (6) Fish and wildlife protection.

20 (a) Fish and wildlife habitat ~~[identified by]~~ inventoried in the Comprehensive Plan ~~], or rec-~~
21 ~~ognized as significant by an ESEE analysis, or found to be significant during project~~
22 ~~review]~~ shall be protected ~~[to the maximum possible]~~ according to the program contained
23 in the Comprehensive Plan. ~~[Where appropriate, such habitat may be mitigated by such~~
24 ~~enhancement measures as the provision of additional feed and cover for wildlife or fish~~
25 ~~stream habitat.~~

26 (b) The extent of the operation's impact on and the importance of the fish and wildlife values

present shall be determined in consultation with the State Department of Fish and Wildlife.

(c) Streamside riparian vegetation shall be retained for all streams not a part of direct extraction activities.

(7) Setbacks.

(a) For mineral and aggregate processing activities:

(i) 200 feet to a property line, or

(ii) 400 feet to a *noise sensitive* land use existing or approved (valid action or administrative decision) on the date of application [February 20, 1990];

(b) For access roads and residences located on the same parcel as the mining or processing activity, setbacks shall be as required by the underlying district; and

(c) For mineral extraction and all other activities:

(i) 50 feet to a property line, or

(ii) 250 feet to a *noise sensitive* land use existing or approved (valid action or administrative decision) on the date of application [February 20, 1990].

~~[(8) Reclaimed Topography.~~

~~All final reclaimed surfaces shall be stabilized by sloping, benching, or other ground control methods. Reclaimed surfaces shall blend into the natural landforms of the immediately surrounding terrain.~~

~~(9) Blasting shall be restricted to the hours of 9:00 am to 5:00 pm, Monday through Saturday.~~

(8 [40]) Safety and security.

Safety and security measures, including fencing, gates, signing, lighting, or similar measures, shall be provided to prevent public trespass to identified hazardous areas such as steep slopes, water impoundments, or other similar hazard where it is found that such trespass is probable and not otherwise preventable

~~[(11) Phasing program.~~

1 ~~All phases of an extraction operation shall be reclaimed before beginning the next, except~~
2 ~~where the Approval Authority finds that the different phases cannot be operated and reclaimed~~
3 ~~separately.]~~

4 [(12) ~~Reclamation Schedule.~~

5 ~~The reclamation plan shall include a timetable for continually reclaiming the land. The~~
6 ~~timetable shall provide for beginning reclamation within twelve (12) months after extraction~~
7 ~~activity ceases on any segment of the mined area and for completing reclamation within three~~
8 ~~(3) years after all mining ceases.]~~

9 (D) The proposed operations will not result in the creation of a geologic hazard to surrounding proper-
10 ties, such as through slumping, sliding, or drainage modifications, and have been certified by a
11 registered soils or mining engineer, or engineering geologist as meeting this requirement.

12 (E) Proposed blasting activities will not adversely affect the quality or quantity of groundwater within
13 wells in the vicinity of the operation.

14 (F) ~~[Conditional or preliminary approval for all phases of the proposed operation, including reclama-~~
15 ~~tion, has been received from all governmental agencies having jurisdiction over mineral extraction,~~
16 ~~and the applicable requirements in ORS 517 and ORS 522 have been complied with.]~~

17 If the site is zoned Exclusive Farm Use (EFU), the proposed operations:

18 (1) Will not force a significant change in accepted farm or forest practices on surrounding lands
19 devoted to farm or forest use; and

20 (2) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to
21 farm or forest use.

22 (G) If the site is zoned Commercial Forest Use (CFU):

23 (1) The proposed operations will not force a significant change in, or significantly increase the
24 cost of, accepted farming or forest practices on agriculture or forest lands;

25 (2) The proposed operations will not significantly increase fire hazard or significantly increase
26 fire suppression costs or significantly increase risks to fire suppression personnel; and

1 (3) A written statement recognizing the rights of adjacent and nearby property owners to conduct
2 accepted forest practices has been recorded with the property deed in accordance with OAR
3 660-06-025 (1994).

4 ~~[(G) The Approval Authority may establish a program for periodic monitoring and reporting.]~~

6 **[11.15.7328 Operation Limitations]**

7 ~~On sites with an ESEE analysis designation of "3C" the Approval Authority may place restrictions on~~
8 ~~extraction activities found to impact other Statewide Planning Goal 5 resources, noise sensitive uses,~~
9 ~~and other conflicting uses identified in the ESEE analysis. Restrictions may include limitations on the~~
10 ~~operating season and size or location of extraction activity, among others. Restrictions shall be site~~
11 ~~specific and directly related to the findings of the ESEE analysis and shall consider the need to balance~~
12 ~~the importance of the competing resources and conflicting uses against the mineral and aggregate~~
13 ~~resource.]~~

15 **[11.15.7329 Off Site Stockpiling and Processing]**

16 ~~Stockpiling, processing, and distribution activities listed in MCC 7320, related to but not including~~
17 ~~extraction, may be approved by the Approval Authority under the procedural provisions of MCC 7110~~
18 ~~through 7120 on sites other than ESEE designated "2A", "3A", and "3C" resource locations upon a~~
19 ~~finding that the applicable standards of MCC 7325 are satisfied.]~~

21 **[11.15.7330 Time Limit]**

22 ~~A Conditional Use permit hereunder shall be valid for a maximum of five years from date of final~~
23 ~~approval. The Approval Authority may allow a time limit of a maximum of ten years on sites for which~~
24 ~~the ESEE analysis has identified a longer potential time limit. The applicant may apply for renewal not~~
25 ~~less than 90 days prior to the expiration of such permit. The renewal application may be denied,~~
26 ~~approved subject to previous conditions, or approved subject to new conditions in light of the follow-~~

ing factors, among others:

(A) ~~Previous impacts of the use upon surrounding lands and activities;~~

(B) ~~Changes in technology and activities of the operation which will impact the surrounding lands and activities, and~~

(C) ~~Compliance with MCC .7325 and conditions of approval.]~~

11.15.7331 Site Reclamation

(A) No mining shall begin without the operator providing the county a copy of a DOGAMI operating permit and approved reclamation permit or exemption certificate.

(B) When approving an application under this section the county shall determine the post-mining use of the property. The determination of post-mining use shall be coordinated with DOGAMI to ensure technical feasibility. The designated post-mining use shall conform to the Comprehensive Plan.

11.15.7332 Monitoring

The Planning Director shall periodically monitor all extraction operations. The beginning dates and frequency of monitoring shall be determined by the Approval Authority based upon any such requirement in the Comprehensive Plan Program and upon the number and type of noise and dust sensitive land uses, and other Goal 5 resources identified in the ESEE Analysis. If the Director determines that an extraction operation is not in compliance with MCC .7325 or site-specific requirements of the Comprehensive Plan Program, such enforcement proceedings deemed appropriate by the Multnomah County Legal Counsel shall be instituted to require compliance.

11.15.7335 Existing Operations

All mineral extraction uses that have been approved under MCC .5575, .5580, and .7305 through .7335, prior to July 26, 1979, shall continue to comply with the ~~[following requirements:]~~ zoning stan-

dards and conditions of approval imposed at the time of approval.

~~[(A) No production from an open-pit or the removal of sand or gravel shall leave a slope exceeding one foot horizontal for one foot vertical.~~

~~(B) No mining, quarrying, excavating or processing of material shall be permitted closer than 100 feet from the boundaries of a Natural Resource, Rural, Residential, Office or Commercial district.~~

~~(C) Properties to be used for surface mining shall be enclosed on the boundaries by a sight obscuring fence, except for reasonable areas of access and egress, as designated by the approval authority.~~

~~(D) No permanent structure, such as rock crusher, washer or sorter, shall be located closer than 500 feet from any district boundary.~~

~~(E) Any conditions of operation imposed as a result of previous zoning controls or regulations shall continue.]~~

* * *

Fees

11.15.9005 Payment

All fees are payable at the time of application.

11.15.9010 Action Proceedings

(A) Change of zone classification

(1) Rural, Urban Future and Urban Low and Medium Density Residential:

One acre or less	\$500.00
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Each additional acre	50.00
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(2) Apartment Residential and Urban High Density Residential:

One acre or less	1,000.00
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Each additional acre	50.00
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1	(3) Commercial or Industrial	1,000.00
2	(B) [Planned Developments] <u>Special District designation (LF, OP, PD, HP, SPA, PAM)</u>	
3	One acre or less	1,000.00
4	Each additional acre	50.00
5	Maximum charge	5,000.00

6
7 * * *

8
9
10 Section III. Adoption.

11 ADOPTED THIS _____ day of _____, 1994, being the date of its _____
12 reading before the Board of County Commissioners of Multnomah County.

13
14
15
16 (S E A L)

17
18
19 By _____
20 Beverly Stein
21 Multnomah County Chair

22 REVIEWED:

23 JOHN DUBAY, CHIEF ASSISTANT COUNTY COUNSEL
24 for MULTNOMAH COUNTY, OREGON

25 By _____
26

REGIONAL SERVICE



METRO

October 11, 1994

Board of County Commissioners
Multnomah County Courthouse
1021 SW Fourth Avenue
Portland, Oregon 97204

Subject: Testimony Regarding Agenda Item C11-94
(surface mining)

Dear Commissioners,

Thank you for this opportunity to submit comments related to the proposed ordinance regarding surface mining and "protected aggregate and mineral resources".

We have previously submitted detailed comments to the Planning Commission and staff (with Cc's to the Board). The purpose of this letter is to summarize our remaining concerns.

- a) Section II, "Strategies" - lays out a process whereby a landowner or operation can submit information concerning the potential significance of a resource site. If the information supports a determination of significance, an ESEE analysis is then conducted to determine whether or not to protect the site.

While we have no objection to this provision for aggregate resources, we don't understand why a similar provision is not included in Agenda Item C 10-94 for other Goal 5 resources such as wildlife habitat, streams

and wetlands. It is recommended that all Goal 5 resources be treated equitably.

Additionally, it is unclear exactly what limitations are applied to "landowner or operators" who submit information concerning potential significance of resource sites. Specifically, is it intended to allow landowners and operators to submit information on land that they do not own or have no financial interest in? It is recommended that this issue be clarified.

We note significant disparity between protection programs for mineral/aggregate resources and other Goal 5 resources. These disparities are especially evident in 11.15.6790 Use Approval Criteria (PAM).

Examples include requirements/allowances for:

- a) finding of "no threat" to mining operations
- b) required analysis prepared by engineer for new "noise" sensitive uses
- c) setbacks (i.e., "no-build zones") from PAM's.
- d) restrictive covenants
- e) permitting impacts on farm and forest practices (and their cost) on adjacent lands

As noted previously, we are not necessarily opposed to these provisions. However, we are curious what makes minerals and aggregate resources "more" valuable than other Goal 5 resources. We recommend equity in the treatment of all Goal 5 resources.

- b) Section II, I - identifies mining activities which will be exempt from County review, conditions and approval.

Exempted activities include:

- Mining auxiliary to forest practices.
- Mining less than 1,000 cys or an area less than one acre on EFU lands.
- Mining less than 5,000 cys or disturbing less than one acre per year in all other zones.

Although mining auxiliary to forest practices is regulated by the Department of Forestry, we are advised that the other two exemptions will be totally unregulated if the ordinance is adopted in its current form (pers. com - Frank Schnitzer 10-7-94).

It is recommended that the County maintain its ability to regulate the latter two mining activities to avoid potential conflicts with other land uses and other Goal 5 resources. The same concern and recommendation is applicable to Section 11.15.6760 of the PAM.

- c) Section 11.15.6765 "Definitions" - does not list other Goal 5 resources (i.e., wildlife habitat, streams, wetlands, scenic or cultural resources) as "dust and noise sensitive"; therefore provisions contained in the "Mineral Extraction CU" which are intended to protect existing "noise and dust sensitive" uses will not apply to other Goal 5 resources, leaving them subject to degradation with no recourse. It is recommended that this oversight be corrected.
- d) Section 11.15.7325, (6) - does not appear to lay out any specific program for Fish and Wildlife protection. We are particularly concerned about potential Goal 5 resources which have not yet been inventoried and evaluated. This situation exists in the majority of rural Multnomah County.

Subsection (b) directs that the impacts of mining and importance of fish and wildlife values be determined but then remains silent on what purpose this information is intended to serve.

Subsection (c) directs the retention of riparian vegetation unless the stream is to be mined. We cannot imagine any situation that would justify mining in a stream or its riparian area. It is recommended that this section be rewritten in a manner that clearly explains what steps will be taken to protect fish and wildlife.

Again, Thank you for this opportunity to share our comments
and concerns regarding this important issue.

Warm Regards,



Charles Ciecko
Director, Regional Parks and Greenspaces

oppcolet.2
CC/mb

cc: Rena Cusma
Judy Wyers
Betsy Williams
Merrie Waylett
Andy Cotugno
Jane Hart
Rosemary Furfey
Steve Oulman, DLCD

October 11, 1994

Arnold Rochlin
P.O. Box 83645
Portland, OR 97283-0645
(503) 289-2657

Multnomah County Board of Commissioners

C 11-94 Aggregate: Comprehensive Framework Plan and Zoning Code Amendments.

AMENDMENTS REQUIRED BY LAW

POLICY 16-B

Page 3. D 2: Omit "operator"

Reason: Only an owner or owner's representative can apply for a site specific change.

Page 3. E: Delete "and the site contains a minimum of one million cubic yards of mineable reserves" and substitute "and the resource is found to be significant under the standards and procedures of OAR Chapter 660-16."

Reason: OAR 660-16-000 requires consideration of a resource site in light of quantity, quality and location. These characteristics must be evaluated relative to the characteristics of other sites in the county that have similar resources. The conclusion of significance cannot lawfully be by an arbitrary number. The result could be stupid. Most of the unincorporated county would qualify under the proposed standard. If a property contains 1 million yards of recoverable rock, and is only a mile away from a site with 500 million yards, you would be required, contrary to common sense and law, to declare the 1 million yard site as significant.

11.15.6765 Definitions

Page 9. (A) *Conflicting Use* : Add: "A *conflicting use* is also a use which is otherwise allowed and which would be adversely affected if use of the resource were allowed without restriction."

Reason: Case law has interpreted a conflicting use to include uses that would be adversely affected by the use of the resource. The underlying fact of *Columbia Steel Castings Co. v. City of Portland*, 314 Or 429 (1992) was the failure of the city of Portland to identify Columbia Steel Castings' industrial use as a conflicting use. It is established that an "impact area" is "the area where uses may occur that could adversely affect the resource cite or be adversely affected by use of the resource site." *Portland Audubon v. Clackamas Co.*, 14 Or LUBA 442, *aff'd*, 80 Or App 593 (1986). The impact area could not be so defined unless uses adversely affected by use of the resource site are conflicting uses.

Page 9. (C) *ESEE Analysis*: Omit "to displace mining".

Reason: The county cannot add or detract from a term defined by the state in the OAR. This is an attempt by DLCD staff, influenced by the aggregate lobby, to rewrite the OAR through the county code.

Page 9-10. (F) *Impact Area*: Delete the definition and replace it with: "an impact area is the area where uses may occur that could adversely affect the resource site or be adversely affected by use of the resource site."

That is the lawful definition as declared in *Portland Audubon v. Clackamas Co.*, 14 Or LUBA 442, *aff'd*, 80 Or App 593 (1986) The other definition is a manipulative attempt by DLCD staff to ultimately control substantive decisions on aggregate resource in the county.

Page 11. (M) "*Significant Site*" : Under (1), Delete "within an ownership or long-term lease containing more than one million cubic yards of reserves" and substitute "located within a defined resource site and found to be significant under the standards and procedures of OAR Chapter 660-16."

Reason: Defining the extent or limit of a significant resource site by who owns or controls the mineral rights is in conflict with OAR 660-16-000. The rule requires a determination of significance through consideration of the resource, not who owns it, or how they want to use the property. Significance is determined in light of quantity, quality and location. These characteristics must be evaluated relative to the characteristics of other sites in the county that have similar resources. The conclusion of significance cannot lawfully be by an arbitrary number or ownership. The result could be stupid. Most of the unincorporated county would qualify under the proposed standard. If a property contains 1 million yards of recoverable rock, and is only a mile away from a site with 500 million yards, you would be required, contrary to common sense and law, to declare the 1 million yard site as significant.

11.15.6770 PAM Overlay Special Subdistricts

Page 12. (B): Delete "adjacent to the *Extraction Area and*"

Reason: The lawful definition of impact area does not include "adjacent". The impact area is necessarily defined by the significant impacts which are usually, but not always, nearby. *Portland Audubon v. Clackamas Co.*, 14 Or LUBA 442, *aff'd*, 80 Or App 593 (1986)

DESIRABLE AMENDMENTS - NOT REQUIRED BY LAW

Page 24 (top) 11.15.7325(C)(2)(i): Delete "*noise and dust sensitive*"

Reason: Restricting concern for visibility to the view from "noise and dust sensitive" uses is stupid on its face.

Page 24 (middle) 11.15.7325(C)(4): Restore "allowed".

Reason: Why would the county want to prohibit a quarry owner from starting at 8:00 am or closing at 5:00 pm if he wants to? This is another absolute stupidity in the rush to promote aggregate.

Page 26-27 11.15.7325(C): Restore deleted (9), (11) and (12)

County Counsel advised the Planning Director on September 21, 1994 that you have authority to maintain county standards for reclamation in addition to, and stricter than, those set by DOGAMI. One of the larger aggregate operations in the state,

Angell Brothers, has been able to secure and renew its conditional use permit under the existing regulations which include those reclamation standards. Do you not want reclamation to blend in with the surrounding area? Do you not want reclamation to proceed in phases, along with the mining (the code has an exception where it can't be done)? Do you not want to require a timetable for reclamation (relative to completion of each phase)?

A handwritten signature in cursive script, appearing to read "Arnold Kachler". The signature is written in dark ink and is centered horizontally on the page.

**MULTNOMAH COUNTY OREGON***Rochlin CU-94*

OFFICE OF COUNTY COUNSEL
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PORTLAND, OREGON 97207-0849
(503) 248-3138
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JACQUELINE A. WEBER

M E M O R A N D U M

TO: Scott Pemble

FROM: John L. DuBay (106/1530)
Chief Assistant County Counsel

DATE: September 21, 1994

SUBJECT: DOGAMI authority

The question asked by the planning commission was whether DOGAMI has exclusive jurisdiction to regulate mining. The answer is no.

The Department is established by ORS 516.020. Its general investigatory duties are described in ORS 516.030. Its particular regulatory duties are in ORS Chapter 517. This chapter includes the provisions for reclamation of mining lands in ORS 517.750 to 517.951.

Nothing in these provisions provide for exclusive power to regulate any aspect of mining.

Except for the exempt operations described in ORS 517.750(15), no mining shall occur without a DOGAMI permit. A permit requires an approved reclamation plan. ORS 517.790(2).

The Department's administrative rules in OAR 632-30-005 to 632-30-060 display considerable deference to local regulations. The purpose clause notes that local permits may be required and that a DOGAMI permit does not constitute authorization to proceed without approval of other agencies. OAR 632-30-005(3).

The Department must notify affected local governments when a completed application for a mining permit has been filed. The notice must state that if a local zoning or plan permit is required, the local government may request a delay

in the Department's final decision. OAR 632-30-030(1)(c). If a local government asks for such a delay, a permit decision will be delayed no more than 165 days after the land use application is made to the local government. OAR 632-30-030(2)(a).

Any conditions or requirements imposed in a DOGAMI permit must be compatible with the requirements and conditions of the local land use plan and permit, including conditions established to comply with Goal 5. OAR 632-30-030(3)(b). Conflicts between local permit conditions and DOGAMI permit conditions may be addressed in the Department's dispute resolution process. Id.

These rules demonstrate an aggregate mining approval process that may require permits from several agencies. The preeminent status of most state law would control in the event of actual conflict. That is, a local permit cannot require action that would violate provisions of a state law or lawful regulation. This does not mean that local ordinances or permit conditions cannot impose more strict requirements than required by state law.

A copy of DOGAMI's administrative rules concerning mining reclamation are attached. If you have a further question, please let me know.

ENDATAACOUNSELAWPDATATVEB475JLD.MEMJm

RECEIVED
SEP 22 1994

Multnomah County
Zoning Division