

# Memorandum

## Comprehensive Plan Update

October 22, 2015

**To:** Air Land Water Wildlife and Hazards (ALWWH) Subcommittee  
**From:** Kevin Cook, Multnomah County Planner  
**Re:** Grading and Fills in Resource Zones

### OVERVIEW

The issue of the importation of large volumes of fill to resource zoned<sup>1</sup> sites was raised in the Transportation Subcommittee and separately by individual CAC members and community members to staff. This memo summarizes the issue and proposes a policy for consideration by the ALWWH Subcommittee.

### THE ISSUE:

Over the years, there have been numerous instances of large volumes of fill dirt being imported to resource zoned lands. Oftentimes the source of the fill is an urban site being prepared for development and excavation businesses typically seek to minimize the cost for disposal of excavated material and will pay willing land owners to receive excess fill. Farmers will sometimes accept a certain amount of fill to make an area of the farm more conducive to growing crops by making the land better drained and more level, and/or by placing good topsoil on top of less productive soil.

The County Grading and Erosion Control (GEC) code includes exemptions from obtaining a GEC permit. One of the exemptions is for "Routine agricultural management practices." The problem arises when property owners receiving fill claim the exemption even though the volume and extent of the fill suggest this may not be the case. Meanwhile, County staff may struggle with the exact meaning of 'routine agricultural management practices' due to a lack of a clear definition and/or related standards.

### Related Issues:

#### 1. Large Fills:

County Code defines a large fill as, 'The addition of more than 5,000 cubic yards of material to a site' (MCC 33.0005). Large fills are only allowed in the Multiple Use Agriculture – 20 (MUA-20) and Rural Residential (RR) zones subject to approval of a Conditional Use permit. Because a large fill is only permitted in MUA-20 and RR zones all other zones can only import up to 5,000 cubic yards of material. Staff notes that it

---

<sup>1</sup> Resource zones are Exclusive Farm Use (EFU) and Commercial Forest Use (CFU).

would be helpful to explicitly state the 5,000 cubic yard maximum for all zones other than MUA-20 and RR and clarify that the total is cumulative and does not permit multiple projects that individually account for less than the maximum volume but collectively would exceed it. Projects involving less than 5,000 cubic yards of fill are still subject to the Grading and Erosion Control or Hillside Development standards.

2. Issues related to grading and fill have also arisen from other exemptions in the GEC code – namely the exemption for ‘forest practices’ and the exemption for ‘residential gardening and landscape maintenance [located at least 100 ft. from a stream or wetland]’.

## STAFF PROPOSAL:

### PROPOSED POLICIES

#### **Topsoil Policy:**

In order to verify importation of agricultural topsoil, amend the Zoning Code to include verification standards.

#### **Strategies:**

When amending the code consider the following:

1. Existing conditions and soil types.
2. Review thresholds.
3. Review the Grading and Erosion Control submittal requirements and the Large Fills submittal requirements when considering application submittal requirements for agricultural topsoil reviews. Additionally applications should include the proposed location, extent, volume, depth, material and soil type, timing of the project from start to finish and a farm management plan demonstrating how the topsoil will be employed in conjunction with farm use (farm use as defined in ORS 215).
4. Concurrence from experts from agencies such as, but not limited to, the Oregon Department of Agriculture and the local Soil and Water Conservation Service.
5. Grading and fill material used for re-contouring or leveling agricultural sites should not be reviewed as a topsoil project and should continue to be reviewed under applicable Grading and Erosion Control standards or Hillside Development standards.

#### **Fill Limits Policy:**

Consider amending the Zoning Code to clarify that in all zones except for the MUA-20 and RR zones, a total cumulative limit of 5,000 cubic yards of fill per each Lot of Record is allowed. Large Fills exceeding 5,000 cubic yards are only permitted in the MUA-20 and RR zones subject to approval of a Conditional Use permit. Consider amending the Zoning Code to clarify that Large Fills must be in conjunction to an approved use.

## **GEC Exemptions Policy:**

Consider Zoning code amendments that define and clarify the exemptions to the Grading and Erosion Control permit requirements.

### **Strategies:**

1. Consider adding thresholds, standards and definitions to the residential gardening and landscape maintenance exemption.
2. Consider verification thresholds and a concurrence requirement for grading and fill projects that are conducted as part of a Forest Practices project.

## **RELEVANT COUNTY CODES AND STATE STATUTES**

**Note:** Highlighting added by staff for emphasis.

### **MULTNOMAH COUNTY CODE:**

#### **§ 33.0005 DEFINITIONS.**

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

Large Fill – The addition of more than 5,000 cubic yards of material to a site

§ 33.2600 EFU- PURPOSE The purposes of the Exclusive Farm Use District are to preserve and maintain agricultural lands for farm use consistent with existing and future needs for agricultural products, forests and open spaces; to conserve and protect scenic and wildlife resources, to maintain and improve the quality of the air, water and land resources of the County and to establish criteria and standards for farm uses and related and compatible uses which are deemed appropriate. Land within this district shall be used exclusively for farm uses as provided in the Oregon Revised Statutes Chapter 215 and the Oregon Administrative Rules Chapter 660, Division 33 as interpreted by this Exclusive Farm Use code section. One of the implementation tools to carry out the purposes of this District is a Lot of Record requirement to group into larger “Lots of Record” those contiguous parcels and lots that were in the same ownership on February 20, 1990. This requirement is in addition to all “tract” grouping requirements of state statute and rule.

#### **§ 33.2620 ALLOWED USES [in EFU]**

(A) Farm use, as defined in ORS 215.203

#### **§ 33.2610 DEFINITIONS**

High-value farm land means land in a tract composed predominately of soils that are: (1) Irrigated and classified prime, unique, Class I or Class II; or (2) Not irrigated and classified

prime, unique, Class I or Class II; or (3) Willamette Valley Soils in Class III or IV including: (a) Subclassification IIIe specifically, Burlington, Cascade, Cornelius, Latourell, Multnomah, Powell, Quatama; (b) Subclassification IIIw specifically, Cornelius; (c) Subclassification IVe, specifically, Cornelius, Latourell, Powell, and Quatama.

MUA-20

#### § 33.2830 CONDITIONAL USES

(D) Large Fills as provided for in MCC 33.6700 through 33.6720.

RR

#### § 33.3130 CONDITIONAL USES

(D) Large Fills as provided for in MCC 33.6700 through 33.6720.

#### LARGE FILLS

#### § 33.6700- PURPOSES

The purpose of the Large Fills section is to address the need for large fill sites in the unincorporated area of Multnomah County while protecting the rural character and natural resources of the County. These regulations are designed to: (A) To address the current problem of large fill areas and sites which have been largely unregulated; (B) Minimize potentially adverse effects on the public and property surrounding the fill site; (C) Acknowledge that natural resources can be impacted by large fill sites; (D) Distinguish large fills as a 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; (E) Provide clear and objective standards by which these uses will be reviewed; (F) Recognize that large fills areas should not impede future uses otherwise allowed under the Comprehensive Framework Plan; (G) To be consistent with state rules which do not currently list large fill sites as a use in farm and forest resource zones; and (H) To clarify that at the time of adoption of this ordinance, Multnomah County has not made the determination that the use of large fills would or would not be consistent with other uses allowed in the farm and forest zones due to the fact that they are not uses allowed under state rules.

§ 33.6705 EXCLUDED AREAS Large fills shall not be allowed in: (A) Areas designated SEC-s; (B) Other stream areas protected by other local, state and federal agencies; (C) Jurisdictional wetlands which have not received fill permits from The Army Corp of Engineers and Division of State Lands; or (D) 100 year floodplains.

§ 33.6710 APPLICATION INFORMATION REQUIRED An application for a large fill site shall include the following:....

## GRADING AND EROSION CONTROL

§ 29.330- PURPOSES. The purposes of the Grading and Erosion Control Subdistrict are to promote the public health, safety and general welfare, and minimize public and private losses due to earth movement hazards in specified areas and minimize erosion and related environmental damage in unincorporated areas of the county, all in accordance with ORS 215, OAR 340-41-455 for the Tualatin River Basin, and the County Comprehensive Framework Plan Policy No. 37. This subdistrict is intended to: (A) Protect human life; (B) Protect property and structures; (C) Minimize expenditures for rescue and relief efforts associated with earth movement failures; (D) Control erosion, production and transport of sediment; (E) Regulate land development actions including excavation and fills, drainage controls and protect exposed soil surfaces from erosive forces; and (F) Control stormwater discharges and protect streams, ponds, and wetlands.

FILL. (1) Any act by which earth, sand, gravel, rock or similar material is pushed, placed, dumped, stacked, pulled, transported, or in any way moved to a new location above the existing natural surface of the ground or on the top of a stripped surface, including the condition resulting there from. (2) The difference in elevation between a point on the original ground surface and the point of higher elevation on a finished grade. (3) The material used to make a fill.

§ 29.339 EXEMPT LAND USES AND ACTIVITIES. The following are exempt from the provisions of this subchapter:

(A) Test pits or borings excavated for purposes of geotechnical evaluation or septic system suitability.

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

(C) Excavations for wells

(D) Mineral extraction activities as regulated by the county zoning code.

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

(F) Routine agricultural management practices.

(G) Residential gardening and landscape maintenance at least 100 feet by horizontal measurement from the top of the bank of a watercourse, or the mean high watermark (line of vegetation) of a body of water or wetland.

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

(I) Forest practices as defined by ORS 527 (the State Forest Practices Act) and approved by the state Department of Forestry. ('90 Code § 9.40.020) (Ord. 847, passed 1996)

(J) Grading activities attributed to routine road maintenance when undertaken by an organization operating under Limit 10, Section 4d of the Endangered Species Act

§ 29.342 APPLICATION INFORMATION REQUIRED. An application for development subject to the requirements of this Subdistrict shall include two copies of the following...

OREGON REVISED STATUTES:

ORS 215.203 (2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).

... (c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.