

Memorandum

Comprehensive Plan Update

November 19, 2015

To: Community Advisory Committee
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 zoned¹ sites was addressed by the Air Land Water Wildlife and Hazards (ALWWH) Subcommittee at their October meeting. The Subcommittee reviewed and approved draft policy for consideration by the full CAC. The County attorney's office has reviewed the proposed policies and offered some suggestions for changes. The changes do not change the intent of the policies but does clarify and strengthen them. The changes are denoted by ~~strike-outs~~ for deleted text and double underline for new text. First some background.

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

¹ Resource zones are Exclusive Farm Use (EFU) and Commercial Forest Use (CFU).

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 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]’.

PROPOSED POLICIES – AS AMENDED BY STAFF:

TOPSOIL POLICY:

~~In order to verify importation of agricultural topsoil, amend the Zoning Code to include verification standards for legitimate agricultural need.~~ Establish standards for qualifying topsoil fill as a routine agricultural management practice exempt from County review requirements.

Strategies Strategy:

~~When amending the code consider the following.~~ 1. The following shall be considered for inclusion in code amendments pertaining to topsoil fill as an agricultural management practice:

4. a. Existing conditions and soil types.
2. b. Review thresholds.
3. c. 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. d. The Planning Director may require 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. e. 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. Establish limits for fill that does not qualify as an agricultural management practice and is subject to County review requirements.~~

Strategies:

1. Amend 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.

2. Amend the Zoning Code to clarify that Large Fills must be in conjunction to an approved use.

GRADING AND EROSION CONTROL EXEMPTIONS POLICY:

~~Consider Zoning Code amendments that define and clarify the exemptions to the Grading and Erosion Control permit requirements. Establish clearly defined 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.