

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Repealing the )  
Columbia County Surface Mining ) ORDINANCE NO. 2009-5  
Ordinance )

The Board of County Commissioners for Columbia County, Oregon, ordains as follows:

SECTION 1.            TITLE.

This Ordinance shall be known as Ordinance No. 2009-4.

SECTION 2.            AUTHORITY.

This Ordinance is adopted pursuant to ORS 203.035, and ORS 517.780.

SECTION 3.            PURPOSE.

The purpose of this Ordinance is to repeal the Columbia County Surface Mining Ordinance ("SMO") in its entirety.

SECTION 4.            FINDINGS.

The Board of County Commissioners adopts the findings of fact and conclusions of law contained in the Staff Report of the Department of Land Development Services dated July 18, 2009, a copy of which is attached hereto as Attachment A, and is incorporated herein by this reference.

SECTION 5.            HISTORY.

The current SMO was adopted by Ordinance No. 90-11 on June 20, 1990. It was amended by Ordinance Nos. 92-8, 95-8, 96-1, 96-2, 2001-3 and 2001-4. Prior to that, the Columbia County Surface Mining Land Reclamation Act of June 28, 1972 controlled.

SECTION 6.            SURFACE MINING ORDINANCE REPEALED.

The Columbia County Surface Mining Ordinance, Ordinance No. 90-11, as amended by Ordinance Nos. 92-8, 95-8, 96-1, 96-2, 2001-3 and 2001-4, is hereby repealed.

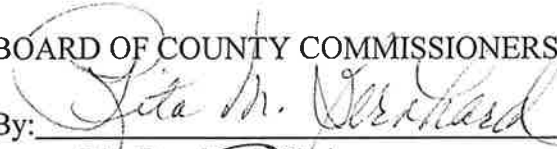
SECTION 7.            EFFECT.

Pursuant to ORS 517.780, regulation of surface mining in the County shall continue uninterrupted under the regulatory authority of the Oregon Department of Geology and Mineral Industries pursuant to ORS 517.702 to ORS 517.989, as amended by Senate Bill 191 (2009).

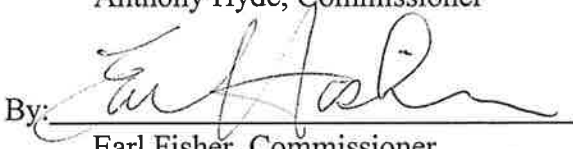
SECTION 8.            EMERGENCY.

This ordinance being immediately necessary to maintain the public health, safety and welfare, an emergency is hereby declared to exist and this ordinance shall therefore take effect on September 1, 2009.

BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON

By:   
Rita Bernhard, Chair

By:   
Anthony Hyde, Commissioner

By:   
Earl Fisher, Commissioner

DATED this 1<sup>st</sup> day of July, 2009.

Approved as to Form

By:   
Office of County Counsel

Recording Secretary

By:   
Jan Greenhalgh, Recording Secretary

First Reading:            7-1-09

Second Reading:        7-1-09

Effective Date:           7-1-09

# BOARD COMMUNICATION

FROM THE LAND DEVELOPMENT SERVICES DEPARTMENT

MEETING DATE: July 1, 2009 Regular Meeting

**TO:** BOARD OF COUNTY COMMISSIONERS

**FROM:** Todd Dugdale, Director of Land Development Services

**SUBJECT:** PUBLIC HEARING  
PA 07-04 Repeal of Surface Mining Ordinance

COLUMBIA COUNTY

**DATE:** June 25, 2009

JUN 25 2009

COUNTY COUNSEL

## SUMMARY:

Columbia County is the only County with its own mined land reclamation program per ORS 517.80(1). However, this statute further provides that "...if such zoning laws or ordinances are repealed on or after July 1, 1972.." the State mining statutes(ORS 517.702 to 517.989 and rules and regulation adopted pursuant to the these statutes will control. The State mining rules are contained in the State Mined Land Reclamation Act in OAR 632 Division 30.

The Board of Commissioners initiated a legislative plan amendment to repeal the Columbia County Surface Mining Ordinance (SMO) on June 13, 2007. At DOGAMI's request the County has waited until special legislation could be enacted to address how Columbia County's mines would be treated under DOGAMI's administration.

Senate Bill 191 enacted into law in the 2009 State Legislative Session provides specific guidance as to how Columbia County's mining permits and limited exemptions will transition to DOGAMI jurisdiction upon County repeal of its SMO. Under the new law County Limited Exempt Mine sites will retain their exempt status under DOGAMI.

## ATTACHMENTS:

1. Staff Report dated June 18, 2009.
2. Planning Commission Recommendation

## RECOMMENDATION:

### Planning Commission Recommendation:

At their meeting on August 20,2007, the Planning Commission recommended the Board not repeal the SMO until an economic study has been done determining its impact and benefit to the County.

### Surface Mining Advisory Committee:

The Surface Mining Advisory Committee has recommended that the SMO be repealed provided that the Limited Exempt Mine sites are recognized under DOGAMI.

### Staff Recommendation:

Based on the findings in the attached Staff Report dated June 18, 2009, Staff recommends repeal of the SMO effective September 1, 2009.

**BOARD OF COMMISSIONERS**  
STAFF REPORT  
June 18, 2009  
"SURFACE MINING ORDINANCE REPEAL"

FILE NUMBER: PA 07-04

APPLICANT: Land Development Services  
County Courthouse  
St. Helens, Oregon 97051

REQUEST: Zoning Text Amendment  
Repeal of the Columbia County Surface Mining  
Ordinance(Ordinance 90-11 As Amended)

**BACKGROUND:**

The Surface Mining Ordinance(SMO) regulates surface mining operations for the County's 25 surface mines. Columbia County is the only County in the State of Oregon with its own mined land reclamation program. ORS 517.780(1) states that "The provisions of ORS 517.702 to 517.989(State Mined Land Reclamation Act) and the rules and regulations adopted thereunder shall not supersede any zoning laws or ordinances in effect on July 1, 1972." The current Columbia County Surface Mining Ordinance(Ordinance 90-11 as amended) amended the 1972 Columbia County Surface Mining Ordinance which was in effect on July 1, 1972. ORS 517.780(1) further provides "However, if such zoning laws or ordinances are repealed on or after July 1, 1972, the provisions of ORS 517.702-517.989 and the rules and regulations adopted thereunder shall be controlling. The governing board of the State Department of Geology and Mineral Industries may adopt rules and regulations with respect to matters presently covered by such zoning laws and ordinances."

On June 13, 2007, the Columbia County Board of Commissioners initiated a legislative Plan Amendment to repeal the Columbia County Surface Mining Ordinance(Ordinance 90-11 as amended). If the SMO is repealed Columbia County's surface mining operating permit program would cease and regulation of surface mining operations would revert to the jurisdiction of the State Department of Geology and Mineral Industries(DOGAMI). DOGAMI currently administers the County's Surface Mining permit program under contract.

On August 8, 2007, the Board of Commissioners met with representatives of DOGAMI to discuss the Board's intent to repeal the County's Surface Mining Ordinance. DOGAMI asked that the effective date for the repeal of the County's Surface Mining Ordinance be set to allow some time for DOGAMI to complete a legal analysis of transition issues. Most important among the transition issues which needs to be addressed by DOGAMI is how the County's seven

Limited Exempt mine sites will be regulated under DOGAMI's administration (**Attachment 1**). In particular, DOGAMI needed to decide how Limited Exempt mine sites would be treated under state law. The Board expressed the intent to proceed with the ordinance repeal process; receive a timely recommendation from the Planning Commission, and work with DOGAMI according to a mutually agreeable time schedule to complete the legal analysis needed and related steps necessary for a smooth transition.

DOGAMI asked that the County not repeal the County Surface Mining Ordinance until special legislation could be enacted addressing how Columbia County mines with operating permits and limited exemption certificates would transition to DOGAMI administration. DOGAMI conducted a legal analysis of transition issues and drafted legislation addressing these issues in Senate Bill 191 (**Attachment2**). Senate Bill 191 became law on June 17, 2009.

#### **APPLICABLE CRITERIA:**

##### **Process Criteria:**

ORS 197.610 45 Day Notice to DLCD

ORS 215.223 Procedure for Adopting Zoning Ordinances

CCZO Section 1606, "Legislative Hearing:"

CCZO Section 1611, "Notice of Legislative Hearing".

##### **Substantive Criteria:**

CCZO Section 1607, "Consistency with the Comprehensive Plan:"

#### **FINDINGS:**

##### **1. Legislative Hearing Requirements**

This request is being processed under ORS 197.610, ORS 215.223, Sections 1606 and 1611 of the Zoning Ordinance.

**ORS 197.610** Local government notice of proposed amendment or new regulation; exceptions; report to commission. (1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing. The director shall notify persons who have requested notice that the proposal is pending.

**ORS 215.223** Procedure for adopting zoning ordinances; notice. (1) No zoning ordinance enacted by the county governing body may have legal effect unless prior to its enactment the governing body or the planning commission conducts one or more public hearings on the ordinance and unless 10 days' advance public notice of each hearing is published in a newspaper of general circulation in the county or, in case the ordinance applies to only a part of the county, is so published in that part of the county.

"1606 **Legislative Hearing:** Requests to amend the text of the Zoning Ordinance...are

legislative hearings. Legislative hearings shall be conducted in accordance with the following procedures:

- .1 A legislative amendment to the Zoning Ordinance Text or Map may be initiated at the request of the Board of Commissioners, a majority of the Commission, or the Director, or any citizen of the County may petition the Commission for such a change."
- .2 Notice of a Legislative Hearing shall be published at least twice, 1 week apart in newspapers of general circulation in Columbia County. The last of these notices shall be published no less than 10 calendar days prior to the Legislative Hearing. The mailing of notice to individual property owners is not required but shall be done if ordered by the Board of Commissioners."

" **1611 Notice of Legislative Hearing:** The notice of a legislative hearing shall contain the following items:

- .1 Date, time and place of the hearing;
- .2 A description of the area to be rezoned or the changes to the text;
- .3 Copies of the statement for the proposed changes are available in the Planning Department. These proposed changes may be amended at the public hearing;
- .4 Interested parties may appear and be heard;
- .5 Hearings will be held in accordance with the provisions of the Zoning Ordinance."

### **FINDING 1: LEGISLATIVE HEARING REQUIREMENTS**

**DLCD 45 DAY NOTICE:** Notice was sent to DLCD on June 27, 2007 for the first evidentiary hearing held by the Planning Commission on August 20, 2007. The County received no comments from DLCD.

**PLANNING COMMISSION HEARING:** A notice of hearing containing the content required by CCZO section 1611 was published in the Chronicle, Spotlight, and Longview Daily News on August 1, 2007 and August 8, 2007, both dates of which are 10 days prior to the Planning Commission hearing date of August 20, 2007.

**BOARD OF COMMISSIONERS HEARING:** A notice of the Board of Commissioner's hearing containing the content required by CCZO Section 1611 was published in the Chronicle on June 17, 2009 at least 10 days prior to the Board of Commissioners hearing date.

### **2. Consistency with Applicable Goals and Policies of the Comprehensive Plan**

The request must be found to be consistent with applicable goals and policies of the Columbia County Comprehensive Plan as follows:

Columbia County Zoning Ordinance:

"1607 **Consistency with the Comprehensive Plan:** All amendments to the Zoning Ordinance Text .... shall be consistent with the Comprehensive Plan Text and Maps.

**FINDING 2: CONSISTENCY WITH COMPREHENSIVE PLAN**

The goals and policies of the Columbia County Comprehensive Plan do not apply to the repeal of the Surface Mining Ordinance. The Surface Mining Ordinance regulates only surface mining operations and reclamation once surface mining has been authorized under provisions of the Comprehensive Plan and Zoning Ordinance . Comprehensive Plan compliance is required during the Goal 5 Post Acknowledgment Plan amendment process to allow surface mining(CCZO Section 1030); permitted uses and development standards for surface mining uses(CCZO Section 1040) and Conditional Use permits to allow surface mining in certain zoning districts(CCZO Section 1503). The repeal of the Surface Mining Ordinance will not affect the County's authority or process for authorizing surface mining use contained in the Columbia County Zoning Ordinance. The authority for the regulation of surface mining operations and reclamation rests with DOGAMI for all other Counties in the State. The repeal of Columbia County's operations and reclamation ordinance will mean that DOGAMI will assume this function consistent with State Law.

**ATTACHMENTS:**

1. Limited Exempt Mine Sites
2. Reasons for Repeal: Staff Listing
3. Senate Bill 191.

**RECOMMENDATION**

**Surface Mining Advisory Committee**

The Committee has discussed possible transfer of the operating permit program to DOGAMI on several occasions over the past five years. They have recommended repealing the County Surface Mining Ordinance and turning the program over to DOGAMI provided that DOGAMI recognize the exempt status of Limited Exempt Mine sites.

**Planning Commission**

At their meeting on August 20, 2007 the Planning Commission recommended that the Surface Mining Ordinance not be repealed until the County evaluated the economic costs and benefits of doing so.

**Staff Recommendation:**

Based on the above findings and the listing of reasons for repeal in **Attachment 3**, the staff recommends approval of the proposed zoning amendment repealing the Columbia County Surface Mining Ordinance with an effective date for the repeal to be September 1, 2009.

**Columbia County Surface Mine Summary  
Limited Exempt Mine Sites**

Site Information		Location	Acres	Permit Type
1	<b>05-0005</b> Glacier Northwest Santosh Pit, Pits A & B	T4N, R1W Sec 29, 30, 31, 32 Tax Lot 100	202	Limited Exemption Certificate
2	<b>05-0012</b> Bascom Pacific, LLC Oak Ranch Pit	T5N, R3W, Sec 5 Tax Lot 300, 301	13.5	Limited Exemption Certificate
3	<b>05-0015</b> Scappoose Sand & Gravel Scappoose Site	T3N, R2W, Sec 1 Tax Lot 600, 601 Sec 12 Tax Lot 100, 101	103	Limited Exemption Certificate
4	<b>05-0018</b> Morse Bros and JH&D	T5N, R1W, Sec 33 Tax Lot 300	89.6	Limited Exemption Certificate
5	<b>05-0061</b> Clatskanie Rock Products Clatskanie Site (Portion Mined Prior to 7/1/72)	T7N, R4W, Sec 8 Tax Lot 300	5	Limited Exemption Certificate
6	<b>05-0068</b> Heller & Heller Construction Neuman Pit – Fall Creek Rd (Portion Mined Prior to 7/1/72)	T4N, R2W, Sec 28 Tax Lot 900	9.83	Limited Exemption Certificate
7	<b>05-0070</b> Tide Creek Rock Tide Creek Pit	T6N, R2W, Sec 36 Portions of Tax Lot 500	11.65 per survey 5/8/01	Limited Exemption Certificate



**Enrolled**  
**Senate Bill 191**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for State Department of Geology and Mineral Industries)

CHAPTER .....

AN ACT

Relating to surface mining operations; amending ORS 517.770, 517.775 and 517.780; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 517.770 is amended to read:

517.770. (1) The following mining operations are exempt from the reclamation requirements set forth in ORS 517.702 to 517.989:

(a) Lands within the surfaces and contours of surface mines in existence on July 1, 1972, or vertical extensions of those surfaces and contours, provided that the State Department of Geology and Mineral Industries [issues] issued a certificate of exemption to the mining operation on or before October 31, 2000[;].

(b) Lands within the surfaces and contours of surface mines in existence on July 1, 1972, or vertical extensions of those surfaces and contours, provided that:

(A) The surface mining operations at the site were allowed under a comparable certificate of exemption that was issued by a county and current on the date of repeal of a county zoning law or ordinance described in ORS 517.780 (1); and

(B) The landowner or operator applies for and receives a certificate of exemption from the department. An application for a certificate of exemption must be filed with the department within 90 days after the date the county's repeal of a zoning law or ordinance becomes effective. If the department does not approve or disapprove the application within 90 days after the date the application is filed with the department, the application will be deemed to be approved. [and]

[(b)] (c) Lands within the surfaces and contours of surface mining operations that are owned or operated by a person that, on July 1, 1972, was a party to a surface mining contract that was valid on January 1, 1971, provided that the department issued a certificate of exemption to the mining operation on or before September 20, 1985.

(2) A certificate of exemption terminates if the landowner or operator does not renew the certificate annually.

**SECTION 2.** ORS 517.775 is amended to read:

517.775. Notwithstanding the provisions of ORS 517.770:

(1) Any landowner or operator conducting surface mining on July 1, 1972, shall pay the permit fee as provided in ORS 517.800; and

(2) The State Department of Geology and Mineral Industries shall require the landowner or operator to complete erosion stabilization upon completion of mining at [the limited exempt site] a mining operation exempt from reclamation under ORS 517.770.

**SECTION 3.** ORS 517.780 is amended to read:

517.780. (1)(a) The provisions of ORS 517.702 to 517.989 and the rules and regulations adopted thereunder do not supersede any county zoning laws or ordinances in effect on July 1, 1972. However, if the county zoning laws or ordinances are repealed on or after July 1, 1972, the provisions of ORS 517.702 to 517.989 and the rules and regulations adopted thereunder are controlling. The governing board of the State Department of Geology and Mineral Industries may adopt rules and regulations with respect to matters covered by county zoning laws and ordinances in effect on July 1, 1972.

(b) If the county zoning laws or ordinances specified in paragraph (a) of this subsection are repealed by a county:

(A) The department may allow a surface mining operation that previously operated under a valid county operating permit and reclamation plan to continue to operate for a period not to exceed one year if the landowner or operator applies for an operating permit under ORS 517.790 within 60 days after the date the county's repeal of the zoning laws or ordinances becomes effective, pays all applicable fees to the department and submits a bond or security to the department as required by ORS 517.810. Pending issuance of an operating permit and approval of a reclamation plan by the department, the county permit is deemed to remain in effect and is enforceable by the department.

(B) The department, in issuing a permit and approving a reclamation plan for a surface mining operation that previously operated under a valid county operating permit as described in paragraph (a) of this subsection, may incorporate any provisions from the county operating permit into the permit issued by the department and the reclamation plan approved by the department if the department determines that the provisions provide adequate protection of the public health, safety and welfare and the environment.

(C) The department may issue a certificate of exemption from reclamation requirements as described in ORS 517.770 (1)(b).

(2) City or county operated surface mining operations that sell less than 5,000 cubic yards of minerals within a period of 12 consecutive calendar months are exempt from the state mining permit requirements of ORS 517.702 to 517.989 if the city or county adopts an ordinance that includes a general reclamation scheme establishing the means and methods of achieving reclamation for city or county operated surface mining sites exempted from the state permit requirements by this subsection.

**SECTION 4.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

## **REASONS TO REPEAL THE COLUMBIA COUNTY SURFACE MINING ORDINANCE**

### **1. Regulation of Mining Operations Is Not Part of the County Mission/DOGAMI Has It As Its Core Mission**

In a time of dwindling resources for County government, Departments have been consolidated and cuts in key programs have had to be made. Land Development Services, for example has taken on two major programs in as many years, Animal Control and County Building Maintenance Services. The SM Operating Permit Program is not part of County's core mission. It is an anomaly. Mining operations in all other Counties are overseen by a State agency whose core mission is to regulate mining operations.

### **2. Takes County Resources Away for More Important Programs/Tasks**

The SM Operating Permit Program, though supported in part by Depletion Fees and administration is contracted out, continues to unnecessarily absorb the time and resources of core County departments, particularly LDS, County Counsel and the Board of Commissioners.

### **3. County Administration of Program Burdened by Land Use Procedures**

Only the County administers SM Operating Permit program and only the County is required to follow unnecessarily burdensome land use procedures for all mining operations actions, even permit renewals. This is an unnecessary burden both for the County and for miners ie Siercks Road and SS&G renewals. Miners will not be burdened by land use procedures under DOGAMI.

### **4. County Ordinance is Vague/Administration Inconsistent**

Vesting language in the County's ordinance, which is absent in State Limited Exempt rules, is vague and susceptible to inconsistent application. The State recognizes only actual mining disturbance in 1972 as the limits of those mines exempt from mining rules. They further limit Limited Exempt status to only those mines that were granted it before October 31, 2000. Under County's LE language mining can be expanded beyond that actually mined in 1972 with no applicable rules governing mining or reclamation. DOGAMI will provide consistent and professional administration of laws applicable throughout the State of Oregon.

### **5. Public Participation Is Provided and County Retains Control The Location and Siting of New Surface Mines and the Enforcement of Land Use Conditions For Existing Mines.**

The Count retains land use control over where and how mines are sited. The zoning and siting of new mines are subjected to an extensive public review and County approval process. Existing mines are subject to conditions previously imposed on them through the land use process. Under its rules DOGAMI must honor and carry out local land use restrictions on Surface Mining imposed as conditions on surface mining land use permits.

### **6. County Has Experience in Working With DOGAMI**

The County has contracted with DOGAMI to administer our program. We have learned to work together and the miners have become acquainted with DOGAMI staff. The surface miners and SMAC favor DOGAMI administration of the program provided the County's Limited Exempt mines will be recognized by DOGAMI. Special legislation has been passed(SB 191) to recognize Columbia County's Limited Exempt mines under DOGAMI administration.

### **7. The Natural Resource Depletion Fee Program Remains In Tact**

The DFO will be unaffected by the transfer of the SM operations program to DOGAMI. Under terms of the ordinance one-third of the \$.15/ton is allocated to SM administration. The administrative portion of the fee will continue to be used to offset costs over and above application fees for SM land use process and for administration of the Depletion Fee program. Cost savings from transferring the Operating Program to DOGAMI will mean that, potentially, a larger proportion of Depletion fees will go to the Road Department for needed County road maintenance.

**BEFORE THE  
COLUMBIA COUNTY PLANNING COMMISSION  
ST. HELENS, OREGON**

In the matter of a Legislative Amendment     )  
to Repeal the Columbia County Surface     )  
Mining Ordinance, Ordinance No, 90-11     )  
As Amended     )

**FINAL ORDER PA 07-04  
RECOMMENDATION**

This matter came before the Columbia County Planning Commission on the application of Land Development Services for an **Ordinance Text Amendment** consisting of repealing the Columbia County Surface Mining Ordinance. If the Surface Mining Ordinance is repealed Columbia County's surface mining operating permit program would cease and regulation of surface mining operations would revert to the jurisdiction of the State Department of Geology and Mineral Industries (DOGAMI).

Notification of this land use application was sent to all affected Columbia County Citizens Planning Advisory Committees, and notice of the Planning Commission hearing was published twice in the three local newspapers of record. A Public Hearing was held on August 20, 2007 where the Planning Commission heard testimony from the interested parties and considered written materials including the Staff Report.

After due consideration, the Columbia County Planning Commission hereby makes the following **RECOMMENDATION** to the Board of Commissioners:

The Planning Commission recommends that the Board not repeal the Surface Mining Ordinance until an Economic Study has been done determining it's impact and benefit to the County.

**COLUMBIA COUNTY PLANNING COMMISSION**