

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending the )  
"Columbia County Natural Resources )  
Depletion Fee Ordinance" and the ) ORDINANCE NO. 96-2  
"Columbia County Surface Mining )  
Ordinance" )  
\_\_\_\_\_ )

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

SECTION 1. TITLE.

This ordinance shall be known as Ordinance No. 96-2. Exhibit "A", which is attached hereto and incorporated herein by this reference, shall be known as the "Columbia County Natural Resources Depletion Fee Ordinance".

SECTION 2. AUTHORITY.

This ordinance is adopted pursuant to ORS 203.035 and 203.055.

SECTION 3. PURPOSE.

The purpose of this ordinance is to refer to the electors of Columbia County amendments to the "Columbia County Natural Resources Depletion Fee Ordinance" as follows:

- a. The depletion fee for severing and depleting natural resources from the soils and waters of Columbia County would be increased from \$0.10 per ton to \$0.15 per ton. The additional fee would be used to reimburse Columbia County for the cost of regulating surface mining in the County. Excess revenues would be dedicated to construction, reconstruction, improvement, repair and maintenance of the Columbia County road system.
- b. The depletion fee would be extended to natural resources severed outside Columbia County which are transported into the County for commercial, construction or industrial use within the County.
- c. The depletion fee would be extended to dredge spoils which are deposited within or transported into the County.

- d. The depletion fee would no longer operate as a lien on real property if unpaid.

If the amendments to the "Columbia County Natural Resources Depletion Fee Ordinance" are approved by the electors of Columbia County, that portion of the "Columbia County Surface Mining Ordinance" which provides for a \$0.02 per ton regulatory fee on minerals would be repealed.

SECTION 4. AMENDMENT; REFERRAL.

- a. The "Columbia County Natural Resources Depletion Fee Ordinance", as adopted by the Board of County Commissioners on September 5, 1990, as approved by the electors of Columbia County, Oregon, voting at the November 6, 1990, general election, and as amended by Ordinance No. 91-3 on March 27, 1991, is amended to read as shown on Exhibit "A", which is attached hereto and incorporated herein by this reference, subject to the approval of the electors voting at the biennial general election to be held on November 5, 1996.
- b. The "Columbia County Natural Resources Depletion Fee Ordinance", as amended by Section 4.a above, is referred to the electors of Columbia County at the biennial general election to be held on November 5, 1996.

SECTION 5. AMENDMENT OF SURFACE MINING ORDINANCE.

If the electors voting at the biennial general election to be held on November 5, 1996, approve the "Columbia County Natural Resources Depletion Ordinance" as amended herein, Section 5.2 of the "Columbia County Surface Mining Ordinance" shall be amended to read as shown on Exhibit "B", which is attached hereto and incorporated herein by this reference.

SECTION 6. REPEALER; SAVINGS CLAUSE.

If the electors voting at the biennial general election to be held on November 5, 1996, do not approve the "Columbia County Natural Resources Depletion Ordinance" as amended herein, this ordinance, Ordinance No. 96-2, shall be repealed automatically effective as of November 15, 1996. In case of such repeal, the "Columbia County Natural Resources Depletion Ordinance", as adopted by the Board of County Commissioners on September 5, 1990, as approved by the electors of Columbia County, Oregon, voting at the November 6, 1990, general election, and as amended by Ordinance No.

91-3 on March 27, 1991, shall continue in effect uninterrupted as if this ordinance, Ordinance No. 96-2, had never been adopted.

SECTION 7. SEVERABILITY.

If for any reason any court of competent jurisdiction holds any portion of this ordinance invalid, or any portion of the attached Exhibits "A" or "B", such portion shall be deemed a separate, distinct and independent portion, and any such holdings shall not affect the validity of the remaining portions thereof.

SECTION 8. EMERGENCY; EFFECTIVE DATE.

This ordinance being immediately necessary to maintain the public health, safety and welfare, an emergency is declared to exist and this ordinance shall take effect upon its adoption. If Exhibit "A" is approved by the electors at the biennial general election to be held on November 5, 1996, Exhibit "A", and the amendment to Section 5.2 of the "Columbia County Surface Mining Ordinance" as shown in Exhibit "B", shall take effect on January 1, 1997.

DATED this 4th day of September, 1996.

Approved as to form by

By: John Klug  
Office of County Counsel

Attest:

By: Jan Sunnhalgh  
Recording Secretary

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: William R. McDonald  
Chairman

By: Carole H. Smith  
Commissioner

By: Joe E. Gault  
Commissioner

First Reading: 3-20-96  
Second Reading: 9-4-96  
Effective Date: 9-4-96

EXHIBIT "A"

COLUMBIA COUNTY  
NATURAL RESOURCES DEPLETION FEE ORDINANCE

Adopted by Ordinance No. 90-20 on September 5, 1990

Approved by the Electors of Columbia County  
at the General Election of November 6, 1990

Amended by Ordinance No. 91-3 on March 27, 1991

Amended by Ordinance No. 96-2 on September 4, 1996

Referred to the Electors of Columbia County  
at the Biennial General Election of November 5, 1996

COLUMBIA COUNTY  
NATURAL RESOURCES DEPLETION FEE ORDINANCE

SECTION 1. TITLE.

This ordinance shall be known as the "Columbia County Natural Resources Depletion Fee Ordinance", and shall be cited herein as "this ordinance".

[Enacted by Ordinance No. 90-20.]

SECTION 2. PURPOSE.

~~A. Except as provided in subsection B of this section, revenue from the fee levied on the depletion of natural resources, as defined in this ordinance, shall be used for the construction, reconstruction, improvement, repair and maintenance of the Columbia County road system.~~

~~B. Revenues described in subsection A of this section may also be used for the cost of collection of this fee and other costs of administration.~~

The purpose of this ordinance is to provide revenues for the construction, reconstruction, improvement, repair and maintenance of the Columbia County road system and to reimburse the County for the cost of regulating surface mining.

[En. Ord. 90-20; Amended by Ordinance No. 91-3; Am. Ord. 96-2.]

SECTION 3. DEFINITIONS.

The definitions of words used in this ordinance shall be as follows:

- A. "Administrator" means the person designated by the Board to administer the provisions of this ordinance.
- B. "Board" means the Board of County Commissioners for Columbia County.
- C. "Severing" or "severed" **and "depleting" or "depleted"** means the physical removal of the natural resource from the ~~earth~~ **soils** or waters of ~~Columbia County~~ **the earth** by any means.
- D. "Natural resource" means coal, clay, soil, stone, shale, sand, gravel, metallic ore, aggregate and any other solid material

or substance ~~excavated, extracted or removed~~ **severed and depleted** or proposed to be ~~excavated, extracted or removed for commercial, construction or industrial use~~ **severed and depleted** from natural deposits or **dredge spoils** located in this county **for commercial, construction or industrial use anywhere, or from natural deposits or dredge spoils located outside of this county and transported into this county for commercial, construction or industrial use within this county.** For purposes of this ordinance, "natural resources" does not include natural gas.

- E. "Operator" means any individual (including employers, employees, agents, permittees, contractors, subcontractors, lessors and lessees), partnership, joint venture, association, public or private corporation, political subdivision, agency, board or department of this state, any municipality, firm, receiver, trust, estate or any other legal entity whatsoever, that is or has engaged in, or proposes or attempts to engage in the business of severing and ~~or~~ **depleting or transporting** natural resources ~~in Columbia County for sale or use.~~ In instances where contracts, either oral or written, are entered into whereby persons, organizations or businesses are engaged in the business of severing and ~~or~~ **depleting or transporting** a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or otherwise has an economic interest in the natural resource is the operator.
- F. "Premises" means the yard, pit, mine or other area in the possession or control of the operator and from which ~~he or she~~ **the operator** engages in severing ~~or extracting~~ (physical removal) **and depleting** of a natural resource.
- G. "Related parties" means two (2) or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests.
- H. "Economic interest" for the purpose of this chapter is synonymous with the economic interest ownership required by Internal Revenue Code, Title 26 U.S.C. section 611 in effect on December 31, 1989, entitling the operator to a depletion deduction for income tax purposes with the exception that a party who only receives an arm's length royalty shall not be considered as having an economic interest.

[En. Ord. 90-20; Am. Ord. 91-3; **Am. Ord. 96-2.**]

SECTION 4. IMPOSITION OF FEE.

A. Depletion Fee.

~~(1)~~ For the privilege of severing and depleting natural resources from the soils and waters of Columbia County, operators shall pay a fee levied at the rate of \$0.10 ~~(ten cents)~~ \$0.15 (fifteen cents) per ton.

~~(2)~~ If an operator measures the natural resource severed or depleted by volume, the operator shall convert that volume into weight by using either:

~~(a)~~ The standard conversion factor of 1.5 tons per cubic yard; or

~~(b)~~ A site specific conversion factor, following a written request and substantial evidence submitted by a particular operator, and upon written approval by the Administrator.

B. Transportation Fee.

For the privilege of transporting natural resources into this county for commercial, construction or industrial use within this county, operators shall pay a fee levied at the rate of \$0.15 (fifteen cents) per ton.

C. Conversion Formula.

If an operator measures the natural resource severed or depleted by volume, the operator shall convert that volume into weight by using either:

(1) The standard conversion factor of 1.5 tons per cubic yard; or

(2) A site specific conversion factor, following a written request and substantial evidence submitted by a particular operator, and upon written approval by the Administrator.

B D. Scope.

The depletion and transportation fees shall apply to all operators severing natural resources in Columbia County, and shall

be in addition to all other fees and taxes imposed by law.  
[En. Ord. 90-20; Am. Ord. 91-3; Am. Ord. 96-2.]

SECTION 5. EFFECTIVE DATE.

The fees levied by section 4 of this ordinance shall be payable on all natural resources **depleted and severed in, or transported into**, Columbia County on or after ~~the effective date of this ordinance~~ **January 1, 1997.**

[En. Ord. 90-20; Am. Ord. 96-2.]

SECTION 6. ADMINISTRATION OF ORDINANCE.

The Board shall appoint a person to administer the provisions of this ordinance and shall delegate to that person the powers, rights, duties and authority so delegated with respect to rules, regulations, collection, refunding and administration of the fees levied under section 4 of this ordinance.

[En. Ord. 90-20.]

[SECTION 7. COLLECTION OF FEES.]

[En. Ord. 90-20; Del. Ord. 91-3.]

SECTION 8. MONTHLY REPORTING AND PAYMENT.

- A. Report and Payment. On or before the last day of the month following each calendar month, every operator, using the forms prescribed by the Administrator, shall report the weight of natural resources removed from the premises of the operator **or transported into the county** during the preceding month, and pay the amount of fees due.
- B. Returns to be Signed. Returns shall be signed by the operator required to file the return or by his or her duly authorized agent but need not be verified by oath.
- C. Information Required. Returns required under this section shall contain such information as the Administrator deems necessary for the proper administration of this ordinance.
- D. Remittance. The operator required to file the return provided under this section shall deliver the return together with a remittance of the amount of the fee due to Columbia County.



- E. Other Reporting and Payment Periods. For the purposes of facilitating the administration, payment or collection of the fees levied under this ordinance, the Administrator may permit or require returns or fee payments other than monthly. When permitted, returns for periods other than monthly shall be filed and paid in such manner as the Administrator may prescribe.
- F. Written Notice Before Change. No operator shall change the reporting system required under this section or permitted in writing by the Administrator without the prior written authorization of the Administrator.
- G. No Exceptions. A report and fee return are required for each reporting period even though there may be no natural resources sold or removed from the premises of the operator, or **transported**, during the preceding month, nor any fees due.
- H. Failure to File Reports. If any operator fails to make a report of the information required by this section within the time and manner prescribed, the Administrator shall examine the books, records and files of any such operator to ascertain the amount of such production and to compute the fee thereon as provided by this ordinance.
- I. Confidentiality. The reports and records submitted by operators in connection with the payment of the fees under this ordinance are production records exempt from public disclosure by ORS 192.501(5). Accordingly, the Board shall adopt a policy of non-disclosure of such records to preserve their confidentiality.

[En. Ord. 90-20; Am. Ord. 91-3; Am. Ord. 96-2.]

#### SECTION 9. OPERATOR REQUIRED TO KEEP RECORDS.

- A. Record keeping. Every operator liable for the reporting or payment of the fee levied by this ordinance shall keep such records, receipts, invoices, and other pertinent papers in such form as the Administrator may require.
- B. Three-year Minimum; Exception. Every such operator shall keep such records for not less than three (3) years from the making of such records unless the Administrator in writing authorizes their destruction sooner.

[En. Ord. 90-20.]

SECTION 10. DISPOSITION OF REVENUE; ADJUSTMENT.

A. Except as provided by subsections B, ~~and C~~ of this section, all revenues collected from the severance and depletion or **transportation** of natural resources under this ordinance shall be used ~~for the construction, reconstruction, improvement, repair and maintenance of the Columbia County road system as follows:~~

- (1) The first \$0.10 (ten cents) per ton shall be used exclusively for the construction, reconstruction, improvement, repair and maintenance of the Columbia County road system.
- (2) The remaining \$0.05 (five cents) per ton shall be dedicated to the regulation of surface mining in Columbia County. Legitimate expenses for the use of such fees shall include the salary of the Surface Mining Administrator, necessary staff, secretarial and clerical support, and the vehicles, supplies and equipment involved in the regulation of surface mining in Columbia County and any other expenses incurred by the County in the regulation of surface mining. The remaining five cents per ton may also be used to reimburse the County for the costs of administering this ordinance and collecting the fee levied under this ordinance.
- (3) If the revenues collected in paragraph (2) above exceed the cost of regulating surface mining, any excess revenues shall also be used exclusively for the construction, reconstruction, improvement, repair and maintenance of the Columbia County road system.

B. Any adjustment of fees, penalties or interest that is necessary to adjust any error in collection or distribution may be made at a subsequent collection or disbursement or by the procedure set forth in section 11.

~~C. At the direction of the Board of County Commissioners, up to a maximum of five percent (5%) of the revenue raised under this ordinance may be used to meet the expenses of administration and collection of the fees levied under this ordinance.~~

[En. Ord. 90-20; Am. Ord. 91-3; **Am. Ord. 96-2.**]

SECTION 11. REFUND.

- A. Refund. Upon its own recommendation or the recommendation of the Administrator, the Board may refund any overpayment of the fee on natural resources imposed by this ordinance that an operator pays, provided that the operator submits a proper claim for refund of the overpayment within 60 days of the due date of the return, or the date the fees were paid, whichever is the later.
- B. Form for Refund. The Administrator shall develop criteria and procedures to refund such fees pursuant to subsection A of this section, including a reasonable procedure for submission of proof by the purchasing or contracting entity that such sales qualify for such refund.

[En Ord. 90-20.]

SECTION 12. DELINQUENCY; EXTENSION.

- A. Delinquency. Unless an operator obtains an extension pursuant to subsection B below, the operator becomes delinquent with respect to this ordinance any time the operator fails:
- (1) To submit its reports completely and accurately, on time, or as otherwise required by this ordinance; or
  - (2) To remit its fee payment fully, on time, or as otherwise required by this ordinance.
- B. Extension.
- (1) The Administrator may upon written request received on or prior to the due date of the report or fee, for good cause satisfactory to the Administrator, extend the time for filing the return or paying the fee for a period not to exceed 30 days.
  - (2) Any operator to whom an extension is granted and who pays the fee within the period for which the extension is granted shall pay, in addition to the fee, interest at the rate of 10% per annum from the date on which the fee would otherwise have been due.

[En. Ord. 90-20.]

SECTION 13. PENALTIES.

This ordinance is enforceable under, and violators hereof are subject to the penalties provided in, the Columbia County Enforcement Ordinance, and to one or more of the following sanctions:

- A. Inadequate or Untimely Reporting. If an operator is delinquent in submitting reports, the Administrator may assess the fee at no more than twice the amount estimated to be due and add a penalty of 10% of the amount of the fee assessed. This penalty shall be in addition to all other penalties.
- B. Inadequate or Late Fee Payments. If an operator is delinquent in making fee payments:
- (1) The Administrator may assess interest payments on the outstanding fee accounts at a rate of 10% per annum from the date due until the date of payment.
  - (2) These fees shall operate as a first lien and privilege on the natural resource, which lien and privilege shall follow the natural resource into the hands of third persons whether in good or bad faith, and whether the same be found in a manufactured or unmanufactured state. ~~Any estimated fee shall likewise operate as a lien on the real property, and Columbia County may foreclose that lien along with the other real property taxes.~~ In addition, interests in minerals, and minerals, mineral rights, and rights of any kind to the ownership of any natural resource severed from the soil or water, shall be subject to seizure and sale for the payment of the fee levied in this ordinance in preference to all other claims, liens and privileges.

[En Ord. 90-20; Am. Ord. 91-3; **Am. Ord. 96-2.**]

SECTION 14. AMENDMENTS.

~~Pursuant to ORS 203.035 and 203.005, the~~ **The Board is authorized to amend this ordinance in the manner provided by ORS 203.035 through 203.065.**

[En. Ord. 90-20; **Am. Ord. 96-2.**]

EXHIBIT "B"

Section 5.2. Permit, Certificate, and Inspection and Regulatory Fees.

(1) Each application for a new operating permit or Limited Exemption Certificate shall be accompanied by an application fee in the amount of \$500. Annually, each application for renewal of an operating permit or Limited Exemption Certificate shall be accompanied by a renewal fee in the amount of \$300. The Administrator shall also charge \$100 for inspections made at sites:

(a) Where surface mining was conducted without the permit or certificate required by this ordinance;

(b) Where surface mining has been abandoned; or

(c) Where surface mining was conducted in an area not described in the permit or certificate.

~~(2) (a) In addition to the fees stated above, each landowner or operator holding a Limited Exemption Certificate or operating permit shall pay a regulatory fee to Columbia County. The regulatory fees collected in fiscal year 1992-93 shall be deposited into an account within the general fund of Columbia County dedicated to the regulation of surface mining in Columbia County. The regulatory fees collected beginning fiscal year 1993-94 and thereafter shall be deposited into a special fund of Columbia County dedicated to the regulation of surface mining in Columbia County. The regulatory fees shall not be used for any other purpose. Legitimate expenses for the use of such regulatory fees shall include the salary of the Administrator, necessary staff, secretarial and clerical support, and the vehicles, supplies and equipment involved in the regulation of surface mining in Columbia County. Such legitimate expenses shall also include such other expenses incurred by the County in the regulation of surface mining.~~

~~(b) Beginning October 1, 1992, and through June 30, 1993, the regulatory fee shall be in the amount of two cents (\$.02) per ton for all minerals removed from each surface mining site. During the preparation of the County's budget for fiscal year 1993-94, and each fiscal year thereafter, an accounting shall be made of the expenses incurred and revenues received by the County as a result of its regulation of surface mining. If it is~~

~~determined that the revenues received, and expected to be received, are insufficient to reimburse the County for the expenses incurred, and expected to be incurred, the regulatory fee may be increased accordingly. If it is determined that the revenues received, and expected to be received, exceed the expenses incurred, and expected to be incurred, the regulatory fee shall be decreased accordingly.~~

~~(c) The collection and administration of the regulatory fees shall otherwise be handled in the same manner as the fees collected under the Columbia County Natural Resources Depletion Fee Ordinance. The reports and records submitted by landowners and operators in connection with the payment of the regulatory fees are production records exempt from public disclosure by ORS 192.501(5). Accordingly, the Board shall adopt a policy of non disclosure of such records to preserve their confidentiality.~~

(3 2) Permit, certificate, **and** inspection and regulatory fees are not refundable. In order to bring uniformity to the issuance of operating permits or Limited Exemption Certificates, henceforth all operating permits and Limited Exemption Certificates shall expire on June 30 of each fiscal year. The holder of an operating permit or Limited Exemption Certificate must pay all fees in arrears, **including depletion fees**, before a new permit or certificate may be issued.

~~(4) The Board of County Commissioners will hold a hearing in September, 1993 to determine whether this ordinance should remain in effect beyond September 30, 1993.~~