

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance Amending)
the Yamhill County Zoning Ordinance to)
Permit the Commercial Storage and) ORDINANCE 701
Distribution of Explosives in the MR-1 and)
MR-2 Mineral Resource Districts, and)
Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in formal session on June 14, 2001, Commissioners Thomas E. E. Bunn, Leslie Lewis and Robert Johnstone being present.

WHEREAS the Board held a duly noticed public hearing on this proposed ordinance amendment on June 7, 2001, took evidence and heard argument from proponents and opponents, and

WHEREAS the Board concluded its deliberations and voted 3-0 to approve the ordinance amendment. NOW, THEREFORE:

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

The Yamhill County Zoning Ordinance §404.04 "Conditional Uses" is hereby amended to include a new subsection, Subsection H, to wit: "Commercial storage and distribution of explosives and related materials." The reasons for this amendment are stated in the Findings for Approval attached and incorporated into this Ordinance as Exhibit "A." This ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

DONE at McMinnville, Oregon this 14th day of June, 2001.

ATTEST

CHARLES STERN
County Clerk

YAMHILL COUNTY BOARD OF COMMISSIONERS

Thomas E. E. Bunn
Chairman THOMAS E.E. BUNN

By: Carol Ann White, Deputy
Deputy Kellye Fetters

Leslie A. Lewis
Commissioner LESLIE LEWIS

FORM APPROVED BY:

Rick Sanai
Rick Sanai
Assistant County Counsel

Robert Johnstone
Commissioner ROBERT JOHNSTONE

FINDINGS FOR APPROVAL
Ordinance 701

DOCKET NO.: G-01-01

REQUEST: Amendment to the text of Section 404 of the Yamhill County Zoning Ordinance to add the following as a conditional use in the MR-1 and MR-2 zoning district.

The specific language added to the conditional use section of the MR-1 or MR-2 zoning district is:

Commercial storage and distribution of explosives and related materials.

APPLICANT: Yamhill County

LOCATION: The amendments would apply to all Mineral Resource zoned (MR-1 and MR-2) properties in Yamhill County

CRITERIA: Section 1207 of the *Yamhill County Zoning Ordinance*.

FINDINGS:

A. Analysis of Proposed Amendments

The intent of the zoning ordinance revisions is to recognize the storage and distribution of explosives as a conditional use in the MR zone. This issue was brought about through Docket C-07-00, an application by NW Energetic Services LLC for a conditional use approval to allow the commercial storage and distribution of explosives and related material from McDowell Quarry which is zoned Mineral Resource MR-1. After extensive review of the application the Planning Director denied the request. The applicant appealed to the Board of Commissioners. The Board agreed with the Director's findings by a vote of 2-1. The complete text of the findings are found in B.O. 01-108. In the proceedings the Board found that the storage of explosives for on-site use is a permitted use within the zone. The Board also found that "on-site use" includes both the MR zoned property upon which the material is stored and any other quarry site in the same ownership. However, the Board also found that commercial storage and distribution is a use that is not allowed in the MR zone. There was also no other ordinance section which allowed storage and distribution of explosives as a permitted or conditional use. The Board also discussed the problem that even storage and distribution of explosives for farm and forestry use was not allowed in the local code. Therefore, the Board of Commissioners has requested that the zoning ordinance be amended to allow for these uses.

B.O. 01-389

B. ZONING ORDINANCE PROVISIONS AND ANALYSIS

1. Section 1207.01 of the Yamhill County Zoning Ordinance (YCZO) contains the process and review criteria pertinent to the proposed zoning ordinance text amendments. The ordinance standards are as follows:
 - A. *An amendment may be initiated by the Board, the Commission, or the Director.*
 - B. *An owner of land may petition the Board, the Commission, or the Director to initiate such an amendment, but may not initiate the amendment by making such an application.*
 - C. *Such amendments shall be made only by the Board after review and recommendation by the Commission, and after public hearings have been held by both the Commission and Board, pursuant to Section 1402 of this ordinance.*
 - D. *Approval of a legislative ordinance amendment shall include findings showing the amendment is consistent with any applicable federal, state and local government rules and statutes, and comprehensive plan goals and policies.*
 - E. *Changes to the County zoning map which result from legislative ordinance amendments shall be made and become effective upon filing said ordinance with the County Clerk.*
2. Regarding the above criterion (A), the Board of Commissioners reviewed Docket C-07-00, a request by Northwest Energetic Services for a conditional use approval to allow the storage and distribution of blasting agents from the McDowell Quarry, a property zoned MR-1. The Board of Commissioners reviewed the request and voted to deny the application because a majority of the Board did not find that the requested use was listed as a conditional use within the zone. After the decision the Board directed planning staff to prepare an ordinance amendment to allow commercial storage and distribution of explosives as a conditional use within the Mineral Resource zone.
3. Regarding the above criterion (B) as noted in Finding B.2 above, the request was made by the Board of Commissioners.
4. Regarding the above criterion (C), Section 1402.02 states: *Notice of any legislative public hearing authorized or required by this ordinance shall be published in a newspaper of general circulation in the county at least ten (10) days prior to the hearing date.*

The following actions were taken to provide notice of this land use action. On March 13, 2001 the notice required by ORS 197.610 of the Planning Commission

hearing was mailed to the Department of Land Conservation and Development. Public notice was also printed in the Newberg Graphic, News Register, and Sheridan Sun. Direct public notice was also mailed to interested parties that had testified as part of Docket C-07-00. There was a request from Thomas C. Tankersley that notice of the ordinance amendment be given to all parties within one mile of an approved quarry site in Yamhill County. This level of notification is far above what the ordinance requires. This level of notification is closer to what might be required under Measure 56. However, Measure 56 only requires notification if an ordinance "Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone." The aforementioned ordinance amendments would not limit or prohibit land uses previously allowed in the affected zone. Additionally, the use that Mr. Tankersley has previously voiced objection to was the commercial storage and distribution of explosives in the Mineral Resource zone. If the ordinance amendment is granted, commercial storage and distribution of explosives and related materials would be a conditional use. This means it would still require additional public notice and an opportunity to comment on this commercial activity.

5. Regarding criterion (D), planning staff is not aware of any state or federal regulations which would prohibit the storage of explosives in a designated Mineral Resource zone. Regarding the Yamhill County Goals and Policies, Section II.F. deals with mineral resources. Goal statement 1 directs the county:

To protect mineral deposits from urban encroachment, provided that such deposits are not located on land identified for urban and rural residential development by the Comprehensive Plan and Plan Map; to ensure that all extraction of mineral resources takes place under conditions which foster compatibility with existing surrounding land uses; and to provide for the restoration of extraction sites for future agriculture, open space, recreational or other appropriate uses.

Policy statement (d) of this section states:

Areas designated by the Comprehensive Plan for mineral resources will continue to be protected from incompatible urban and rural residential development and other conflicting uses through appropriate zoning and review measures. If such development is approved, adequate setbacks and use limitations will be applied to the development to minimize conflicts with adjacent future mining operations. (Underline added)

Obviously this goal and policy statement are geared toward protecting the mineral resource from uses outside of the designated Mineral Resource zone. However, it could be argued that the storage of explosives, whether for commercial or resource use, is a use that would conflict with the Mineral Resource use. This appears to be what Gary Fish, DLCDC Mineral and Aggregate Resources Specialist is saying in his

April 16, 2001 letter. Mr. Fish cites two sentences in the purpose section of the Mineral Resource zone which are to, "provide for the development and utilization of identified deposits of mineral aggregate resource materials." And "to establish siting criteria and operating standards for mineral resources that minimize present and future on-site and off-site land use and environmental conflicts." Mr. Fish concludes that "The department believes that the commercial storage and distribution of explosive materials does not fulfill either of these stated purposes for (this) zone." Mr. Fish does not state why or how this conclusion was reached. From the tone of his letter it appears that he has a concern with conflicting uses. Therefore, based on Mr. Fish's letter and the above plan policy, it is important to analyze what activities would be allowed which might conflict with the MR Mineral Resource zone.

The most obvious use to determine whether conflicts exist is the storage of the explosives themselves. Part of the answer to this question is found in the Board's findings related to the storage of blasting materials. The Board made the following findings on page 3 of Exhibit A to BO 01-108 which states, "The next question involves the storage of blasting material. Is the storage of blasting materials also allowed in the zone? The answer is yes, to a certain degree, the storage of blasting material is an allowed use. There are a couple of reasons for this interpretation. First, since a blast at a quarry site takes days and sometimes weeks to set up, it is reasonable that blasting material would be stored for some time prior to the blast. The second, and more compelling reason is that since blasting is an allowed use in the zone, it follows that the material to do on-site blasting can be stored on-site. It should be noted that the Planning Director interprets that 'on-site use' includes both the MR zoned property upon which the material is stored and any other quarry site in the same ownership." Based on these findings, explosives can be maintained in the MR zone. There is no stated or implied limitation on the amount of the materials that can already be stored in the MR zone as long as they are used by the existing quarry or one in the same ownership. Since explosives can already be stored within the zone, it does not appear that explosive storage would conflict with the purpose of the MR zone.

The next possible conflicting use is traffic. The MR zone allows uses which can generate a substantial amount of traffic. Due to market demands quarries can be inactive for long periods and then have a substantial amount of traffic. The amendment that would allow commercial storage and distribution of explosives is proposed to be a conditional use. To justify a conditional use an applicant must demonstrate compliance with the conditional use standards found in Section 1202.02. Section 1202.02(D) requires an applicant to demonstrate that:

The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district;

By having the commercial storage be a conditional use, the traffic that would be generated will be evaluated at the time of application.

One other possible conflict is the establishment of a commercial use in close proximity to a resource use. Although it is never exactly stated in such a manner, this appears to be one of the concerns voiced by Gary Fish of DLCD. Mr. Fish stated, "To allow off-site distribution as a permitted use in the Mineral Resource zone blurs the line between what is a commercial explosive distribution system and those explosives intended only for on-site use in a mining, forest or farm operation." Presently, quarries are allowed to sell the rock that is mined from their site. Most of these sales are wholesale, although sales to individuals are not prohibited. So some limited commercial sales are permitted in the zone. This is similar to the farm zone where a farmer usually will sell their crop wholesale but can also direct market to customers. Continuing this comparison to the farm zone, the farm zone allows *commercial activities in conjunction with farm use*. This provision has allowed the sale of supplies related to farm use. These include the sale of feed, fertilizer, seed, chemicals and other products used for commercial agriculture. The mineral resource zone has no similar provision and the proposal at hand is not intended to greatly expand the ability for commercial use in the MR zone. The intent is simply to allow for explosives, which are already allowed to be stored on-site, to be sold to other quarry operators and other users. With this limitation, the conflict between the commercial use of explosives and the quarrying activities appears to be unlikely. The potential for conflict may come about if the primary use of a MR property is for the distribution of explosives rather than for quarrying activities.

6. An exception is not required to allow this use in the MR zones. Commercial storage, distribution and sale of explosive materials does not conflict with mineral resource uses and is not adversely affected by the use as discussed throughout these findings. The State Department of Geology and Mineral Industries ("DOGAMI") has reviewed the proposed amendment and had no concerns that the amendment would adversely affect Goal 5 resources. Through the conditional use process this use may be regulated to ensure that it does not interfere with the extraction of mineral resources.
7. Regarding the above criterion (D), the amendment is consistent with comprehensive plan goals and policies.

One county goal is "to maintain a rate and pattern of economic growth sufficient to prevent recurring high levels of unemployment and under employment in the county, balance the real property tax base of the various cities and strengthen local economic bases." Explosives and the rock products extracted through their use support Yamhill County land uses in conjunction with Urban Growth and Economic Development by providing the raw material used to produce both concrete and asphalt which are then used to pave streets and driveways, make curbs and gutters, sidewalks, foundations for houses, bridges and other business and public support

infrastructure. Rock is also used to maintain surfaces on rural roads in the form of gravel. Explosives are also used, in primarily rural areas, for the construction of and widening of existing roads.

Another goal of the county is the conservation of the county's farm lands for the production of crops and livestock and to ensure that the conversion of farm land to urban use where necessary and appropriate occurs in an orderly and economical manner. Explosives use further this goal. Explosives are used to clear stumps, level fields and develop drainage control in support of farming operations and to preserve water runoff quality. Explosives are used to develop and maintain rural roads, facilitating the transportation of farm products to market and the efficient return of supplies.

Another county goal is to conserve and to manage efficiently the county's forest and range resources thereby ensuring a sustained yield of forest products, adequate grazing areas for domestic livestock, habitat for fish and wildlife, protection of forest soils and watershed and preservation of recreational opportunities. Explosives and the rock produced through their use are used extensively to produce the logging road infrastructure and provide for their continued maintenance, facilitating the safe and efficient harvesting of forest products in all types of weather.

Allowing the storage and distribution of explosive materials or blasting agents in the county will further county goals of conservation of county water resources. A water resources goal is to conserve and manage efficiently county water resources in order to sustain and enhance the quantity and quality of flows for all consumptive and nonconsumptive uses and to abate flood, erosion and sedimentation problems. Explosives are used to produce rip rap for the stabilization of stream and river banks as well as the stabilization of excavated slopes for roadways, housing and businesses of all sizes, thereby minimizing erosion and sedimentation problems.

Allowing the storage and distribution of explosive materials or blasting agents in the county will further county goals of protecting mineral deposits from urban encroachment. One of the county's mineral and aggregate resource goals is to protect mineral deposits from urban encroachment, provide that such deposits are not located on land identified for urban and rural residential development by the Comprehensive Plan and Plan Map to ensure that all extraction of mineral resources takes place under conditions which foster compatibility with existing surrounding land uses; and to provide for the restoration of extraction sites for future agricultural, open space, recreational or other appropriate uses. Explosives provide the most economic way to excavate significant quantities of rock for any application or subsequent use.

Allowing the storage and distribution of explosive material or blasting agents in the county will further county goals of providing and encouraging an efficient, safe,

convenient and economic transportation system. One of the county's transportation goals is to provide and encourage an efficient, safe, convenient and economic transportation and communication system, including road, rail, waterways, public transit and air, to serve the needs of existing and projected urban and rural development within the county, as well as to accommodate the regional movement of people and goods and the transfer of energy, recognizing the economic, social and energy impacts of the various modes of transportation. Explosives further this goal since they are used extensively to first excavate and or widen existing roadways as well as providing the materials for road base, asphalt or concrete. Explosives are also used to produce ballast for the establishment and maintenance of railroad transportation systems as well as the excavation of the original grade. Providing this material locally is also beneficial in that it decreases the cost of doing business.

8. Safety is increased by providing a location in the county for this use. In general terms, the risk to the public is far greater if explosives have to be transported over greater distances than if they are stored in strategically located areas. A central location reduces travel time and public exposure on the highway system. It is also inherently more desirable from a security standpoint to have one strategically located distribution site than to have small amounts of explosives scattered throughout the county in multiple locations.
9. The storage and distribution of explosives is regulated at the federal level by the Bureau of Alcohol, Tobacco and Firearms, the Department of Transportation, Mine Safety and Health Administration and Occupational Safety and Health Administration. The activity is regulated at the state level by the Washington Department of Labor and Industries and the Oregon State Fire Marshal. As part of the regular evaluation of those facilities by Federal and State government, these agencies routinely determine whether the distances prescribed for the types and weights of explosives contained in magazine facilities and their individual proximity to inhabited dwellings are in compliance. Consideration of the "American Table of Distances" and the proximity to residential structures to all the zone designations in Yamhill County indicate that there are only two zoning areas which would support the physical separation of any significant amount of blasting agents and inhabited structures. These zoning designation would include Mining Resource and Forest/Farm uses. Since blasting agents are used most routinely in the Mining Resource zone, it is logical to allow the storage and distribution of explosives in the Mining Resource areas.
10. Regarding criterion (E) above, the request does not involve a map amendment so this criterion does not apply.

C. ALTERNATIVES:

Both the findings in BO 01-108 and the letter from Mr. Fish suggested placing the storage of explosives in the HI Heavy Industrial zone. So why isn't that being pursued? For two reasons. First, the HI zone presently does not list the storage of explosives as a permitted or conditional use. For this activity to take place in the present HI zone a similar use would have to be approved. This means that explosive storage would need to be similar to some type of use that is already permitted in the HI zone. It appears that none of the permitted HI uses are similar to explosive storage but an argument could always be made that it is. Secondly, and more importantly, the goals and policies that govern the HI zone state that zone is to be within the urban growth boundary. Yamhill County Comprehensive Plan Policy I.H.1.b states:

To the greatest extent possible, industrial areas will be located within urban growth boundaries. Those industrial areas located outside urban growth boundaries will be compatible with the industrial development goal and will be located where they can be adequately served by necessary major utility lines, including electric power substations and transmission lines, trunk sewer lines, trunk water lines, and where appropriate, trunk gas lines. (Underline added)

There are other policies that refer to the placement of industrial areas in the urban growth boundary (UGB) but this one is the most specific. The problem with this is that explosive storage is, understandably, heavily regulated. The regulations require separation of the stored explosive from inhabited dwellings. Property within the UGB is extremely unlikely to satisfy these distance requirements.

The Planning Commission recommended that the commercial storage, distribution and sale of explosives be a permitted use subject to a limited use overlay in the PWS zone and a conditional use subject to the reasons exception criteria in the MR-1 and MR-2 zone. Application of the reasons criteria to the conditional use permit review of the use in the MR-1 and MR-2 zones would not provide a benefit.

Exception reason one is that reasons justify why the state policy embodied in the applicable goals should not apply. The state policy embodied in Goal 5 is to protect natural resources and conserve scenic and historic areas and open spaces, including mineral resources. This policy continues to apply where the commercial storage, distribution and sale of explosives materials occurs because the proposed amendment allows the use conditionally in the MR Zone, not on all Goal 5 land, and the use, as discussed above, furthers the Goal 5 mineral use.

Exception reason two is that areas which do not require a new exception cannot reasonably accommodate the use. The requirements of the American Table of Distances for separation between residential uses and the proposed use dictate that the only areas in Yamhill County that can accommodate this use are the Forestry,

Farm and Mineral Zones. If the use was proposed in a Farm/Forest zone, an exception would be needed so there is not other land which could accommodate the use that does not need an exception. It is not necessary to make this finding, however, because, as discussed above, the proposed use is not a conflicting use and does not require an exception in the MR zone.

Exception reason three is that the long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. The proposed use does not have adverse environmental, economic, social and energy consequences in the MR zone so the criteria is not applicable.

The proposed use has a positive affect on the economy. Explosives and the rock products extracted through their use support Yamhill County land uses by providing the raw material used to produce both concrete and asphalt which are then used to pave streets and driveways, make curbs and gutters, sidewalks, foundations for houses, bridges and other business and public support infrastructure. Rock is also used to maintain surfaces on rural roads in the form of gravel. Explosives are also used, in primarily rural areas, for the construction of and widening of existing roads. Further, provision of this material locally has a positive affect on the economy by decreasing the cost of doing business.

The proposed use also assists the agricultural economy and the conservation of the county's farm lands for the production of crops and livestock. Explosives are used to clear stumps, level fields and develop drainage control in support of farming operations and to preserve water runoff quality. Explosives are used to develop and maintain rural roads, facilitating the transportation of farm products to market and the efficient return of supplies.

The proposed use also has positive environmental affects. One county goal is to conserve and to manage efficiently the county's forest and range resources thereby ensuring a sustained yield of forest products, adequate grazing areas for domestic livestock, habitat for fish and wildlife, protection of forest soils and watershed and preservation of recreational opportunities. Explosives and the rock produced through their use are used extensively to produce the logging road infrastructure and provide for their continued maintenance, facilitating the safe and efficient harvesting of forest products in all types of weather.

The proposed use also furthers county efforts to conserve and manage efficiently county water resources in order to sustain and enhance the quantity and quality of flows for all consumptive and nonconsumptive uses and to abate flood, erosion and sedimentation problems. Explosives are used to produce rip rap for the stabilization of stream and river banks as well as the stabilization of excavated slopes for

roadways, housing and businesses of all sizes, thereby minimizing erosion and sedimentation problems.

The proposed use has positive social affects. One of the county's mineral and aggregate resource goals is to protect mineral deposits from urban encroachment, provide that such deposits are not located on land identified for urban and rural residential development by the Comprehensive Plan and Plan Map to ensure that all extraction of mineral resources takes place under conditions which foster compatibility with existing surrounding land uses; and to provide for the restoration of extraction sites for future agricultural, open space, recreational or other appropriate uses. Explosives provide the most economic way to excavate significant quantities of rock for any application or subsequent use.

Lastly, the proposed use has positive energy affects in that it will further the County's goal to provide and encourage an efficient, safe, convenient and economic transportation and communication system, including road, rail, waterways, public transit and air, to serve the needs of existing and projected urban and rural development within the county, as well as to accommodate the regional movement of people and goods and the transfer of energy, recognizing the economic social and energy impacts of the various modes of transportation. Explosives further this goal since they are used extensively to first excavate and or widen existing roadways as well as providing the materials for road base, asphalt or concrete. Explosives are also used to produce ballast for the establishment and maintenance of railroad transportation systems as well as the excavation of the original grade.

Exception reason four is that the proposed use is compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The conditional use permit process is available to ensure that any mitigations necessary to maintain compatibility with adjacent uses are imposed.

Following consideration of all the factors discussed above, the Board considered but did not adopt the Planning Commission's recommendation.

CONCLUSIONS:

1. The proposal is to amend the text of the Yamhill County Zoning Ordinance.
2. The proposed text language complies with the review criteria for a legislative amendment in Section 1207.02 of the Yamhill County Zoning Ordinance.
3. The proposed amendments comply with the Yamhill County Comprehensive Plan goals and policies, state statutes and local government rules and statutes.