

IN THE BOARD OF COUNTY COMMISSIONERS, OF LANE COUNTY OREGON

OCT 10 1986

County Clerk
For Lane County Oregon
BY *[Signature]* DEPUTY

ORDINANCE NO. PA 918

(IN THE MATTER OF AMENDING THE
(LANE COUNTY SOLID WASTE MANAGEMENT
(UPDATE 79-80

WHEREAS, ORS 215.213(2)(k) and Lane Code Chapter 16.212(4)(i) allow the Hearings Official to review and approve or deny solid waste disposal sites specifically approved by the "governing body of the County"; and

WHEREAS, the Solid Waste Management Plan Update 79-80 reflects the existence of privately owned solid waste management sites but does not identify them, and is the appropriate vehicle to specifically identify and approve privately owned solid waste disposal sites approved by DEQ; and

WHEREAS, once identified by the Solid Waste Management Plan Update 79-80 as an approved site, a site zoned EFU subject to LC 16.212(4)(i) must still be approved by the Hearings Official subject to meeting the criteria established in LC 16.212(5); and

WHEREAS, this Ordinance has been reviewed by the Lane County Planning Commission at a Public Hearing on September 9, 1986; and

WHEREAS, the Lane County Board of Commissioners has held a Public Hearing to consider this request; NOW

THEREFORE, the Lane County Board of Commissioners Ordains as follows:

The Lane County Solid Waste Management Update 79-80 is hereby amended by inserting Appendix G which is attached to and incorporated into this Ordinance as Exhibit 'C'.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

While not part of this Ordinance, we adopt the attached Exhibit 'A', 'B', and 'D' as Findings in support of this decision.

An emergency is hereby declared to exist and this Ordinance, being enacted by the Board in the exercise of its police power for the purpose of meeting such emergency and for the immediate preservation of the public peace, health, and safety shall take effect immediately.

ENACTED this 8th day of October, 1986.

[Handwritten initials]

[Signature: John Ball]
v. Chairperson, Lane County Board of Commissioners

REEL 129 PAGE 1332

LANE COUNTY HEARINGS OFFICIAL
REQUEST FOR A SPECIAL USE PERMIT TO ALLOW A SOLID
WASTE DISPOSAL SITE WITHIN AN E-25 DISTRICT

(CONTESTED)

Application Summary

Dow Corning Corporation, P.O. Box 719, Springfield, Or 97477. Assessor's map 18-02-08, tax lots 100 and 102. Request for a special use permit to allow a solid waste disposal site within an E-25 Exclusive Farm Use Zone (PA 1405-86).

Hearing Date: June 5, 1986
(Record Held Open Until June 20, 1986)

Decision Date: July 7, 1986

Appeal Deadline: July 17, 1986 Lane County Board of Commissioners

Statement of Criteria and Standards

Eugene-Springfield Metropolitan Area General Plan
Lane Code 16.212

Jurisdiction

The jurisdiction of the hearings official to decide this issue has been challenged. Opponents of this conditional use permit request have argued that Lane Code 16.212((4)(i) allows hearings officials to approve only solid waste disposal sites specifically approved by the governing body of the county. The Hearings Official agrees.

The language of Lane Code 16.212(4)(i) is not ambiguous and does not appear to be inconsistent with other provisions of the Code. As pointed out by both parties, this provision is identical to the language of ORS 215.213((2)(k), from which it was taken. The legislative history of this statutory provision [taken from the Minutes of the Senate and Environmental and Energy Committee, May 15, 1979, pages 2-6, 8] indicates an awareness and sensitivity to the issue of taking farm land for a predominantly urban purpose. Much of the testimony in these and the May 3, 1979 minutes of the same committee are concerned with the necessity of using agricultural land to enable local governments to adequately plan for solid waste disposal. Together, these two concerns are consistent with the language of ORS 215,213(2)(k) which allows solid waste disposal sites approved by the governing body on EFU lands.

The Hearings Official does not agree with the applicant's contention that the term "governing body," as used in Lane Code 16.212(4)(i) and ORS 215.213(2)(k), embraces the designee of a governing body. The Oregon Court of Appeals, in 1000 Friends of Oregon v. Washington County, No. A39704 (Or App, June 18, 1986), held that the term "governing body", as used in ORS 215.050 and 215.060 regarding comprehensive plan and land use ordinance revisions, must be interpreted in its

most restrictive sense. The fact that there are numerous examples where the legislature has allowed a local county governing body to delegate its quasi-judicial land use authority, i.e., ORS 215.263 (1)(2)(3), ORS 215.293, ORS 215.416(9), ORS 215.428(1), and ORS 215.213(2), does not mean that such delegation automatically follows under the legislatively mandated state-wide land use program. Subsection (k) of ORS 215.213(2) is the only land use category of 26 enumerated land use categories in Section (2) which requires approval by the governing body. Given the legislative concern of Senate Bill 925 regarding the necessity for local planning of solid waste disposal sites such an inclusion cannot be viewed as an anomaly.

Approval by the governing body of a solid waste disposal "site" does not moot the hearings official decision-making process. The hearings official approval criteria of Lane Code 16.212(4)(i) focus on the proposed use's impact on surrounding agricultural lands and farming activities. ORS 215.213(2)(k) does not distinguish between public and private ownership of solid waste disposal sites and neither does the legislative history of this statutory provision. The primary purpose of ORS 215.213 is to identify those land uses which may be appropriately sited on agricultural land. Solid waste management needs and environmental protection are addressed only indirectly in ORS 215.213(2)(k), through the involvement of the local governing body and DEQ. Other statutes (ORS Chapter 459) and regulations (Statewide Planning Goals) presumably are to guide these latter decision-making bodies through the actual siting process.

The 'siting' of a solid waste disposal site clearly involves looking at larger issues. The Eugene-Springfield Metropolitan Area General Plan (Metropolitan Plan) identifies Lane County as being responsible for providing solid waste management service in the metropolitan area (Page III-G-1). The Lane County Solid Waste Management Plan is listed as a special purpose/functional plan for the Metropolitan Plan (Page I-5) and addresses environmental and energy conservation impacts as well as physical storage problems associated with solid waste disposal. The Plan does not address privately owned and operated solid waste disposal sites, either in the Eugene-Springfield metropolitan area or within rural Lane County, and specifically does not reflect the applicant's proposed site on its inventory. However, the Metropolitan Plan is concerned with the provision of key urban services, i.e., those services important to urban development and which are primarily planned for by local government (Page V-1). Whether the Solid Waste Management Plan must be amended to recognize the proposed use is not a question for the Hearings Official. If the Board of County Commissioner's chose not to amend the Solid Waste Management Plan then some other formal action by the Board will be necessary to approve the 'siting' of the proposed use per the requirements of ORS 215.213(2)(k) and Lane Code 16.212(4)(i).

Finally, the Hearings Official does not believe the Lane Code 16.212(4)(i) requirement for DEQ approval creates an insurmountable "Catch 22." Upon proper approval of the proposed use as a site for the disposal of solid waste, the Hearings Official may issue a decision approving or denying the proposed use. This decision would be solely based on the criteria of Lane Code 16.212(5) and applicable Metropolitan Plan policies, although its actual implementation could be conditioned upon DEQ approval. This application's record (See June 3, 1986 letter from Ernest Schmidt, DEQ, to Joe Hudzikiewics, Lane County) indicates that this latter approval would be routine. The Hearings Official, however, is not

willing to follow the same procedure in regard to the requirement of approval by the Board of County Commissioners. The criteria and process of such a procedure is unclear and a decision at the governing body level could substantially modify or even moot a hearings official decision. Therefore, a hearings official decision on this matter prior to a decision by the governing body on the siting of the proposed use would be premature. Lane Code 14.300(7), which allows for an interpretation of county policy from the Board, is not appropriate as the time frames for this process are quite tight and because the Hearings Official believes that the action necessary of the Board of Commissioners is one of substance, requiring an initial land use action, and not a clarification or interpretation of existing policy.

Decision

THE REQUEST FOR A SPECIAL USE PERMIT TO ALLOW THE DISPOSAL OF SOLID WASTE WITHIN AN E-25 EXCLUSIVE FARM USE DISTRICT (PA 1405-86) IS DISMISSED FOR LACK OF JURISDICTION. THIS DISMISSAL IS WITHOUT PREJUDICE AND THIS APPLICATION MAY BE REFILED WITHOUT ADDITIONAL FEES UPON A SHOWING THAT THE PROPOSED USE HAS BEEN APPROVED AS A SITE FOR THE DISPOSAL OF SOLID WASTE BY THE LAND COUNTY BOARD OF COUNTY COMMISSIONERS.

Respectfully Submitted,


Gary L. Darnielle
Lane County Hearings Official

clgddow2

FINDINGS IN THE MATTER OF) PA 918
 APPROVING THE DOW CORNING)
 PRIVATE SOLID WASTE DISPOSAL)
 SITE)

FACTS

1. The Dow Corning site is an approximately 37 acre property located southeast of the city of Springfield and south of Clearwater Lane. Clearwater Lane is a private road which is an easterly extension of a county road segment running south from Jasper Road. The assessor's map and tax lot designation is 18-02-08, tax lots 100 and 102.

Since 1981, Dow Corning has used the site under a Conditional Use Permit for disposal of silicon waste from Dow Corning's Springfield plant. Except for the waste materials which have been deposited on the south portion of the property under Dow Corning's existing conditional use permit, and a gravel road on the site leading to the disposal area, there is nothing which would constitute "development" on the property. There are indications that the site was once used as a wood waste dump, but the site has not been used for waste disposal other than for the existing Dow Corning fill operation during the last five years. On the area proposed for landfill use, there are only a few scattered clumps of trees, primarily on the eastern property line. The site proposed for fill operations is predominantly an open area without significant vegetation.

The property is bounded on the south by the Middle Fork of the Willamette River. The Willamette Greenway boundary runs in a generally east-west direction through the property, dividing it into a northern 22 acres outside the Greenway and a southern 15 acres within the Greenway. The solid waste use is proposed only for the area outside the Greenway. This northerly portion of the property has a irregular undulating surface caused by removal of topsoils and gravel prior to the time Dow Corning acquired an interest in the property.

The southern 15 acres lying within the Willamette River Greenway is not part of the proposed fill area. An existing rip-rap dike within the Greenway area creates a six to eight foot elevation change that provides protection from flooding for the site proposed for filling. Between the dike and the river the property contains riparian vegetation. The 100 year flood plain is approximately 400 feet south of the closest area proposed for landfill use. Some of the northwest area within the existing Greenway boundaries has been used for Dow Corning's current landfill operations. This has occurred because the Greenway boundary was believed to be closer to the river when the 1981 conditional use permit for landfill use was issued. Except for

final grading and cover of the approximately one-half acre of fill within the current Greenway, all landfill operations are proposed on the northern half of the property outside the Greenway.

2. The general vicinity of the Dow Corning site contains a mixture of open, vacant parcels, agricultural land used for pasture, small orchards and some row crops, riparian zones along the river, and scattered rural residential parcels on Clearwater Lane. The closest residences are approximately 200 feet north and 250 feet west from the closest part of the proposed landfill area. The properties immediately abutting the Dow Corning site are zoned EFU. Field crops are grown on the parcel to the west. There is a residence on an approximately two acre parcel to the north. There is an orchard and wood lot on the parcel to the east. North of Clearwater Lane are undeveloped wooded and open field areas.

3. The Dow Corning site is zoned for exclusive farm use, E-25. It is within jurisdictional limits of the Metropolitan Plan, outside of the urban growth boundary but inside the plan boundary. The soils map indicates that the bulk of the property has soil type 10A Newberg Fine Sandy Loam, which has an agricultural capability Class II rating and a Douglas Fir Cubic Site Class rating of 3. The site is designated Agricultural in the plan. The topographic map indicates irregular topography, depressions and a borrow area; these indications reflect the prior removal of topsoils and gravel. The prior removal of topsoil has essentially limited the agricultural potential to pasture use.

4. Dow Corning proposes to use the site for disposal of pelletized silica fume dust. Approval for use of the site is required not only by Lane County but also by DEQ, for which renewal of an existing DEQ solid waste disposal permit is pending.

The waste material to be disposed is the product of operations at Dow Corning's plant, which is located in the vicinity of 20th and Main Streets in the city of Springfield, approximately 3.5 miles from the site. Dow Corning processes quartz rock, which is predominantly silicon dioxide, in order to extract pure silicon. The silica fume dust waste product of the extraction process is also silicon dioxide, although it is changed in form from quartz rock to dust which is then pelletized by Dow Corning. In its final form, the waste product is similar to hardened pellets of quartz sand.

The plant at which Dow Corning conducts these operations was previously operated by a company known as National Metallurgical, which, in 1978 and earlier, was a source of concern to State and local agencies for workplace safety due to dust created in the extraction process, and also significant air pollution. Since

Dow Corning acquired the plant in 1980, Dow Corning has expended approximately \$3,000,000 in order to resolve the workers' safety and air pollution problems. One result of those efforts has been creation of a waste product which must be distributed to a landfill site rather than be distributed into the air.

The applicant has stated that the waste product is inert and non-hazardous. Fred Simmons of Springfield testified in opposition to the assertion that the material is non-hazardous, claiming that tests of the waste product at the University of Oregon revealed traces of chromium and cadmium. Mr. Simmons agreed that a standard 24 hour toxicity test will not produce evidence of the presence of cadmium or chromium. Mr. Simmons did not provide evidence other than his testimony of any University of Oregon tests. DEQ has tested the material by X-ray fluorescence elemental scan, and by letter dated July 26, 1985 to Tom Freeman of Dow Corning Corporation identified only the following metals in the waste material: potassium, calcium, iron, zinc, lead and strontium. DEQ's letter further states that the material "does not fail EP toxicity requirements for hazardous wastes...[and] is not classified as a hazardous waste." On the basis of the better evidence, we find the silicon dioxide waste product to be inert and non-hazardous.

5. Dow Corning's landfill plan involves initial filling of areas previously excavated for topsoil or sand and gravel. Additional fill would continue from the south to the north, with final earth and vegetative covering being applied as sections are completed by being brought to final contours. The end result will be a mound 16 feet high at the center, sloping to accommodate DEQ requirements for run-off. Final cover slopes will be five percent (5%) in all directions and will be seeded to prevent erosion and allow ongoing use as pasture or for other agricultural use. Little surface run-off is anticipated due to absorption by the cover, but as protection, a ditch at the base of the fill area will be provided to catch and direct any run-off toward the river for disposal in accordance with DEQ standards. The site has a calculated life capacity of 34.5 years based on current average production figures. Cover material for the completed landfill will be available on site.

6. Access to the site from the Dow Corning plant is via 42nd Street in Springfield to Jasper Road to Clearwater Lane to a private access easement serving five residences and the site. The easement is an easterly extension of Clearwater Lane.

Fill material is currently hauled to the site by dumptruck on an average of two days a week and about eight loads per day. Fill material is watered-down at the Springfield plant to eliminate spillage and dust emissions during transport. The materials placed on the site are compacted and graded with a bulldozer. Final cover over completed sections will be graded. The cover material will consist of two feet of soil graded to

within 25 feet of property lines and blended with the surrounding grade at the fill base. Dow Corning's operational plan submitted to DEQ requires grass ground cover to be established within one year of the final cover grading in order to control potential erosion.

7. Three monitoring wells have been drilled on the perimeter of the site to verify ground water flow and to measure water quality. Ground water flows are westerly. Water quality samples indicate that the water at all points is of high quality, with only selenium at slightly in excess of the drinking water standard of 0.01 MG/L. Selenium is a chemical element which is not present in the silicon dioxide waste product generated by the Dow Corning process. The test well samples indicate that the highest selenium values occurred in the test well furthest upgradient, confirming that the source of the selenium is upgradient or natural, and is not associated with the Dow Corning waste product. The occurrence of the highest selenium readings in the upgradient test well also indicate that the source of the selenium is not the wood waste which had been previously disposed on the site before Dow Corning acquired an interest in the site.

8. The most readily available alternative to use of a private site by Dow Corning is the County operated site at Short Mountain. The distance from the Dow Corning site in Springfield to Short Mountain is approximately 10-12 miles. Access to the Short Mountain Landfill Area would most likely require trips from the Dow Corning plant site through the main business district of Springfield, through the Glenwood area to Interstate 5, and then to the Short Mountain Landfill Area. While dumping of the product at the County operated landfill area would probably not be denied, it is not a particularly desirable material for the County landfill. It is not biodegradable, it requires special handling, and it is not suitable for use as cover material. As such, it would impede resource (gas) recovery efforts at the Short Mountain site. Any mixing of the materials with other materials will reduce the possibility of recovery and utilization of waste products from the County site if markets are developed for their use.

9. The Lane County Planning Commission conducted a hearing in this matter on September 9, 1986 and recommended approval by unanimous vote, based on the following six findings:

- (1) The Dow Corning proposal is compatible with surrounding agricultural lands.
- (2) The proposal protects resource lands and will enhance farm use of the property.
- (3) The proposal complied with air and water quality standards as evidenced by DEQ's readiness to issue their permit.

- (4) The material being disposed of is inert.
- (5) There does not appear to be an alternative disposal site. The material is not wanted at the County Short Mountain landfill site.
- (6) The solid waste site is located within an EFU zoned area and is permitted by ORS 215.213(2)(k) and LC 16.212(4)(i).

Based on the Board's finding number 8 above, Planning Commission finding (5) is not accurate except to the extent that Planning Commission finding (5) is interpreted to mean that the use of the County site at Short Mountain is a less desirable alternative for the reasons stated in Board finding 8.

The Planning Commission also recommended that Exhibit C of Ordinance No. 918 should be changed to read (proposed change underlined):

"Approved Inert Non-Toxic, Nonhazardous Solid Waste Disposal Sites Within Exclusive Farm Use Zoned Land."

The Planning Commission's recommendation of approval was also based on the understanding that this application should not set a precedent for future solid waste sites.

The Board deleted the Planning Commission's proposed language because of concerns that this language could cause unnecessary difficulty for future siting of a County owned site. Nevertheless, approval by the Board of this site, and Hearings Official consideration of a special use permit application for use of this site is and should be based on the facts of this application which indicate that this site has been approved only for disposal of Dow Corning's silicon dioxide waste product. Any other applications for approval of solid waste sites will have to be considered on their own merits.

LEGAL CRITERIA

This is a refinement to Lane County Solid Waste Plan. The Solid Waste Management Plan, Update 79-80, is primarily intended to govern management of waste volumes received at County operated solid waste facilities. Solid Waste Plan, Page 1. Nevertheless, the Plan does recognize that there are private solid waste disposal sites. For example, the Plan recognizes that solid waste disposal sites, whether public or private, must be operated in compliance with a solid waste permit issued by DEQ. Solid Waste Plan, Page 4. Figure VIII on Page 20 of the Plan contains a chart reflecting past and projected volumes of solid waste. The note below the chart indicates that the figures used in the chart do not include volumes disposed at private disposal sites. The note below figure IX at Page 22 indicates that "DEQ licensed private disposal sites in the County received 71,852 cubic yards

in 1978. Estimated to drop to 68,796 by 1980 and 50,000 by 1990, or 1.2% not included in total volumes." These data are also reflected in Appendix E, Page 47. At Page 31 of the Solid Waste Plan, the Plan recognizes that solid waste disposal sites have traditionally been the responsibility of local government, with the exception of "several strictly industrial waste sites..."

Because the Solid Waste Management Plan clearly reflects the existence of privately owned sites but does not identify them, the purpose of this refinement to the Lane County Solid Waste Management Plan is to identify and thereby approve a specific privately owned solid waste disposal site approved by DEQ. That such identification and approval was specifically contemplated by existing plans is demonstrated by the provisions of Lane Code 16.212(4)(i) which authorize solid waste disposal sites on EFU land when approved by the county governing body.

As contemplated by ordinances and plans included as part of the plan acknowledgement process, this site designation is a plan implementation measure which must be tested against the applicable comprehensive plan policies. Because this is a contemplated plan implementation, the statewide goals apply only through the related policies of the acknowledged plan. There are a number of provisions in the Plan which provide policy and guidance to the issue.

The Metropolitan Plan contains the following elements:

- Growth Management and the Urban Services Area
- Residential Land Use and Housing
- Economy
- Environmental Resources
- Willamette River Greenway, River Corridors and Waterways
- Environmental Design
- Transportation
- Public Utilities, Services and Facilities
- Parks and Recreation Facilities
- Historic Preservation
- Energy
- Citizen Involvement

On the facts of the proposal under consideration, the controlling element of the Plan is the Environmental Resources element. Other policies from other elements of the Plan have limited relevance to this proposal. For example, the Residential Land Use and Housing element requires protecting existing and proposed residential areas from conflicting nonresidential land uses. See Metro Plan p. III-A-3. In this case, however, the area around the Dow Corning site is not a proposed residential area. It is not zoned as an existing residential area. It is zoned as an exclusive farm use area. The existing few residential uses in the area are rural uses. The use of this site for a

use authorized in EFU zones will be no more inconsistent with the existing rural residential use than will other farm uses. In the Plan, the thrust of any conflict between residential and agricultural uses is generally to protect agriculture from encroachment of residences rather than the other way around. The EFU type use of the site as proposed raises few, if any, credible conflicts with any of the policies in, for example, the Growth Management or Residential elements of the Metro Plan. The same may be said of the Environmental Design, Transportation, Public Utilities, Parks, Historic Preservation, Energy, and Citizen Involvement elements of the Plan. Some support for the proposal could be garnered from the Economic element of the Plan, but the critical factors are found in the Environmental Resources element of the Plan.

There is limited application of the Plan's Greenway elements because the only remaining operations within the Willamette River Greenway will be to cover materials which were deposited under the 1981 conditional use permit into what is now has been determined to be the Greenway. Covering and reclaiming that area will protect and serve and enhance the natural, scientific, environmental and economic qualities of the Greenway area. Any subsequent use of the site for the proposed purposes will be outside of the Greenway and will not conflict with the Greenway policies of the Metropolitan Plan.

A. The relevant goals of the Environmental Resources element are these:

GOALS: Protect valuable natural resources and encourage their management and proper use and reuse, reflecting their special natural assets.

Maintain a variety of open spaces within and on the fringe of the developing area.

Provide a healthy and attractive environment for the metropolitan population. Metro Plan II-C-6.

Discussion: If the Dow Corning site is a valuable natural resource, it is because of its designation as agricultural land. As noted in the facts previously stated, the soil maps indicate that the site contains Class II agricultural soils. However, the facts also indicate that much of the topsoil has been removed, a fact which is confirmed by the irregular terrain on the site. As the fill is covered, the irregular topography will be evened out. Given this opportunity, the proposal can even be viewed as a reclamation of what is now marginally usable agricultural land. The overall plan, especially its reclamation aspects, is consistent with the requirement to protect valuable natural resources and encourage their wise management and proper use and reuse.

Because the site is not within or on the fringe of the developing metropolitan area, there is no conflict with the requirement to maintain a variety of open spaces within and on the fringe of the developing area.

Disposal of a nonhazardous, nonbiodegradable material in this area, and its associated reclamation of land, will not adversely impact the requirement to provide a healthy and attractive environment for the metropolitan population.

B. The relevant objectives of the Environmental Resources element are these:

OBJECTIVE: Maintain the benefits associated with environmental resources in an urban setting. Those resources include agricultural lands, clean air and water, forest lands, sand and gravel deposits, scenic areas, wild life and wild life habitat, and vegetation. Policies directed toward these resources may differ, depending upon whether they are located on urban, rural, or urbanizable land. Metro Plan, p. III-C-6.

Discussion: As noted previously, the resource value of this land is as agricultural land, but its value is questionable due to the prior removal of topsoils. The evidence presented indicates that the use of the site for solid waste disposal will not adversely effect ground water. The Dow Corning operation in Springfield reflects a past concern for air pollution with the considerable improvement of the plant as a point source for air pollution when compared with its operation by its previous owner. If use of this site for solid waste disposal might not be appropriate on urban or urbanizable land, its use on rural land is consistent with an agricultural use of the land and as such is consistent with this criterion.

OBJECTIVE: Improve and maintain air and water quality to meet acceptable State and local standards.

Discussion: The existence of a waste product exists in part because of Dow Corning's efforts to deal with an air pollution problem. The air pollution problem has been essentially resolved. The fill material is inert, nontoxic, nonbiodegradable and the technical data presented indicate it will have no adverse impact on water quality.

C. The relevant Environmental Resources policies are these:

POLICY: Designated agricultural land shall be protected for agricultural use through zoning for exclusive farm use or equivalent acceptable zoning and through application of other protective measures. Metro Plan, p. III-C-8.

Discussion: This land is zoned for exclusive farm use. Final approval of the site for solid waste disposal will require

approval by the Lane County Hearings Official under the protective measures outlined in the Lane Code. As such, this proposal is consistent with the above criterion.

POLICY: Regulate site planning for new development and construction to better control drainage and erosion and to manage storm runoff. Metro Plan p. III-C-9.

Discussion: The plan submitted to DEQ will require appropriate sloping for runoff and direction of storm water away from any existing properties toward the river. As such, operation of the site in accordance with the DEQ permit will meet the requirements of this element of the Plan. The Lane County Hearing Official is hereby directed to make operation of the site in accordance with the DEQ permit a condition of County Approval under LC 16.212(5)(c).

POLICY: Local governments shall continue to monitor, to plan for, and to enforce applicable air and water quality standards and shall cooperate in meeting applicable federal, state, and local air and water quality standards. Metro Plan, p. III-C-10.

Discussion: As noted in the facts, the Dow Corning plant was a significant point source of air pollution during the period of its operation by a prior owner. Since the acquisition of the plant by Dow Corning, the air pollution problem has been corrected. One result of correction of the air pollution problem has been the creation of a solid waste disposal problem. Disposal of the waste material on this site, based upon the water quality analysis submitted, will not adversely affect ground water in the area. As such, this criterion of the Metropolitan Plan is met.

CONCLUSION REGARDING METROPOLITAN PLAN COMPLIANCE.

Since the evidence indicates that little, if any, danger is presented to water quality, the primary concern under the Metropolitan Plan relates to agricultural policies.

As a general matter, the agricultural policies of the Metropolitan Plan reflect compliance with the policies of LCDC Goal 3 and applicable State law including ORS 215.203 and 215.243. The same is true of the agricultural policies contained in the Lane County Rural Comprehensive Plan. The policies of the latter plan, such as those dealing with preservation and protection of agricultural lands, parcel size, conflicting uses, and conversion of rural land to urbanizable land, and the Metropolitan Plan policies contain common themes. Among the common themes are: (1) Preserving agricultural land for certain specified agricultural uses, and (2) ensuring that particular uses will not unreasonably interfere with farming practices on nearby lands.

In the Dow Corning instance, the use proposed is one permitted by ORS 215.203, and specially permitted under Lane County's EFU zone, LC 16.212. Agricultural policy 13 of the Rural Comprehensive Plan prohibits construing County policy to exclude specially permitted nonfarm uses, such as the proposed use, from EFU zones.

Because no division of property is proposed, there is no effect on preserving parcel sizes. No public services need to be extended to the property. As addressed previously, the overall project requires reclamation of the site. In this case, the site is one from which topsoils have been previously removed and on which as a result of the topsoil removal, the terrain is very irregular. The reclamation as an ongoing aspect of the site's use will effectively preserve the site's agricultural potential if not actually improving it. Throughout the proposed use and with the end product, the open nature of the area will be preserved.

The use of the site for solid waste disposal will require use of trucks bringing materials onto the site and some working of the material by heavy equipment. The proposal indicates that material would not be placed nor any grading required any closer than 30 feet to any adjoining property line. Continuous placement of cover will prevent erosion. The technical data indicate no threat from the fill material to ground water supplies. In short, the operation should have no greater adverse impact on adjoining agricultural uses than would a classical agricultural use which involves, as is not uncommon, use of heavy equipment for working land and transporting products from the land. Consequently the proposed use will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

The proposed use is consistent with the agricultural policies of the Rural Comprehensive Plan, the policies of ORS 215.243 and ORS 215.203, and the purposes of the EFU zone which has been applied to the property. For these reasons and the reasons outlined above, the proposed use is consistent with Metropolitan Plan.

APPENDIX "G" LANE COUNTY SOLID WASTE MANAGEMENT PLAN UPDATE 79-80

Approved Solid Waste Disposal Sites Within EFU Exclusive Farm Use Zoned Land

NAME

LOCATION

1. Dow Corning
(Humphreys & Clearwater)

Map 18-02-08; Tax Lots 100 and 102