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BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

McKAY CREEK VALLEY ASSOCIATION )  
and CHRIS CLARK KING, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
WASHINGTON COUNTY, )  
 )  
Respondent, )  
 )  
and )  
 )  
KARBAN CORPORATION, )  
 )  
Intervenor-Respondent. )

LUBA No. 92-238  
FINAL OPINION  
AND ORDER

Appeal from Washington County.

Robert L. Liberty, Portland, represented petitioners.

David C. Noren, Sr. Assistant County Counsel,  
Hillsboro, represented respondent.

Timothy V. Ramis and William A. Monahan, Portland,  
represented intervenor-respondent.

HOLSTUN, Referee; KELLINGTON, Chief Referee; SHERTON,  
Referee, participated in the decision.

REVERSED 10/13/93

You are entitled to judicial review of this Order.  
Judicial review is governed by the provisions of ORS  
197.850.

1 Opinion by Holstun.

2 Our decision in this matter was reversed and remanded.  
3 McKay Creek Valley v. Washington County, \_\_\_ Or LUBA \_\_\_,  
4 (LUBA No. 92-238, April 22, 1993), rev'd 122 Or App 59  
5 (1993). The court of appeals agreed with our conclusion  
6 that the disputed aggregate processing facility could not be  
7 allowed under ORS 215.213(2)(d)(D), the basis for the county  
8 decision challenged in the appeal proceeding leading to our  
9 prior decision. McKay Creek Valley v. Washington County,  
10 supra, 122 Or App at 62-63. However, the court reversed and  
11 remanded for our reconsideration of whether the proper  
12 disposition of this appeal is reversal or remand.

13 In our prior decision we concluded the issue of whether  
14 the county correctly construed and applied a second  
15 subparagraph of ORS 215.213(2)(d), ORS 215.213(2)(d)(C), had  
16 not been properly preserved during local appeal proceedings  
17 and had not been properly raised to this Board. We  
18 therefore did not consider whether the disputed aggregate  
19 processing facility could be allowed under ORS  
20 215.213(2)(d)(C). However, we remanded the decision  
21 challenged in this matter on the assumption that under  
22 Schatz v. City of Jacksonville, 113 Or App 675, 835 P2d 923  
23 (1992) the county could, if it elected to do so, reconsider  
24 whether the challenged request for permit approval could be

1 granted under ORS 215.213(2)(d)(C).<sup>1</sup> The court of appeals  
2 explained that our assumption in this regard is incorrect.  
3 McKay Creek Valley v. Washington County, *supra*, 122 Or App  
4 at 64 (citing Beck v. City of Tillamook, 313 Or 148, 831 P2d  
5 678 (1992)).

6 In accordance with the court of appeals' decision, the  
7 county's decision is reversed. OAR 661-10-071(1)(c).

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<sup>1</sup>ORS 215.213(2)(d)(A) and (B) permit approval of certain mining and processing uses in EFU zones, but are inapplicable in view of the facts presented in this case.