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### ***7.1 - CONDITIONAL USES***

#### **§ 39.7000        PURPOSES**

Conditional uses as specified in a district or described herein, because of their public convenience, necessity, unique nature, or their effect on the Comprehensive Plan, may be permitted as specified in the district or described herein, provided that any such conditional use would not be detrimental to the adjoining properties or to the purpose and intent of the Comprehensive Plan.

#### **§ 39.7005        GENERAL PROVISIONS**

(A) Application for approval of a Conditional Use shall be subject to the provisions for Type III decisions in MCC 39.1105 through 39.1240.

(B) A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the Approval Authority.

(C) The findings and conclusions made by the approval authority and the conditions, modifications or restrictions of approval, if any, shall specifically address the relationships between the proposal and the approval criteria listed in MCC 36.6315 and in the district or use provisions.

## **§ 39.7010      CONDITIONS AND RESTRICTIONS**

The approval authority may attach conditions and restrictions to any conditional use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, parking, loading, circulation, access, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

## **§ 39.7015      CONDITIONAL USE APPROVAL CRITERIA**

(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

- (1) Is consistent with the character of the area;
- (2) Will not adversely affect natural resources;
- (3) The use will not:
  - (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor
  - (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
- (4) Will not require public services other than those existing or programmed for the area;
- (5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

- (6) Will not create hazardous conditions; and
- (7) Will satisfy the applicable policies of the Comprehensive Plan.
- (8) The use is limited in type and scale to primarily serve the needs of the rural area.

(B) Except for off-site stockpiling, subsection (A) of this section shall not apply to applications for mineral extraction and processing activities. Proposals for mineral extraction and processing shall satisfy the criteria of MCC 39.7315.

#### **§ 39.7020      ADDITIONAL APPROVAL CRITERIA FOR CERTAIN TRANSPORTATION USES IN THE EXCLUSIVE FARM USE ZONING DISTRICT**

For the transportation uses listed in MCC 39.4230(P), (Q), and (R), the Hearing Authority shall find that Multnomah County has:

- (A) Identified reasonable build alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The County need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer.
- (B) Assessed the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands.
- (C) Selected from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use.

#### **§ 39.7025      DESIGN REVIEW**

Uses authorized under MCC 39.7000 through 39.7035 shall be subject to design review approval under MCC 39.8000 through 39.8050.

#### **§ 39.7030      DESIGN REVIEW EXEMPTION**

Exempted from the Design Review criteria of MCC 39.8000 through 39.8050 include:

- (A) Single family residences.

(B) Type B Home Occupations that require the addition of less than 400 square feet of ground coverage to the structure.

(C) Commercial photovoltaic solar power generation facility.

### **§ 39.7035      CONDITIONAL USE PERMIT**

A conditional use permit shall be obtained for each conditional use approved, before development of the use. The permit shall specify any conditions and restrictions imposed by the approval authority or Board of County Commissioners, in addition to those specifically set forth in this Chapter.

### **AIRPORT LANDING FIELD (CU)**

### **§ 39.7050      PURPOSE**

The purposes of the Airport Landing Field regulations are to provide for review, approval, and development standards for airports, air fields, landing pads, and related uses associated with aircraft operations in any zoning district; to establish maximum structure heights for developments in the vicinity of an airport, designed to promote safe operating conditions for aircraft under ORS 492.560; to reduce the potential for exposure to hazardous conditions by limiting the occupancy of buildings and uses in airport approach areas.

### **§ 39.7055      USES**

An Airport Landing Field District (LF) shall be established through the Type IV Legislative Process subject to the Administrative Procedures in Part 1 of this Zoning Code. The Conditional Uses permitted within the LF District are as provided in MCC 39.7075.

### **§ 39.7060      ALLOWED USES**

Any use permitted in the underlying district, except as provided in MCC 39.7075 (B), subject to the height limitations of MCC 39.7075 (A).

### **§ 39.7065      CONDITIONAL USES**

The following uses may be permitted under the procedural provisions of MCC 39.7000 through 39.7035, when found by the approval authority to satisfy the approval criteria of MCC 39.7070:

- (A) Airport;
- (B) Aircraft landing field;
- (C) Heliport, helistop, or helicopter landing pad;
- (D) Glider, hang glider, or balloon launching or landing area;
- (E) Parachutist landing field; and
- (F) Any other similar facility designated, constructed or used for the operation or landing of aircraft which carry persons, materials, or products.

#### **§ 39.7070      APPROVAL CRITERIA FOR AN LF CONDITIONAL USE**

In approving a Conditional Use listed in MCC 39.7065, the approval authority shall find that the proposal:

- (A) Will satisfy the applicable elements of Comprehensive Plan Policies:
- (B) Will have minimal adverse impact, taking into account location, size, design, and operating characteristics on the:
  - (1) Livability,
  - (2) Value, and
  - (3) Appropriate development of abutting properties and the surrounding area; and
- (C) Will satisfy the use and height limitations of MCC 39.7075.

#### **§ 39.7075      DEVELOPMENT LIMITATIONS**

- (A) The height of any structure or part of a structure, such as a chimney, tower, or antenna, and objects of natural growth, shall be limited pursuant to OAR 660-013-0010 through OAR 660-013-0160.
- (B) In an approach zone to an airport or aircraft landing field, no meeting place which is designated to accommodate more than 25 persons at one time shall be permitted.
- (C) No use in this district shall:

- (1) Create electrical interference with navigational signals or radio communication between an airport and aircraft;
- (2) Display lights which may be confused with airport navigational lights or result in glare visible in the airport vicinity; or
- (3) Otherwise endanger or interfere with the safe operation of aircraft.

#### KEEPING OF DOGS (CU)

##### **§ 39.7100 USES**

Dog kennels, boarding, breeding, keeping or training places or the keeping or raising of four or more dogs over six months of age may be permitted only upon the approval of the approval authority as a conditional use. Such approval shall not include animal hospitals or veterinary clinics as conditional uses.

##### **§ 39.7105 LOCATION REQUIREMENTS**

These uses shall be permitted only in the EFU, MUA-20, RR, C-3 and LM districts and only where they will not conflict with the surrounding property uses. Additional requirements for locating or expanding kennels in the EFU district are found at MCC 39.4230 (I).

##### **§ 39.7110 MINIMUM SITE SIZE REQUIREMENTS**

- (A) Area: Two acres.
- (B) Width: Two hundred fifty feet.
- (C) Depth: Two hundred fifty feet.

##### **§ 39.7115 MINIMUM SETBACK REQUIREMENTS**

These uses shall be located no closer than one hundred feet to any lot line.

##### **§ 39.7120 OTHER REQUIREMENTS**

- (A) All kennels, runs or pens shall be constructed of masonry or such other opaque material as shall provide for cleanliness, ease of maintenance, and sound and noise control.



(B) All kennels, runs and other facilities shall be designed, constructed, and located on the site in a manner that will minimize the adverse effects upon the surrounding properties. Among the factors that shall be considered are the relationship of the use to the topography, natural and planted horticultural screening, the direction and intensity of the prevailing winds, the relationship and location of residences and public facilities on nearby properties, and other similar factors.

(C) The owner or operator of a use approved under MCC 39.7100 shall maintain the premises in a clean, orderly and sanitary condition at all times. No garbage, offal, feces, or other waste material shall be allowed to accumulate on the premises. The premises shall be maintained in such a manner that they will not provide a breeding place for insects, vermin or rodents.

(D) A separate housing facility, pen or kennel space may be required for each dog over six months of age kept on the premises over twenty-four hours.

#### **§ 39.7125 OTHER APPROVALS**

The approval authority may request the advice of the County Dog Control Officer, officials of humane societies, and veterinarians before approving an application hereunder.

#### **§ 39.7130 EXEMPTIONS**

Animal facilities for which Animal Control Facility licenses were issued prior to October 31, 1985 shall be exempted from the provisions of MCC 39.7100 through 39.7125 unless:

- (A) There is an increase in the number of animals in the facility, or
- (B) The use is discontinued for a period of more than two years.

#### **LARGE FILLS (CU)**

#### **§ 39.7200 PURPOSES**

The purpose of the Large Fills regulations is to address the need for large fill sites in the unincorporated area of Multnomah County while protecting the rural character and natural resources of the County. These regulations are designed to:

- (A) To address the current problem of large fill areas and sites which have been largely unregulated;

(B) Minimize potentially adverse effects on the public and property surrounding the fill site;

(C) Acknowledge that natural resources can be impacted by large fill sites;

(D) Distinguish large fills as a use dependent to a large degree upon market conditions and resource size and that reclamation and the potential for future use of the land for other activities must also be considered;

(E) Provide clear and objective standards by which these uses will be reviewed;

(F) Recognize that large fill areas should not impede future uses otherwise allowed under the Comprehensive Plan;

(G) To be consistent with state rules which do not currently list large fill sites as a use in farm and forest resource zones;

(H) To clarify that at the time of adoption of Ordinance 922, (1998), Multnomah County has not made the determination that the use of a large fill would or would not be consistent with other uses allowed in the farm and forest zones due to the fact that they are not uses allowed under state rules; and

(I) To clarify that, at the time of adoption of Ordinance 1038, (2004), it has been determined by Multnomah County that fills associated with the construction of a State or County owned and maintained roads and bridges that are designated as a Rural Collector or Rural Arterial on the Functional Classification of Trafficways map shall not be a *Large Fill*, regardless of the quantity of fill material on a site. It is further determined that fills that are in conjunction with and part of approved transportation projects are an allowed use in the Exclusive Farm Use district under state rules.

## **§ 39.7205 EXCLUDED AREAS**

Large fills shall not be allowed in:

(A) Areas designated SEC-s or SEC-wr;

(B) Other stream areas protected by other local, state and federal agencies;

(C) Jurisdictional wetlands which have not received fill permits from The Army Corp of Engineers and Division of State Lands; or

(D) 100 year floodplains.

#### **§ 39.7210 APPLICATION INFORMATION REQUIRED**

An application for a large fill site shall include the following:

(A) A scaled site plan showing the subject property and all uses, roads, parcels, structures and water features within 1,500 feet of the fill area, when such information can be gathered without trespass;

(B) A contour map at 5' intervals showing both existing and proposed contours with datum;

(C) A geotechnical report for the entire fill area. The report shall include but not be limited to:

(1) Methods of site preparation;

(2) Specific fill methods to be used including techniques such as benching and terracing;

(3) Compaction methods;

(4) Drainage analysis showing pre and post development runoff conditions;

(5) Underground drainage systems utilized for fill compaction shall have a hydraulic analysis to determine the amount of water to be accommodated;

(6) Known landslides and other geologically unstable areas within 1,500 feet surrounding the fill area; and

(7) An erosion control plan for year round protection of the fill site from erosion. The plan should include erosion control measures for:

(a) Winter stabilization;

(b) Rainy season operations in spring and fall;

(c) Summer operations;

(d) Timelines for the various phases;

(D) Written findings demonstrating how the proposal complies with MCC 39.7215;

- (E) A copy of the deed(s) to all parcels on which the fill site will be located;
- (F) A written description of the project including specific timelines for all phases and proposed hours of operation;
- (G) Application materials required to comply with MCC 39.5085 and 39.5090;
- (H) A reclamation plan submitted by a licensed landscape architect demonstrating that reclaimed surfaces conform with the natural landforms of the surrounding terrain.

### **§ 39.7215      CRITERIA FOR APPROVAL**

The approval authority shall find that:

- (A) The applicant demonstrates that the property shall be capable of being used as provided in the Comprehensive Plan and the underlying district after the fill operation.
- (B) The applicant has shown that the following standards can or will be met by a specified date:
  - (1) Access and traffic.
    - (a) Prior to any filling activity, all on-site roads used in the fill operation and all roads from the site to a public right-of-way shall be designed and constructed to accommodate the vehicles and equipment which will use them.
    - (b) All on-site and private access roads shall be paved or adequately maintained to minimize dust and mud generation within 100 feet of a public right-of-way.
    - (c) No material shall be tracked or discharged in any manner onto any public right-of-way.
    - (d) The applicant shall submit a traffic management plan that identifies impacts to existing County infrastructure and an assessment as to the ability of the existing infrastructure to withstand increased traffic loading and usage. The County Engineer shall review the submitted plan and shall certify, based on findings relating to the Multnomah County Road Rules and Design and Construction Manual, that the road(s) identified in the plan:

1. Are suitable for all additional traffic created by the fill operation for the duration of the activity, or

2. If the roads are unsuitable for all additional traffic created by the fill operation for the duration of the activity that:

A. The applicant has committed to finance installation of the necessary improvements under the provisions of 02.200 (a) or (b) of the Multnomah County Road Rules and Design and Construction Manual, and

B. A program has been developed for the number and weight of trucks that can safely be accommodated at specific levels of road improvement. Based upon those findings, the Hearing Authority may attach related conditions and restrictions to the conditional use approval.

(e) Truck movements related to the dumping of materials shall occur entirely on-site and not utilize the public right-of-way or private easements.

(f) Proposals in proximity to state highway facilities need to be reviewed by the Oregon Department of Transportation.

(2) Buffer requirements.

(a) All existing vegetation and topographic features which would provide screening and which are within 100 feet of the proposed area of fill shall be preserved. The applicant shall demonstrate that the existing screening is sufficient to ensure the project site will not noticeably contrast with the surrounding landscape, as viewed from an identified viewing areas, neighboring properties, or accessways, or

(b) If existing vegetation and topography is insufficient to obscure the site from neighboring properties, accessways or identified key viewing areas, the applicant shall propose methods of screening and indicate them on a site plan. Examples of screening methods include landscape berms, hedges, trees, walls, fences or similar features. All required screening shall be in place prior to commencement of the fill activities.

(c) The Approval Authority may grant exceptions to the screening requirements if:

1. The proposed fill area, including truck line-up area and fill areas are not visible from any neighboring properties, key viewing areas and accessways identified in (b) above, or

2. Screening will be ineffective because of the topographic location of the site with respect to surrounding properties.

(3) Signing.

One directional sign for each point of access to each differently named improved street may be allowed for any operation. Signing shall be specified and controlled by the standards of MCC 39.6805.

(4) Timing of Operation.

(a) Hours of operation shall be specified on each application. At a maximum operating hours shall be allowed from 7:00 am to 6:00 pm. Large fills shall not operate on Sundays or on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day.

(b) The placement of fill materials shall not occur from October 1<sup>st</sup> - May 1<sup>st</sup>.

(5) Air, water, and noise quality.

(a) The applicant shall obtain and comply with the standards of all applicable permits from the Department of Environmental Quality. Copies of all required permits shall be provided to Multnomah County prior to beginning filling. If no permits are required, the application shall provide written conformation of that from the Department of Environmental Quality.

(b) Sound generated by an operation shall comply with the noise control standards of the Department of Environmental Quality. Compliance with the standards may be demonstrated by the report of a certified engineer.

(6) Minimum Setbacks.

(a) For filling activities the minimum setback shall be 100 feet to a property line, or if multiple parcels, to the outermost property line of the site.

(b) For access roads and residences located on the same parcel as the filling or processing activity, setbacks shall be as required by the underlying district.

(7) Reclaimed Topography.

All final reclaimed surfaces shall be stabilized by ground control methods as specified by the landscape architect. Reclaimed surfaces shall conform with the natural landforms of the surrounding terrain.

(8) Safety and security.

Safety and security measures, including fencing, gates, signing, lighting, or similar measures, shall be provided to prevent public trespass and minimize injury in the event of trespass to identified hazardous areas such as steep slopes, water impoundments, or other similar hazards.

(9) Phasing program.

Each phase of the operation shall be reclaimed within the time frame specified in subsection (11) or as modified in the decision.

(10) Timeline.

Timelines for Large fill Conditional Use Permits shall be for a two-year period, unless otherwise approved by the Approval Authority. The applicant may request a longer time period for completion as part of the initial application. If an approval has been issued, the applicant may request a longer time period for completion pursuant to the procedures for a Type III permit as described in Part 1 of this Zoning Code.

If completion of a large fill project extends beyond two years, the applicant shall submit an engineering report prepared and signed by a licensed engineer at least once per year by October 31, or as otherwise specified by the Approval Authority. The engineering report shall describe at a minimum the following:

- (a) The amount of fill added to the site since the start of the fill or the last engineering report and stability measures used and planned for the new fill;
- (b) Future fill locations within the approved site and stability measures planned both within and outside the fill site;
- (c) Incidents of landslide or other instability within and outside the fill site, clean-up efforts for these incidents, and measures used and planned to prevent future incidents.

(11) Reclamation Schedule.

(a) Reclamation shall begin within twelve (12) months after fill activity ceases on any segment of the project area. Reclamation shall be completed within three (3) years after all filling ceases, except where the Approval Authority finds that these time standards cannot be met.

(b) The owner shall provide an acceptable guarantee of financial surety to the County prior to beginning work. The applicant shall provide an estimate of the cost to implement the approved plan. Estimated costs shall be based upon the current local construction costs. The financial guarantee shall be 150 percent of the estimated cost to complete the plan. The financial guarantee may be reduced to 125 percent of the cost in cases where the property owner has a written contract with a contractor to guarantee completion of the work which has been reviewed and approved by the County. All such contracts are subject to review by the County. Prior to release of the financial guarantee, the applicant shall submit a report from a licensed professional engineer whose main area of expertise is geotechnical engineering to the County, approving the construction and reclamation and certifying its completion.

#### **§ 39.7220      MONITORING**

(A) The Planning Director shall periodically monitor all fill operations. The dates and frequency of monitoring shall be determined by the Approval Authority based upon the number and type of surrounding land uses and the nature of the fill operation. If the Director determines that a fill operation is not in compliance with the approval, enforcement proceedings pursuant to MCC 39.1510 or as deemed appropriate by the Multnomah County Attorney shall be instituted to require compliance.

(B) For multiple year projects, prior to commencement of material placement in the spring, an engineer's report shall be submitted detailing the condition of the fill after the rainy season. The report shall include any remediation needed and any necessary modifications to fill placement due to failure, slumpage, slides, etc.

#### **MINING AND MINERAL EXTRACTION (CU)**

#### **§ 39.7300      DEFINITIONS**

As used in MCC 39.7305 through 39.7330, the words and their derivations defined in MCC 39.5415 shall have the meanings given therein.

#### **§ 39.7305      PURPOSES**

The purposes of the Mineral Extraction regulations are to promote the public health, safety and general welfare through the protection of mineral and aggregate resources in accordance



with LCDC Statewide Planning Goal #5, and the Multnomah County Comprehensive Plan. The regulations are designed to:

- (A) Recognize mineral and aggregate resource extraction as a land use influenced largely by the location of the natural resource and the location of the market;
- (B) Provide maximum flexibility for location of the extraction process within a variety of underlying zones, while at the same time minimizing potentially adverse effects on the public and property surrounding the extraction site;
- (C) Recognize mineral and aggregate resource sites which receive an ESEE designation for protection as being appropriate for extraction operations when in compliance with MCC 39.7315 through 39.7325; and
- (D) Recognize mineral extraction as a temporary use dependent to a large degree upon market conditions and resource size and that reclamation and the potential for future use of the land for other activities must also be considered.

#### **§ 39.7310      EXCEPTIONS**

Exempted from the requirements of MCC 39.7305 through 39.7330 are those mineral extraction sites and activities as given in MCC 39.5410.

#### **§ 39.7315      CRITERIA FOR APPROVAL**

The approval authority shall find that:

- (A) The site is included on the inventory of protected aggregate and mineral resource sites in the Comprehensive Plan.
- (B) There is a proposed reclamation plan which will allow the property to be utilized as provided in the Comprehensive Plan and the underlying district.
- (C) The applicant has shown that the standards of this section, or site-specific requirements adopted as part of a comprehensive plan amendment, can or will be met by a specified date.
  - (1) Access and traffic.
    - (a) Prior to any surface mining activity, all on-site roads used in the mining operation and all roads from the site to a public right-of-way shall be designed and constructed to accommodate the vehicles and equipment which will use them.

(b) All on-site and private access roads shall be paved or adequately maintained to minimize dust and mud generation within 100 feet of a public right-of-way or 250 feet of a *dust sensitive* land use.

(c) No material which creates a safety or maintenance problem shall be tracked or discharged in any manner onto any public right-of-way.

(d) The applicant shall submit all traffic information and traffic management plans required in any site-specific Comprehensive Plan Program. The County Engineer shall review the submitted plans and shall certify, based on findings relating to the Multnomah County Road Rules and Design and Construction Manual, that the roads appropriately identified in the Plan:

1. Are adequate to safely accommodate any additional traffic created by the extraction operation for the duration of the activity, or

2. If the roads are inadequate to safely accommodate any additional traffic created by the extraction operation for the duration of the activity that:

- a. The applicant has committed to finance installation of the necessary improvements under the provisions of 02.200 (a) or (b) of the Multnomah County Road Rules and Design and Construction Manual, and

- b. A program has been developed for the numbers and weight of trucks from the site that can safely be accommodated at specific levels of road improvement. Based upon those findings, the Hearing Authority may attach related conditions and restrictions to the conditional use approval.

(e) If there are no traffic management requirements in the site-specific Comprehensive Plan Program requirements, the applicant shall identify the most commonly used routes of travel from the site. The County Engineer shall certify, based on findings relating to the Multnomah County Road Rules and Design and Construction Manual, that the applicant has identified the appropriate roads, and those roads:

1. Are adequate to safely accommodate any additional traffic created by the extraction operation for the duration of the activity, or

2. If the roads are inadequate to safely accommodate any additional traffic created by the extraction operation for the duration of the activity that:

- a. The applicant has submitted a traffic management plan that is sufficient for the County Engineer to make relevant findings regarding necessary road improvements;
- b. The applicant has committed to finance installation of the necessary improvements under the provisions of 02.200 (a) or (b) of the Multnomah County Road Rules and Design and Construction Manual; and
- c. A program has been developed for the numbers and weight of trucks from the site that can safely be accommodated at specific levels of road improvement. Based upon those findings, the Hearing Authority may attach related conditions and restrictions to the conditional use approval.

(2) Screening, landscaping and visual appearance.

- (a) All existing vegetation and topographic features which would provide screening and which are within 100 feet of the boundary of the proposed area of extraction shall be preserved.
- (b) If the site-specific Goal 5 analysis determines that existing vegetation and topography is insufficient to obscure the site from key viewing areas and corridors, then measures as identified in the Goal 5 analysis to reduce or eliminate conflicts shall be implemented. Methods of screening may include landscape berms, hedges, trees, walls, fences or similar features. Any required screening shall be in place prior to commencement of the extraction activities.
- (c) The Approval Authority shall grant exceptions to the screening requirements if:
  1. The proposed extraction area is not visible from any key viewing areas and corridors identified in (b) above, or
  2. Screening will be ineffective because of the topographic location of the site with respect to surrounding properties, or
  3. The area is part of the completed portion of a reclamation plan.

(3) Signing.

Only one free standing sign for each point of access to each differently named improved street may be allowed. The free standing signs are allowed one square foot of sign face area per linear foot of site frontage, up to a maximum of 280 square feet. The maximum height of a free standing sign is 30 feet.

(4) If no hours and days of operation are contained in the site-specific Comprehensive Plan Program, the following shall apply:

(a) Operating hours shall be allowed from 7:00 am to 6:00 pm. No operation shall be allowed on Sundays or on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day.

(b) Blasting shall be restricted to the hours of 9:00 am to 5:00 pm. No blasting shall be allowed on Saturdays, Sundays or on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day.

(c) Short-term exceptions to the hours and days of operation may be approved pursuant to the provisions of MCC 39.8750.

(5) Air, water, and noise quality.

(a) The applicant shall obtain and comply with the standards of all applicable emission discharge permits from the Department of Environmental Quality. Copies of all required permits shall be provided to the county prior to beginning mining.

(b) The applicant shall obtain and comply with the standards of all applicable waste water discharge permits from the Department of Environmental Quality. Copies of all required permits shall be provided to the county prior to beginning mining.

(c) Sound generated by an operation shall comply with the noise control standards of the Department of Environmental Quality. Compliance with the standards can be demonstrated by the report of a certified engineer. Methods to control and minimize the effects of sound generated by the operation on noise sensitive uses existing or approved (valid action or administrative decision) on the date of application may include, but not be limited to, the installation of earth berms, equipment location, limitations on the hours of operation, and relocation of access roads.

(6) Fish and wildlife protection.

Fish and wildlife habitat, water bodies, streams, and wetlands inventoried in the Comprehensive Plan shall be protected according to the program contained in the Comprehensive Plan.

(7) Setbacks:

(a) For mineral and aggregate processing activities:

1. 200 feet to a property line, or
2. 400 feet to a noise and dust sensitive land use existing or approved (valid action or administrative decision) on the date of application;

(b) For access roads and residences located on the same parcel as the mining or processing activity, setbacks shall be as required by the underlying district; and

(c) For mineral extraction and all other activities:

1. 100 feet to a property line, or
2. 400 feet to a noise and dust sensitive land use existing or approved (valid action or administrative decision) on the date of application.

(8) Reclaimed Topography.

All final reclaimed surfaces shall be stabilized by sloping, benching, or other ground control methods. Reclaimed surfaces shall blend into the natural landforms of the immediately surrounding terrain. These reclamation standards shall not apply where the Approval Authority finds that the standards conflict with the reclamation plan provided in the Comprehensive Plan or where DOGAMI finds that the standards are less restrictive than DOGAMI reclamation standards.

(9) Safety and security.

Safety and security measures, including fencing, gates, signing, lighting, or similar measures, shall be provided to prevent public trespass to identified hazardous areas such as steep slopes, water impoundments, or other similar hazards where it is found that such trespass is probable and not otherwise preventable.

(10) Phasing program.

All phases of an extraction operation shall be reclaimed before beginning the next, except where the Approval Authority or DOGAMI finds that the different phases cannot be operated and reclaimed separately.

(11) Reclamation Schedule.

The reclamation plan shall include a timetable for continually reclaiming the land. The timetable shall provide for beginning reclamation within twelve (12) months after extraction activity ceases on any segment of the mined area and for completing reclamation within three (3) years after all mining ceases, except where the Approval Authority or DOGAMI finds that these time standards cannot be met.

(D) The proposed operations will not result in the creation of a geologic hazard to surrounding properties, such as through slumping, sliding, or drainage modifications, and have been certified by a registered soils or mining engineer, or engineering geologist as meeting this requirement.

(E) Proposed blasting activities will not adversely affect the quality or quantity of groundwater within wells in the vicinity of the operation.

(F) If the site is zoned Exclusive Farm Use (EFU), the proposed operations:

(1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(2) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

(G) If the site is zoned Commercial Forest Use (CFU):

(1) The proposed operations will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;

(2) The proposed operations will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and

(3) A written statement recognizing the rights of adjacent and nearby property owners to conduct accepted forest practices has been recorded with the property deed in accordance with OAR 660-06-025 (1994).

## **§ 39.7320 SITE RECLAMATION**

(A) No mining shall begin without the operator providing the county a copy of a DOGAMI operating permit and approved reclamation permit or exemption certificate.

(B) When approving an application under this subpart of MCC Chapter 39 the county shall determine the post-mining use of the property. The determination of post-mining use shall be coordinated with DOGAMI to ensure technical feasibility. The designated post-mining use shall conform to the Comprehensive Plan.

### **§ 39.7325      MONITORING**

The Planning Director shall periodically monitor all extraction operations. The beginning dates and frequency of monitoring shall be determined by the Approval Authority based upon any such requirement in the Comprehensive Plan Program and upon the number and type of noise and dust sensitive land uses, and other Goal 5 resources identified in the *ESEE Analysis*. If the Director determines that an extraction operation is not in compliance with MCC 39.7315 or site-specific requirements of the Comprehensive Plan Program, such enforcement proceedings deemed appropriate by the Multnomah County Legal Counsel shall be instituted to require compliance.

### **§ 39.7330      EXISTING OPERATIONS**

(A) All mineral extraction uses that have been approved without a time limit under MCC 39.7300 through 39.7330, prior to July 26, 1979, shall continue to comply with the zoning standards and conditions of approval imposed at the time of approval.

(B) Mineral extraction conditional use permits approved with a time limit under MCC 39.730 through 39.7330 during the time period July 26, 1979 to December 2, 1994, shall be subject to the zoning standards and conditions of approval imposed at the time of approval, including the specified expiration date, except those permits that were valid on December 2, 1994 shall expire two years after the Land Conservation and Development Commission has issued a Periodic Review Final Order regarding the county's Statewide Planning Goal 5 analysis of Mineral and Aggregate Inventory Site #4 (Angell Brothers).

## **STORAGE OF MOTOR VEHICLES OF SPECIAL INTEREST (CU)**

### **§ 39.7350      DEFINITIONS**

For the purpose of MCC 39.7350 through 39.7365, the following terms are hereby defined:

(A) Collector A person who owns one or more motor vehicles of special interest who collects, purchases, acquires, trades or disposes of those motor vehicles or parts thereof for the person's own use in order to preserve, restore and maintain a motor vehicle of special interest for hobby purposes.

(B) Motor Vehicle of Special Interest A motor vehicle satisfying the criteria of paragraph (a) of subsection (4) or paragraph (c) of subsection (6) of ORS 481.205 or otherwise unique due to limited production, original production, mechanical or styling oddities, high intrinsic value or produced by a company no longer in existence.

(C) Parts Car A motor vehicle generally in inoperable condition that is owned by a collector to furnish parts that are not obtainable from normal sources, thus enabling a collector to preserve, restore and maintain a motor vehicle of special interest.

#### **§ 39.7355 USES**

The following uses may be permitted under MCC 39.7350 through 39.7365, when approved by the approval authority.

(A) The storage by a collector of one or more motor vehicles of special interest.

(B) The storage of parts of motor vehicles of special interest or of a parts car or cars when accessory to the storage of one or more motor vehicles of special interest.

#### **§ 39.7360 APPROVAL CRITERIA**

The approval authority shall find that the proposal will satisfy the approval criteria listed in MCC 39.7015.

#### **§ 39.7365 CONDITIONS AND RESTRICTIONS**

In addition to the conditions and restrictions which may be attached under the provisions of MCC 39.7010, the approval authority:

(A) Shall specify the location and size of the storage area;

(B) Shall require the enclosure of the storage area within a sight-obscuring fence and that stored items be maintained in a manner so as not to be visible above the top of the fence; and

(C) May require some or all of the stored items to be contained within a completely enclosed building or under a roofed structure of a size, location and design which is compatible with other permitted structures in the vicinity.

### **TYPE C HOME OCCUPATION (CU)**

#### **§ 39.7400 PURPOSES**

The purposes of the Type C home occupation section are to address the need for home based business that are small scale businesses (not more than 5 employees) and that fit in with the characteristic of the neighborhood or the area. The regulations are designed to:



(A) Protect the individual characteristics of areas in unincorporated Multnomah County and maintain the quality of life for all residents of the communities.

(B) Join in an effort to reduce vehicle miles traveled, traffic congestion and air pollution in the State of Oregon.

#### **§ 39.7405      CRITERIA FOR APPROVAL**

(A) A Type C home occupation is a lawful commercial activity that is conducted in a dwelling or accessory building on a parcel by a business operator, is subordinate to the residential use of the premises, and complies with the following:

(1) The on-site business functions of the home occupation shall take place entirely within a dwelling unit or enclosed accessory building on the premises, except for employee and customer parking and signage. No outdoor storage, business activities, or displays shall occur outside of an enclosed building.

(2) Type C home occupation shall not exceed 35 percent of the total gross floor area of the dwelling, attached garage and accessory buildings, or 1,500 sq. ft, whichever is less.

(3) The home occupation shall not employ more than five employees.

(4) No more than a total of 40 vehicle trips per day by customers of the home occupation, delivery service providers serving the home occupation and employees may be authorized through the conditional use process. No deliveries or pick-ups associated with the home occupation and between the hours of 7 p.m. - 7 a.m. are permitted. Deliveries or pick-ups shall occur on the premises only. The road serving the tract may not be used for loading or unloading purposes.

(5) In addition to the required residential parking, the premises has on-site parking pursuant to MCC 39.6500-39.6600 to accommodate the total number of employees and customers, proposed to be on the premises at any one time. No use, parking or storing on the premises of any vehicle in excess of a gross vehicle weight of 11,000 pounds.

(6) Notwithstanding MCC 39.6700-39.6820, only one sign shall be permitted for the home occupation. The sign may be freestanding or a fascia sign.

(a) The sign shall be a maximum of eight square feet;

(b) A freestanding sign shall not exceed six feet in height;

(c) A fascia sign shall be placed on the building used for the business and shall not exceed the height of the first floor;

(d) The sign shall face the access point to the property. A freestanding sign shall not be placed within the vision clearance area;

(e) Indirect lighting of the sign may occur only during the hours the business is operating.

(7) The combination of all uses on the premises associated with the home occupation will not generate noise above 50 dB(A) (decibels adjusted) at the property lines between 7 a.m. and 6 p.m. daily. During all other hours, the home occupation shall not create noise detectable at the property line. Vehicles entering or exiting the subject property shall be exempt from this standard, but idling vehicles shall not.

(8) The use shall not generate vibration, glare, flashing lights, dust, smoke, fumes, or odors detectable at the property line. Vehicles entering or exiting the subject property shall be exempt from this standard, but idling vehicles shall not. All storage, use and disposal of chemicals and materials shall be in conformance with all other applicable state pollution control regulations.

(9) No repair or assembly of any motor or motorized vehicles. A motorized vehicle includes any vehicle or equipment with an engine including automobiles, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, and chain saws.

(10) No building or structure is proposed to be constructed or modified in a manner that would not otherwise be allowed in the zoning district. Buildings or structures used as part of the home occupation shall not have or require a building code occupancy rating other than R-3 or U as determined by the building official.

(11) In the EFU and CFU zone districts, the home occupation will not unreasonably interfere with other uses permitted in the general district.

(12) The approval criteria listed in MCC 39.7015.

(B) Each approval issued by a hearings officer shall be specific for the particular home occupation and reference the business operator, number of employees allowed, the hours of operation, frequency and type of deliveries, the type of business and any other specific information for the particular application.

(C) Notwithstanding the transfer of approval rights in MCC 39.1230, approval of a Type C home occupation does not run with the land and is not transferred with ownership of the land. Approval of a Type C home occupation is personal to the business operator and specific to the authorized premises. Approval of a Type C home occupation terminates automatically, immediately and without notification if the business operator ceases to reside full-time on the authorized premises.

(D) Existing Type C Home Occupations that were approved prior to August 18, 2012, which complied with all provisions of their permit, may continue provided any alteration, expansion or establishment of a new home occupation shall be subject to the above home occupation regulations. The adoption of these home occupation regulations is not intended to make these existing businesses non-conforming and proposals for alteration, expansion or replacement of the Type C home occupation shall be pursuant to these home occupation regulations.

#### **§ 39.7410 TYPE C HOME OCCUPATION RENEWAL**

(A) The home occupation may continue for a period of three years from date of the final decision provided it is in compliance with the approved permit. At the end of the three year period, the right to operate the Type C home occupation from the property expires automatically unless the permit is renewed for an additional three year period pursuant to the following:

(1) The Type C home occupation has been conducted in full compliance with the permit for a preponderance of the time since the prior approval.

(2) Each renewal period shall be for a three year period from the last expiration date. The home occupation may be renewed an unlimited number of times.

(3) To obtain a renewal of the home occupation, the business operator shall use the forms provided by the Planning Director and shall submit the application prior to expiration of the permit. Provided the renewal application is submitted on or before its expiration date, the business operator may continue the home occupation pending the County's final decision on the renewal request.

(4) A Type C home occupation renewal shall be processed pursuant to the Type II approval process in MCC 39.1105.

(B) The Planning Director may consider minor modifications to the Hearings Officer's decision required by MCC 39.7405(B) and the conditions of approval if requested by the

business operator as part of a Type C home occupation renewal application. A minor modification may be approved if it:

- (1) Is consistent with the prior approval.
- (2) Is consistent with MCC 39.7405(A).
- (3) Does not increase the intensity of use of the premises.

## FARM STANDS (CU)

### § 39.7450 DEFINITIONS

(A) *Local agricultural area* – Oregon or an adjacent county in Washington that borders Multnomah County.

(B) *Farm crops or livestock* – Both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, “processed crops and livestock” includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

### § 39.7455 CRITERIA FOR APPROVAL

(A) The parcel where the farm stand is located is adjacent to the Historic Columbia River Highway (Highway) or has road frontage on a County maintained road that intersects with the Highway. A portion of the parcel’s road frontage shall be within 500 feet, as driven, from the Historic Columbia River Highway.

(B) The farm stand is designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items, and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total sales of the farm stand.

(C) A farm stand operation that includes fee-based activities shall be located on a lot of with a minimum lot size of five acres and 75 percent of the lost must be used in the farm

operation. The farm stand shall be open for retail sales of farm crops and livestock during all hours that fee-based activities are offered.

(D) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(E) The proposed farm stand shall meet the criteria in MCC 39.7015.

## ***7.2 - COMMUNITY SERVICE USES***

### **§ 39.7500 PURPOSE**

This subpart of MCC Chapter 39 provides for the review and approval of the location and development of special uses which, by reason of their public convenience, necessity, unusual character or effect on the neighborhood, may be appropriate as specified in each district.

### **§ 39.7505 GENERAL PROVISIONS**

(A) Community Service approval shall be for the specific use or uses approved together with the limitations or conditions as determined by the approval authority.

(B) Uses authorized pursuant to this section shall be subject to Design Review approval under MCC 39.8000 through 39.8050.

(C) A Community Service approval shall not be construed as an amendment of the Zoning Map, although the same may be depicted thereon by appropriate color designation, symbol or short title identification.

### **§ 39.7510 CONDITIONS AND RESTRICTIONS**

The approval authority may attach conditions and restrictions to any community service use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, parking, loading, circulation, access, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

### **§ 39.7515 APPROVAL CRITERIA**

In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria, except for transmission towers, which shall meet the approval criteria of MCC 39.7550 through 39.7575, wireless communications facilities, subject to the provisions of MCC 39.7705, and except for regional sanitary landfills which shall comply with MCC 39.7600 through 39.7625.

- (A) Is consistent with the character of the area;
- (B) Will not adversely affect natural resources;
- (C) The use will not:
  - (1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor
  - (2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
- (D) Will not require public services other than those existing or programmed for the area;
- (E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;
- (F) Will not create hazardous conditions;
- (G) Will satisfy the applicable policies of the Comprehensive Plan;
- (H) Will satisfy such other applicable approval criteria as are stated in this Section.
- (I) The use is limited in type and scale to primarily serve the needs of the rural area.

## **§ 39.7520      USES**

(A) Except as otherwise limited in the EFU, all CFU and OR districts, the following Community Service Uses and those of a similar nature, may be permitted in any district when approved at a public hearing by the approval authority.  
Allowed Community Service Uses in the EFU, CFU and OR districts are limited to those uses listed in each respective district.

- (1) Church.

- (2) Group care facility.
- (3) Kindergarten or day nursery.
- (4) Library.
- (5) Park, playground, sports area, golf course or recreational use of a similar nature.
- (6) Utility facilities,, including power substation or other public utility building or use.
- (7) Private club, fraternal organization, lodge.
- (8) Radio and television transmission towers.
  - (a) VHF and UHF television towers, FM radio towers, two-way radio, common carrier, and cellular telephone towers, and fixed point microwave towers are permitted in any district, provided only self-supporting structures are permitted in the Exclusive Farm Use district.
  - (b) Low-power television towers, satellite ground stations, AM radio towers, and building-mounted towers are permitted in any district except urban residential districts, provided only self-supporting structures are permitted in the Exclusive Farm Use district.
  - (c) Ham radio, amateur sole source emitters, Citizen Band transmitters, and structures to support them are permitted in any district as an accessory use and do not require a Community Service use designation if used for non-commercial purposes only. Any such tower shall comply with the regulations of the district in which it is located. Non-amateur sole source emitters shall also comply with the registration requirements of MCC 39.7575 (B).
  - (d) Receive-only facilities in conjunction with a permitted use are exempt from the provisions of this section, but shall comply with all other requirements of this paragraph (A) (8) and 39.7550 through 39.7575.
- (9) Recycling collection center.
- (10) Riding academy or the boarding of horses for profit.
- (11) School, private, parochial or public; educational institution.

(12) Transit station, or park and ride lot.

(13) Waste collection, transfer, processing, or recovery facility.

(14) Museum.

(15) Ambulance Service Substation.

(16) Mining and processing of geothermal resources.

(17) Limited alternative uses of surplus public school space pursuant to the provisions in MCC 39.7650.

(18) Fire Station.

(19) Accessory uses to the above.

(B) In addition to those uses listed in subsection A of this section, in the West Hills, Sauvie Island/Multnomah Channel and East of Sandy Rural Planning Areas, the following Community Service Uses and those of a similar nature may also be permitted when approved at a public hearing by the approval authority

(1) Marina.

(2) Camp, campground, or recreational vehicle park.

(3) Cemetary, crematory, mausoleum, mortuary or funeral home.

(4) Government building or use.

(5) Hospital, sanitarium, rest or retirement home.

(6) Philanthropic or eleemosynary institution.

(7) Racetrack

(8) Refuse dump or sanitary landfill.

(9) Resort, dude ranch, hunting or fishing lodge.



(10) Regional sanitary landfills.

(11) Wireless communication facilities.

(C) Approval of a Community Service Use shall be deemed to authorize associated public utilities to serve the site, including energy and communication facilities.

## **§ 39.7525      RESTRICTIONS**

A building or use approved under MCC 39.7520 through 39.7650 shall meet the following requirements:

(A) Minimum yards in EFU, CFU, MUA-20, RR, BRC, OCI, OR and PH-RC, UF-20, LR-10, Districts:

(1) Front yards shall be 30 feet.

(2) Side yards for one-story buildings shall be 20 feet; for two-story buildings, 25 feet.

(3) Rear yards shall be as required in the district.

(B) Minimum yards in LR-7, LR-5 and MR-4 Districts:

(1) Front yards shall be 30 feet.

(2) Side yards for buildings 25 feet or less in height shall be 15 feet; for buildings over 25 feet in height, 20 feet. (3) Rear yards shall be as required in the district.

(C) Minimum yards in other districts shall be as required in the district.

(D) Minimum Site Size:

(1) A day nursery or kindergarten shall provide not less than 100 square feet per child, of outdoor play area located other than in a required front yard.

(2) Primary (kindergarten through fourth grade), private and parochial schools shall be on sites of one acre for each 90 pupils or one acre for each three classrooms, whichever is greater.

(3) Elementary public schools shall be on sites of one acre for each 75 pupils or one acre for each two and one-half classrooms, whichever is greater.

(4) Churches shall be on sites of 15,000 square feet.

(D) Off-street parking and loading shall be provided as required in MCC 39.6500 through 39.6600.

(E) Signs for Community Service Uses pursuant to the provisions of MCC 39.6700 through 39.6820.

(F) In the MUA-20, RR, and BRC, SRC and RC districts, the length of stay by a person or vehicle in a camp, campground, ~~or~~ campsite or recreational vehicle park shall not exceed a total of 90 days during any consecutive 12 month period by an individual, group or family.

(G) Other restrictions or limitations of use or development not required under this subsection shall be provided in the district.

## RADIO AND TELEVISION TRANSMISSION TOWERS (CS)

### § 39.7550 PURPOSE

The purposes of MCC 39.7550 through 39.7575 are to:

(A) Minimize visual impacts of towers through careful design, siting and vegetative screening.

(B) Avoid potential damage to adjacent properties from tower failure and falling ice, through engineering and careful siting of tower structures.

(C) Lessen traffic impacts on surrounding residential areas.

(D) Ensure that the amount of non-ionizing electromagnetic radiation emitted by antennas does not exceed the amount at which human health has been found to be affected and is the minimum necessary to provide adequate access to the area's broadcasters by requiring compliance with stated emission standards and required separation standards.

### § 39.7555 DEFINITIONS

The following definitions shall apply to MCC 39.7550 through 39.7575:

(A) **Sole Source Emitter** - An individual piece of property containing one or more radio transmitters, only one of which is normally transmitting at a given instant in time.

(B) **Intermittent Operation** - An operation where the radio transmitter does not normally continually operate for a period of 15 minutes or more at one time and generally, the transmitter operation is random in time.

(C) **Vehicular Source** - Transmitters located in vehicles which normally move about.

(D) **Hand-Held Source** - Transmitters normally held in the hand of, or on the person of, the person operating the transmitters.

(E) **Portable Sources** - Transmitters and associated antenna which are capable of being moved from one point to another and operated from a given location for a period of less than one month.

(F) **Regularly Occupied** - Occupied by a given individual on an on-going regular basis and excluding occasional visitors, passersby, etc.

(G) **Source of Non-ionizing Electromagnetic Radiation** - Any source of electromagnetic radiation emanating emissions between 100 kHz and 300 GHz with an effective radiated power greater than 1 watt.

(H) **Height of Antenna Above Ground** - The vertical distance between the highest current point of the antenna and the ground directly below this point.

(I) **General Population** - That segment of the population which is not a member of the immediate family or employee of the owner or operator of source of NIER or, because of occupation, is required to work with sources of NIER.

(J) **The effective radiated power (ERP)** is the power input to the antenna, times the numerical power gain of the antenna relative to an isotropic radiator.

(K) **Point on property line of highest radiation** means for sites with more than one source, the point on the property line where the radiation is predicted to be maximum with all sources of NIER operating.

## **§ 39.7560 APPLICATION REQUIREMENTS**

An application for approval of a Community Service designation for a radio or television transmission tower shall contain at least the following information before it is complete:

(A) Site plan or plans to scale specifying the location of towers(s), guy anchors (if any), transmission building and/or other accessory uses, access, parking, fences, landscaped areas,

and adjacent land uses. Such plan shall also demonstrate compliance with MCC 39.7565 (I) and (J).

(B) Landscape plan to the scale indicating size, spacing and type of plantings required in 39.7565 (B).

(C) Report from a professional engineer licensed in the State of Oregon, documenting the following:

(1) Tower height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design. A cross-section of the tower structure shall be included.

(2) Total anticipated capacity of the structure, including number and types of antennas which can be accommodated.

(3) Evidence of structural integrity of the tower structure as required by the Building Official.

(4) Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris.

(5) Ice hazards and mitigation measures which have been employed, including increased setbacks and/or deicing equipment.

(D) Statements from the F.A.A, O.S.A.D., and F.C.C., that the standards of MCC 39.7565 (G) are met or the required good faith, timely effort it achieve such responses.

(E) Written authorization from adjoining property owners, if needed, under MCC 39.7565 (J).

(F) Responses to the applicable Comprehensive Plan Policies.

### **§ 39.7565      APPROVAL CRITERIA FOR NEW TRANSMISSION TOWERS**

New transmission towers permitted under MCC 39.7520 (A) (8) (a) or (b) may be allowed, based on findings by the approval authority that the following criteria are met.

(A) The site is of a size and shape sufficient to provide the following setbacks:

(1) For a tower located on a lot abutting an urban residential district or a public property or street, except a building-mounted tower, the site size standards of MCC 39.7565 (I) and (J) are met as to those portions of the property abutting the residential or public uses.

(2) For all other towers, the site shall be of sufficient size to provide the setback required in the underlying district between the base of the tower, accessory structures and uses, and guy anchors, if any, to all abutting property lines.

(B) The required setbacks shall be improved to meet the following landscaping standards to the extent possible within the area provided:

(1) Landscaping at the perimeter of the property which abuts streets, residences, public parks or areas with access to the general public other than the owner of such adjoining property. Such landscaping plan shall demonstrate the following:

(a) For towers 200 feet tall or less, a buffer area no less than 25 feet wide shall commence at the property line. At least one row of evergreen shrubs shall be spaced not more than five feet apart. Materials should be of a variety which can be expected to grow to form a continuous hedge at least five feet in height within two years of planting. At least one row of evergreen trees or shrubs, not less than four feet height at the time of planting, and spaced not more than 15 feet apart, also shall be provided. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.

(b) For towers more than 200 feet tall, a buffer area not less than 40 feet wide shall be provided at the property line with at least one row of evergreen shrubs spaced not more than five feet apart which will grow to form a continuous hedge at least five feet in height within two years of planting; one row of deciduous trees, not less than 1 1/2 inch caliper measured three feet from the ground at the time of planting, and spaced not more than 20 feet apart; and at least one row of evergreen trees, not less than four feet at the time of planting, and spaced not more than 15 feet apart. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.

(c) In lieu of these standards, the approval authority may allow use of an alternate detailed plan and specifications for landscape and screening, including plantings, fences, walls and other features designed to screen and buffer towers and accessory uses. The plan shall accomplish the same degree of screening achieved in (a) and (b) above, except

as lesser requirements are desirable for adequate visibility for security purposes and for continued operation of existing bona fide agricultural or forest uses, including but not limited to produce farms, nurseries, and tree farms.

(C) The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. Towers clustered at the same site shall be of similar height and design, whenever possible. Towers shall be painted and lighted as follows:

(1) Towers 200 feet or less in height shall have a galvanized finish or be painted silver. If there is heavy vegetation in the immediate area, such towers shall be painted green from base to treeline, with the remainder painted silver or given a galvanized finish.

(2) Towers more than 200 feet in height shall be painted in accordance with regulations of the Oregon State Aeronautics Division.

(3) Towers shall be illuminated as required by the Oregon State Aeronautics Division. However, no lighting shall be incorporated if not required by the Aeronautics Division or other responsible agency.

(4) Towers shall be the minimum height necessary to provide parity with existing similar tower supported antenna, and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower.

(D) A minimum of two parking spaces shall be provided on each site; an additional parking space for each two employees shall be provided at facilities which require on-site personnel, provided additional parking may be required in accordance with MCC 39.6500 to 39.6600 if the site serves multiple purposes.

(E) The applicable policies of the Comprehensive Plan are met.

(F) The NIER standards of MCC 39.7575 are met.

(G) The following agency coordination standards are met:

(1) A written statement provided by the applicant from the appropriate official in the Federal Aviation Administration that the application has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulations, or a statement that no compliance with Part 77 is required;

(2) A written statement provided by the applicant from the appropriate official in the Oregon State Aeronautics Division that the application has been found to comply with the applicable regulations of the Division, or a statement that no such compliance is required; and,

(3) A written statement provided by the applicant from the appropriate official in the Federal Communications Commission that the application complies with the regulations of the Commission or a statement that no such compliance is necessary.

(4) The statements in (1) through (3) may be waived when the applicant demonstrates that a good faith, timely effort was made to obtain such responses but that no such response was forthcoming, provided the applicant conveys any response received; and further provided any subsequent response that is received is conveyed to the approval authority as soon as possible.

(H) For a proposed tower in the EFU, CFU and MUA-20 districts, the following restrictions on accessory uses shall be met:

(1) Accessory uses shall include only such buildings and facilities necessary for transmission function and satellite ground stations associated with them, but shall not include broadcast studios, offices, vehicle storage areas, nor other similar uses not necessary for the transmission function.

(2) Accessory uses may include studio facilities for emergency broadcast purposes or for other special, limited purposes found by the approval authority not to create significant additional impacts nor to require construction of additional buildings or facilities exceeding 25 percent of the floor area of other permitted buildings.

(I) Site size and tower setbacks:

(1) The site shall be of a size and shape sufficient to provide an adequate setback from the base of the tower to any property line abutting an urban residential district, public property, or public street. Such setback shall be sufficient to:

(a) Provide for an adequate vegetative, topographic or other buffer, as provided in MCC 39.7565 (C) and (B),

(b) Preserve the privacy of adjoining residential property,

(c) Protect adjoining property from the potential impact of tower failure and ice falling from the tower by being large enough to accommodate such failure and ice on the site, based on the engineer's analysis required in MCC 39.7560 (C) (4) and (5), and

(d) Protect the public from NIER in excess of the standard of MCC 39.7575 (A).

(2) A site is presumed to be of sufficient size when it:

(a) Meets the requirements of (1) (c) and (d) above,

(b) Provides a setback equal to 20 percent of the height of the tower to any property line abutting an urban residential district, public property, or public street, and

(c) Provides a setback equal to or exceeding the rear yard setback required for the adjoining property where the adjoining property is not in an urban residential district nor a public property or a public street.

(3) Placement of more than one tower on a lot shall be permitted, provided all setback, design and landscape requirements are met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of the towers on the site described in MCC 36.6110 (C) (4) will not lead to multiple failures in the event that one fails.

(4) Structures and uses associated with the transmission use other than the transmission tower shall be located to meet the setbacks required in MCC 39.7525.

(J) Guy setbacks:

(1) For a guyed structure, the site shall be of a size and shape sufficient to provide an adequate setback from a guy anchor to any property line abutting an urban residential district, public property or public street in addition to the size required to comply with 39.7565 (I). Such setback shall be adequate to provide a vegetative, topographic or other buffer sufficient to obscure view to the anchor from such adjoining properties.

(2) A site is presumed to be of sufficient size when it provides:

(a) A setback of at least 25 feet between a guy anchor and any property line abutting an urban residential district or public property or street, and



(b) A setback equal to or exceeding the rear yard setback required for the adjoining property where the adjoining property is not a public property or street nor in an urban residential district.

(3) A guy anchor may be located on an adjoining property when:

(a) The owner of the adjoining property on which it is to be placed authorizes it in writing, and

(b) The guy anchor meets the requirements of (1) or (2) above as to all other adjoining property lines.

(4) Guy anchors may be located within required landscape areas.

(5) A guy from a tower which was previously approved under any ordinance may be extended to an adjacent site if the guy anchor will comply with MCC 39.7565 (J) (3) as determined by the Planning Director.

#### **§ 39.7570      DESIGN REVIEW**

The use shall comply with the design review provisions of MCC 39.8000 to 39.8050. This may be implemented as a condition of approval.

#### **§ 39.7575      RADIATION STANDARDS**

Non-ionizing electromagnetic radiation standards.

(A) No source of non-ionizing electromagnetic radiation shall hereinafter be operating, which causes the general population to be exposed to radiation levels exceeding the mean squared electric (E<sup>2</sup>) or mean squared magnetic (H<sup>2</sup>) field strengths, or their equivalent plan wave free space power density, as specified in Table 1.

(1) For near field exposures, measurements of the mean squared electric and magnetic field strengths are especially important to determine compliance with the standards in columns 2 and 3 of Table 1. For convenience, mean squared electric or magnetic field strengths may be specified as the equivalent plane-wave power density. At higher frequencies (e.g., above 30-300 MHz), measurement of mean-squared magnetic field strength may not be necessary if it can be reliably inferred from measurements of either mean squared electric field strength or equivalent plane-wave power density.

(2) In the event the federal government promulgates mandatory or advisory standards more stringent than those described herein, the more stringent standards shall apply.

(3) These standards are adapted from the American National Standards Institute's American National Standard C95.1-1982, Safety Levels With Respect to Human Exposure to Electromagnetic Fields (300 kHz to 100 GHz). This ANSI standard's documentation should be consulted to help resolve any future questions about the basis or interpretation of the standards in this section.

(4) Similarly, the latest revision of ANSI's American National Standards Institute's American National Standard C95.3, Techniques and Instrumentation for the Measurement of Potentially Hazardous Electromagnetic Radiation at Microwave Frequencies, is incorporated here by reference as one source of acceptable methods for measuring non-ionizing radiation levels in determining compliance with this standard.

(a) For all measurements made to ensure compliance with this section, evidence shall be submitted showing that the instrument or instruments used were calibrated within the manufacturer's suggested periodic calibration interval; that the calibration is by methods traceable to the National Bureau of Standards; a statement that the measurements were made in accordance with good engineering practice; and a statement or statements as to the accuracy of the results of the measurements.

(5) The standards adopted herein shall be periodically reviewed by the Multnomah County Health Officer, in light of any new scientific knowledge as to the effects on the general population of non-ionizing electromagnetic radiation; and these standards may hereafter be raised, lowered or otherwise changed as the County shall require by amendment of this section. The first such reports shall be delivered on or before January 1, 1984.

(6) For average times less than 0.5 hour, the allowed power density  $P$  in  $\mu\text{w}/\text{cm}^2$  as a function of averaging time  $t$  in hours is given by  $P = k/t$  where in turn  $K$  is equal to  $1/2$  times the allowed power density for averaging times of 0.5 hour and greater.

(B) All existing sources of non-ionizing electromagnetic radiation in the frequency spectrum, 100 kHz to 300 GHz, except those exempted below, are within 120 days of the enactment of this section, hereby required to register with the County and provide the following information for each individual source on forms provided by the Planning Director.

(1) Name and address of owner of transmitter and/or antenna.

- (2) Name and address of owner of property on which the transmitter and/or antenna is located.
- (3) Location of transmitter.
- (4) Location of antenna by geographic coordinates by either latitude and longitude or state plane coordinates.
- (5) Output frequency of transmitter.
- (6) Type of modulation and class of service.
- (7) Power output of transmitter (average and peak).
- (8) Power input to antenna.
- (9) Manufacturer, type, manufacturer's model number of antenna and a copy of the antenna radiation patterns.
- (10) Gain of antenna with respect to an isotopic radiator.
- (11) Polarization of radiation from antenna.
- (12) Height of antenna above ground.
- (13) Horizontal and radial distance of antenna to nearest point on property line and to nearest habitable space regularly occupied by others than immediate family or employees of transmitter and/or antenna owner and/or operator.
- (14) Elevation above mean sea level of ground at the antenna location and the points specified in (B)(13).
- (15) The call letters assigned to the source.
- (16) Date of installation of present transmitter, and date of installation of the associated antenna, date of installation of the structure, if any, on which the antenna is located.
- (17) Any sources not so registered shall be regarded as a new source and any registered source with different essential technical characteristics than those of (B) (3) through (B) (13) above as a changed existing source.

(C) After August 19, 1982, no installation of a new source of non-ionizing electromagnetic radiation or changes in an existing source which in any way causes increases in the NIER or radiation pattern of the NIER source shall occur without first obtaining a Community Service use designation or modification thereof, unless otherwise provided herein.

(D) The application for the use shall be on forms provided by the Planning Director, and shall show:

(1) The information required under (1) through (16) of subsection (B) above.

(2) The measured existing non-ionizing radiation levels at the nearest point on the property lines of the predicted maximum radiation from the source, and the nearest point regularly occupied by other than the immediate family and/or employees of the transmitter owner and/or operator.

(a) These measurements shall be made at a height of 1.5 meters above the ground or at the greater height if habitation occurs at a greater height with lesser radial distance to the source.

(b) If the measured level is equal to or less than 1/5 of the limits, the measurement shall be made for the continuous period 6 a.m., to 6 p.m., on a regular business day.

(c) If the measured level is greater than 1/5 of the limits, the measurement shall be made for a continuous period of 168 hours.

(d) If there exists an operational situation which would cause higher levels to occur at some other time than the intervals of (b) or (c) above, the measurement shall be made during that time.

(e) These measurements may be made by whatever means the registered professional engineer under whose direction and supervision they are made deems appropriate. The effects of contributing sources of frequency below the lower frequency limit of broadband instruments may be appropriate separate single instant measurements of the contribution due to these sources. Further, levels below 20 microwatts/cm<sup>2</sup> or the minimum sensitivity of the instruments used, whichever is lesser, shall be deemed zero for further computational purposes.

(3) The calculated average levels at the three points specified in (D) (2) after installation of the new source, including both the background and the new source.

(4) The calculated levels at the boundaries of other sources at which the new source may cause a detectable increase in level.

(5) The calculated level at the predicted point of maximum radiation off of the property on which the new source is located caused by the new source along with the measured background NIER at this point. This measurement shall meet the requirements of (D) (2).

(6) The geographic coordinates (latitude and longitude or state plane coordinates) of each point of measurement and/or calculation shall be furnished.

(E) A Community Service use designation or modification thereof may be granted if the levels calculated in subsection (D), including the existing measured background, do not exceed the limits set forth in subsection (A), and if a new tower is required, the siting standards of this section are met. However, if the calculated levels, including existing measured background at any point specified in subsection (D) exceed one-third of the maximum levels of subsection (A), then, the approval shall be conditional upon measurements made after the new source is installed showing that the maximum levels of subsection (A) are not exceeded. If the calculated levels exceed the maximum level of subsection (A), the application shall be denied.

(F) All commercial intermittent sole source emitters of less than 1 KW average output are exempt from the measurement requirements of subsection (D) if they comply with the separation requirement of this subsection (F) and all other requirements of this section. Prior to issuance of a building permit for a tower to support an antenna associated with one of these uses, the Planning Director shall determine that the antenna meets the following requirements:

(1) For an effective radiated power (ERP) of less than 100 watts the highest current point of the antenna is located at least ten feet and all portions of the antenna three feet from the external surface of any habitable structure not located on the property containing the source and from habitable space on the same property normally occupied on a regular basis by others than the immediate family and/or employees of the owner and/or operator of the source.

(2) For an ERP greater than 100 watts, but less than 1,000 watts, the highest current point of the antenna is at least 15 feet and all portions of the antenna at least six feet from the external surface of any habitable structure not located on the property containing the source and from habitable space on the same property normally occupied on a regular basis by others than the immediate family and/or employees of the owner and/or operator of the source.

(3) For an ERP equal to or greater than 1,000 watts, but less than 10 kW, the antenna meets the following separation criteria from the external surface of any habitable structure not located on the property containing the source and from habitable space on the same property normally occupied on a regular basis by others than the immediate family and/or employees of the owner and/or operator of the source.

Frequency	Minimum Distance from Highest Current Portion	Minimum Distance from Any Portion
<7 MHz	11 feet	5 feet
7 - 30 MHz	$f/0.67$ feet	$f/1.5$ feet
30 - 300 MHz	45 feet	20 feet
300 -1500 MHz	$780 / \sqrt{f}$ feet	$364 / \sqrt{f}$ feet
>1500 MHz	20 feet	10 feet
Where $f$ is frequency in megahertz.		

(4) For an ERP equal to or greater than 10 kW, but less than 30 kW, the antenna meets the following separation criteria from the external surface of any habitable structure not located on the property containing the source, and from habitable space on the same property normally occupied on a regular basis by others than the immediate family and/or employees of the owner and/or operator of the source.

Frequency	Minimum Distance from Highest Current Portion	Minimum Distance from Any Portion
<7 MHz	17.5 feet	8 feet
7 - 30 MHz	$f/0.4$ feet	$f/0.91$ feet
30 - 300 MHz	75 feet	33 feet
300 -1500 MHz	$1300 / \sqrt{f}$ feet	$572 / \sqrt{f}$ feet
>1500 MHz	34 feet	15 feet

(G) The following uses are exempt from all requirements of this section:

- (1) All portable, hand-held and vehicular transmission sources.
- (2) Industrial, scientific, and medical equipment operating at frequencies designated for that purpose by the FCC.
- (3) Radio frequency machines:
  - (a) Which have an effective radiated power of 7 watts or less;
  - (b) Which are designated and marketed as consumer products, such as microwave ovens, citizen band radios, and remote control toys, or
  - (c) Which are in storage, shipment or on display for sale, provided such machines are not operated.
- (4) Amateur intermittent sole source emitters of less than 1 KW average output.

<b>TABLE 1</b> <b>Non-Ionizing Electromagnetic Radiation Standards</b>			
Frequency (MHz)	Mean Squared Electric (E) Field Strength* ( $V^2/m^2$ ) <sup>†</sup>	Mean Squared Magnetic (H) Field Strength* ( $A^2/m^2$ ) <sup>‡</sup>	Equivalent Plane-Wave Power Density* ( $mW/cm^2$ )
100 kHz - 3 MHz	80,000	0.5	20
3 MHz - 30 MHz	$4,000(180/f^2)$	$0.025(180/f^2)$	$180/f^2$
30 MHz - 300 MHz	800	0.005	0.2
300 MHz - 1500 MHz	$4,000(f/1500)$	$0.025(f/1500)$	$f/1500$
1500 MHz - 300 GHz	4,000	0.025	1.0

\* All standards refer to root mean square (rms) measurements averaged over 0.5 hour (30 minutes).

<sup>†</sup>  $V^2/m^2$  = Volts squared per meter squared.

<sup>‡</sup>  $A^2/m^2$  = Amperes squared per meter squared.

Note: f = frequency in megahertz (MHz).

## REGIONAL SANITARY LANDFILLS (CS)

### § 39.7600 DEFINITIONS

#### (A) Definitions

(1) *Regional Sanitary Landfill* shall mean a general purpose landfill facility which, by itself or as a component of a network of such facilities, is designed and operated for the disposal of the region's solid waste and which METRO or its franchisee shall operate.

(2) *METRO* shall mean the Metropolitan Service District or its successor. (County or other authorized unit of government.)

(3) *Suitable* shall mean adapted or adaptable to a use.

(4) *Mitigate* shall mean to make less severe, less painful or less of a loss, to a level provided for in MCC 39.7600 through 39.7620.

(5) *Beneficial Continuation of Existing Uses* shall mean capable of using the property for the purposes already in existence, although there may be minor diminution in the quality of the use.

### § 39.7605 PURPOSE

The purposes of MCC 39.7600 through 39.7625 are to:

(A) Determine whether a proposed landfill site is suitable and whether it can be reclaimed for uses allowed by the underlying zoning district.

(B) Mitigate any adverse impacts to the surrounding area by the imposition of conditions on the design, operation and off-site effects of the proposed landfill.



(C) Assure that the proposed landfill site has been determined preferable to other sites, based on an Alternative Sites Study conducted by METRO.

### **§ 39.7610 APPLICATION REQUIREMENTS**

(A) An application for a Community Service Use permit under these provisions shall be filed on forms made available for that purpose. Information, maps, and reports submitted shall be deemed by the Planning Director to be necessary to determine compliance with the criteria.

(B) The base fee shall be \$2,000 payable at the time of application. An additional fee of not more than \$20,000 may be charged to cover the cost of any technical review and analysis required to evaluate the application, as determined by the Planning Director. Additionally, the Board of County Commissioners may, by order, provide that the fee for technical review and analysis be increased to a total of \$30,000 if the Board determines that such an increase is justified by the complexity of issues raised on a particular application. If charged, the additional fee shall be used to hire technical consultants to supplement the staff. This subsection fees supersedes any conflicting fee schedule in use.

(C) The applicant shall determine that the proposed landfill is the most appropriate method of disposing of solid waste.

### **§ 39.7615 CRITERIA FOR APPROVAL**

The Approval Authority shall find that:

(A) METRO or its franchisee has adopted Landfill Site Selection Criteria that addresses environmental, economic, operational and land use factors; they have applied these criteria to a study of alternative landfill sites, that study to have been completed no more than twelve (12) months from the date of application to the Approval Authority, and have determined that, based on the criteria, a preferred site has been selected for development.

(B) The site is suitable for the proposed landfill, considering each of the factors below. In determining suitability, the Approval Authority shall also apply the following test to the findings for each of the factors; the Approval Authority finds, after any mitigation of impacts, that the impacts of the factor would not prevent the beneficial continuation of existing uses on surrounding property.

(1) Site Size — when the site is of sufficient size for the use and to allow for sufficient buffering of adverse impacts.

(2) Traffic Routes and Capacities — when projected traffic will not create dangerous intersections or traffic congestion, considering road design capacities, existing and projected traffic counts, speed limits and number of turning points. Traffic must have access to collector or arterial streets and not use local streets;

(3) Geologic Conditions — when the site is geologically stable enough to support the landfill; evidence shall include testimony from State of Oregon Certified Engineering Geologists; the Approval Authority shall also request that the Oregon State Department of Geology review and comment on all geological evidence which is submitted;

(4) Surface and Groundwater Conditions — when flooding will not occur, where surface water can be feasibly controlled and diverted away from the landfill, where leachate or other landfill pollutants would not be discharged into adjacent public or private waterways such that State and Federal water quality standards will be exceeded, and where groundwater sources of domestic (human and livestock) water supply would not be contaminated beyond those quality levels of OAR 340-61-040(4) and (5) or OAR 340-41-029, whichever is the most strict. As used in this subpart of MCC Chapter 39, the term *discharge* shall include both intentional and unintentional escape or release of landfill pollutants;

(5) Soil and Slope Conditions — when soils and topography allow feasible operating conditions for the landfill, and would not result in substantial off-site erosion and sedimentation; on-site soil erosion must be controlled to the extent that the productive capability of on-site land, not utilized directly for landfilling operations, is not reduced. The Approval Authority shall also request that any Soil and Water Conservation District which includes the site within its boundaries review the proposal and offer testimony on potential soil erosion problems;

(6) Leachate and Gas — when site characteristics, such as geology and slope, will permit the safe and effective collection and treatment of these landfill by-products;

(7) Critical Habitat of Endangered Species — where such habitat and species, if found, will be protected pursuant to OAR 340-61-040 (7) and any applicable Federal law;

(8) Historically, anthropologically, and archaeologically significant areas -- where such areas, if found, will be protected pursuant to ORS Chapter 358, 16 U.S.C. Sections 461 through 470n, or any other applicable State or Federal law;

(9) Public Facilities and Services — where all such facilities necessary to serve the landfill are either available or programmed for the area; and

(10) Fire Standards Criteria — Fire danger, where the landfill shall not significantly increase the fire danger in any given area and there shall be adequate fire protection systems in place at the site and in the surrounding community, including State systems, if any.

In determining suitability of the above factors, the Approval Authority may place substantial weight on DEQ's Findings for approval or denial of a preliminary application.

(C) The proposed landfill is designed and operated so as to mitigate conflicts with the surrounding uses. Conflicts with regard to the following shall be identified and mitigated (mitigation shall be made to the level of the applicable State standard, if any, and to a level that will not prevent the beneficial continuation of existing uses on surrounding lands):

(1) Visual appearance, including lighting on surrounding property, including OAR 340-61-040 (15) and any other applicable State or Federal standard;

(2) Signing, including OAR 340-61-040 (15) and any other applicable State or Federal standard;

(3) Hours of operation;

(4) Odors;

(5) Safety and security risks, including OAR 340-61-040 (14) and any other applicable State or Federal standard;

(6) Noise levels, including OAR Chapter 340 and any other applicable State or Federal standard;

(7) Dust, and other air pollution, including OAR 340-61-040 (8) and any other applicable State or Federal standard;

(8) Bird and vector problems, including OAR 340-61-040 (23) and any other applicable State or Federal standard; and

(9) Damage to fish and wildlife habitats, including OAR 340-61-040 (7) and any other applicable State or Federal standard.

(D) The proposed landfill site is capable of being reclaimed to a primary use permitted in the underlying zoning district. For resource districts (CFU, EFU, MUF, MUA), the primary use will be the resource for which the district was created (i.e., timber production in CFU, farmland in EFU, etc.). The soil productivity, if in a natural resource zone, is capable of

being brought back to the closest level economically and technically feasible to that which existed on the site prior to the landfill.

(E) Where the Approval Authority finds it appropriate, the approval criteria may be satisfied by the applicant's submission of a statement of intent to provide facilities as necessary to prevent impermissible conflict with surrounding uses. If this evidence is relied on in satisfying any approval criteria, a condition shall be imposed to guarantee the performance of the actions specified.

#### **§ 39.7620      CONDITIONS**

(A) The proposal provides a plan for the reclamation of the site, in compliance with MCC 39.7615 (D). The implementation of the reclamation plan shall be funded by a trust fund deemed sufficient by the Approval Authority.

(B) Approval for all phases of the proposed landfill must be received from all governmental agencies having jurisdiction over sanitary landfills. Such agencies shall be consulted by Multnomah County for the setting and enforcement of permit conditions. Preliminary approval from DEQ is necessary prior to County approval. Final DEQ approval is required prior to the construction and operation of the landfill.

(C) METRO or its franchisee shall provide annual reports, within 90 days of each anniversary of approval date, to the County, describing the landfill operation and compliance with permit conditions.

(D) Other conditions of approval shall be specified in the decision and shall be reasonably imposed to insure compliance with the purposes and criteria of these provisions, and in the public interest.

#### **§ 39.7625      LIMITATIONS ON APPLICATION OF ORDINANCE**

MCC 39.7600 through 39.7620 shall not be applied to any proposed regional or other sanitary landfill site which has previously been the subject of an application for a community service designation as a regional or other sanitary landfill. Such proposal shall be considered under the Multnomah County Zoning Code provisions applicable to such landfills which were in effect at the time of the initial application.

SURPLUS PUBLIC SCHOOL BUILDING SPACE, CS

**§ 39.7650 LIMITED ALTERNATIVE USES OF SURPLUS PUBLIC SCHOOL SPACE LOCATED IN MUA-20, RR, RC, BRC, SRC, PH-RC, AND OR DISTRICTS.**

(A) Purpose - The purpose of this section is to facilitate the efficient alternative use of vacant or under-utilized public school building space located in MUA-20, RR, RC, BRC, SRC, PH-RC, and OR districts by authorizing those uses which are beneficial to or compatible with the community.

(B) Minor Uses - The Board finds that the uses listed in this subsection are so similar to school use in land use impact, that they should be allowed as accessory or alternative uses to approved school use. At the same time, the policy of citizen involvement and open public participation dictates that these listed uses be permitted after public review in a Type III approval process.

Subject to the Community Service approval criteria of MCC 39.7515 and the restrictions of MCC 39.7525, one or more of the following alternative uses may be permitted to occupy vacant or under-utilized space in an existing public school building:

- (1) Adult, teen or senior center.
- (2) Community food or non-profit hot meals service.
- (3) After-school child care.
- (4) Health center, including counseling, well-baby clinic, or physical therapy.
- (5) Accessory uses common to the above uses.

(C) Other Uses - Subject to the approval criteria of MCC 39.7650(D) and the restrictions of MCC 39.7525, the following alternative uses may be permitted to occupy vacant or under-utilized space in the existing public school building after public review in a Type III approval process:

- (1) Arts or crafts gallery or sales.
- (2) Community access cable TV studio.
- (3) Non-profit community theater.
- (4) Office of non-profit group or association.

(5) Professional or business office.

(6) Accessory uses common to the above uses.

(D) Approval Criteria - In approving an alternative use listed in 39.7650 (C), the approval authority shall find:

(1) The approval criteria of MCC 39.7515 are satisfied; and

(2) The use will occupy existing public school building space which is surplus to the current or anticipated need for school purposes; and

(3) The use:

(a) Will provide an appropriate public facility or public non-profit service to the immediate area of community; or

(b) Is consistent with rural area needs in a location and under circumstances reasonably suitable for the purpose; and

(4) There are safe, convenient and reasonably suitable means of pedestrian, bicycle and vehicle access to and circulation on the site; and

(5) The applicable development standards of this Chapter are met or can be satisfied through appropriate conditions of approval.

## WIRELESS COMMUNICATIONS FACILITIES, CS

### **§ 39.7700 PURPOSES**

The purpose and intent of MCC 39.7700 through 39.7765 is to provide a process and uniform comprehensive standards for the development and regulation of wireless communications facilities. The regulations contained herein are designed to protect and promote public health, safety, community welfare, and the aesthetic quality of unincorporated Multnomah County as set forth within the State-wide Oregon Planning Goals and policies of the Comprehensive Plan; while at the same time not unduly restricting the development of needed wireless communications facilities and encouraging managed development of the evolving wireless communications network. It is furthermore intended that, to all extent permitted by law, the County shall apply these regulations to specifically accomplish the following:

(A) Protect the visual character of the County from the potential adverse effects of wireless communications facilities development;

(B) Insure against the degradation of the County's scenic corridors and ridgelines and rural communities designated under local, state or federal law;

(C) Retain local responsibility for and control over the use of public rights-of-way to protect citizens and enhance the quality of their lives by requiring a review of any proposed WCF in a public right-of-way;

(D) Protect the environmental resources of Multnomah County;

(E) Insure that a competitive and broad range of personal wireless communications services including but not limited to; cellular, personal communications service(PCS), specialized mobile radio(SMR), are provided to serve residential and business communities;

(F) Create and preserve wireless communications facilities that may serve as an important and effective part of Multnomah County's emergency response network;

(G) Simplify and shorten the process for obtaining necessary permits for wireless communications facilities while at the same time protecting legitimate interests of Multnomah County citizens; and

(H) Reconcile established use requirements in EFU zoned lands with Oregon Revised Statutes.

#### **§ 39.7705      APPLICABILITY**

(A) Siting for a personal wireless communications facility is a use of land, and subject to the County's zoning ordinance and all other applicable ordinances and regulations.

(B) The requirements of 36.6175 through 36.6188 shall apply to all new wireless communications facilities (WCFs).

#### **§ 39.7710      REVIEW PROCEDURES DISTINGUISHED**

(A) An application for a WCF that employs co-location upon a tower or structure approved under MCC 39.7700 through 39.7765 shall be reviewed under a Building Permit Review/Type I process in any zone.

(B) An application for a WCF that employs concealment technology or co-location upon a tower or structure not approved under MCC 39.7700 through 39.7765 shall be reviewed under a Planning Director Review/Type II process.

(C) An application for a WCF not employing co-location or concealment technology shall be reviewed under a Community Service Review/Type III and Design Review process unless within an Exclusive Farm Use district. New WCFs within an Exclusive Farm Use district shall be processed under a Planning Director Review or Building Permit Review as appropriate.

REVIEW PROCESS AND HEIGHT LIMITATION		
TOWER/ ANTENNA TYPE	REVIEW PROCESS	HEIGHT LIMIT
Co-location (tower or structure approved under this subpart of Chapter 39)	Building Permit	N/A
Co-location (tower or structure not approved under this-subpart of Chapter 39)	Planning Director	N/A
Concealment Technology	Planning Director	See: 39.7740(B)(2)(a)
Screened Tower	Community Service Hearing	See: 39.7740(B)(2)(a)
All Towers within EFU zone	Planning Director	<200 feet

## § 39.7715 DEFINITIONS

As used in MCC 39.7700 through 39.7765 the following words and their derivations shall have the meanings provided below.

**Antenna** - The surface from which wireless radio signals are sent from and received by a wireless communications facility.

**Carrier** - A company that provides wireless services.



**Co-applicant** - All persons and/or entities joining with an applicant in an application for a development permit, including the owners of the subject property and any tenants proposing to conduct a development or activity subject to a development permit.

**Co-location** - The use of a single mount and/or site by more than one licensed wireless communications carrier. Also, the use by one or more carriers of an existing structure as a telecommunications antenna mount, such as, but not limited to a water tank, fire station, electrical substation, utility pole, or tower etc.

**Commercial mobile radio services** - Any of several technologies using radio signals at various frequencies to send and receive voice, data, and video.

**Community Service Review (Type III)**- Review as a Community Service Use before a Hearings Officer for a new wireless communication facility that is neither co-located nor employs concealment technology.

**Concealment technology** - The use of technology through which a wireless communications facility is designed to resemble an object which is not a wireless communications facility and which is already present in the natural environment, or designed to resemble or placed within, an existing or proposed structure.

**Equipment cabinet** - An enclosed structure at the base of the mount within which are housed batteries and electrical equipment necessary for the operation of a WCF. This equipment is connected to the antenna by cable.

**FCC** - Federal Communications Commission.

**FCC guidelines** - The Radiofrequency (RF) Performance Standards set forth by the FCC's OET Bulletin 65, Evaluating Compliance with FCC Guidelines for human Exposure to Radiofrequency Electromagnetic Fields, as referenced in A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance or a subsequent FCC publication delineating required radiofrequency performance standards.

**Guyed tower** - A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

**Lattice tower** - A type of mount that is self-supporting with multiple legs and cross bracing of either structural steel or diagonal cables, or a combination thereof.

**Licensed carrier** - A company authorized by the FCC to build and operate a commercial mobile radio services system.

**Location** - The subject property where a use or development is located or proposed to be located.

**Maintenance** - Emergency or routine repairs, reconstruction of previously approved facilities, or replacement of transmitters, antennas, or other components of previously approved facilities which do not create a significant change in visual impact or an increase in radio frequency emissions.

**Modification** - The changing of any portion of a wireless communication facility from its description in a previously approved permit.

**Monopole** - The type of mount that is self-supporting with a single shaft, typically of wood, steel or concrete.

**Mount** - The structure or surface upon which antennas are placed including but not limited to:

1. Roof-mounted. Mounted on the roof of a building.
2. Side-mounted. Mounted on the side of a structure including a tower.
3. Ground mounted. Mounted on the ground.

**Planning Director Review (Type II)** - Expedited review encouraging the co-location of wireless communication facilities onto existing in use tower facilities, existing structures, or the use of concealment technology. Such review is an Administrative decision by the Planning Director.

**Radiofrequency engineer** - An engineer specializing in electrical or microwave engineering, licensed in Oregon, with a degree in engineering, and experience to perform and certify radiofrequency radiation measurements.

**Site** - A portion of a subject property.

**Siting** - The method and form of placement of a use or development on a specific area of a subject property.

**Speculation ("Spec") tower** - A tower designed for the purpose of providing location mounts for wireless communications facilities without a binding commitment or option to lease a location upon the tower by a service provider at time of initial application.

**Subject Property** - For the purpose of MCC 39.7700 through 39.7765 subject property shall mean one or more contiguous lots or parcels in the same ownership.

**Tower** - A mast, pole, or monopole, guyed or free standing lattice tower designed and primarily used to support antennas associated with wireless communication service. A speculation tower may consist of any one of these tower types. As part of the service, the term tower includes but is not limited to microwave towers, common carrier towers, personal communications service (PCS) and cellular telephone towers.

**Wireless communications facility (WCF)** - An unstaffed facility for the transmission or reception of radiofrequency (RF) signals, usually consisting of an equipment cabinet or other enclosed structure containing electronic equipment, a support structure, antennas, or other transmission and reception devices.

**Visually subordinate** - The relative visibility of a wireless communication facility, where that facility does not noticeably contrast with the surrounding landscape. Visibly subordinate facilities may be partially visible, but not visually dominate in relation to their surroundings.

## **§ 39.7720 EXCLUSIONS**

The following uses and activities shall be exempt from these regulations:

- (A) Emergency or routine repairs, reconstruction, or routine maintenance of previously approved facilities, or replacement of transmitters, antennas, or other components of previously approved facilities which do not create a significant change in visual impact or an increase in radiofrequency emissions;
- (B) Medical, industrial, and scientific equipment operating at frequencies designated for that purpose by the Federal Communications Commission;
- (C) Ham radio, amateur sole source emitters, citizen band transmitters and accessory structures including antennas;
- (D) Two-way communication transmitters used on a temporary basis by "911" emergency services. Including fire, police, and emergency aid or ambulance service;
- (E) Radio transceivers normally hand-held or installed in moving vehicles, such as automobiles, trucks, watercraft, or aircraft. This includes cellular phones;
- (F) Military and civilian radar, operating within the regulated frequency ranges, for the purpose of defense or aircraft safety;

(G) Machines and equipment that are designed and marketed as consumer products, such as microwave ovens and remote control toys; and

(H) Two-way broadband antenna(s) smaller than one (1) meter in any dimension operating at less than 7 watts effective radiated power (ERP) for use by a dwelling unit occupant for personal use or home occupation.

## **§ 39.7725      GENERAL REQUIREMENTS**

(A) No WCF shall be constructed or operated within unincorporated Multnomah County until all necessary approvals and permits, whether local, state, or federal have been secured.

(B) No more than one ground mount shall be allowed per subject property.

(C) An application for a WCF shall include both the licensed carrier and the landowner of the subject property.

(D) A permit shall be required for the construction and operation of all WCFs. Review and approval shall be under either a Community Service Review, Planning Director Review, or a Building Permit Review.

(E) Design Review shall be required of all WCF towers regardless of review procedure and may at applicant's option be processed concurrently with the respective review process pursuant to MCC 39.8000 through 39.8020.

(F) A new permit shall be required for all modifications, not constituting maintenance, to an approved permit for any WCF.

(G) If co-location or concealment technology is not feasible, the applicant shall demonstrate that such locations or concealment technology designs are unworkable for the carrier's coverage plan.

(H) All approvals for a WCF shall become null, void, and non-renewable if the facility is not constructed and placed into service within two years of the date of the Community Service Review Decision, Planning Director Review Decision, Building Permit, or superseding decision.

(I) The applicant, co-applicant, or tenant shall notify the Planning Director of all changes in applicant and/or co-applicants or tenants of a previously permitted WCF permitted under MCC 39.7700 through 39.7765 within 90 days of change. Failure to provide

appropriate notice shall constitute a violation of the original permit approval and be processed pursuant to MCC 39.1510.

(J) All WCFs must comply with all applicable Multnomah County codes and regulations, including, but not limited to the Uniform Building Code, Grading and Erosion Control, Flood Hazard, and Significant Environmental Concern.

(K) No on-premises storage of material or equipment shall be allowed other than that used in the operation and maintenance of the WCF site.

(L) Self-supporting lattice towers not employing concealment technology and speculation towers are not permitted in any zone.

### **§ 39.7730 REGISTRATION OF WIRELESS COMMUNICATIONS CARRIERS AND PROVIDERS**

(A) Registration Required. All wireless communication carriers and providers that offer or provide any wireless communications services for a fee directly to the public, within unincorporated Multnomah County, shall register each WCF with the County pursuant to this Section on forms to be provided by the Planning Director.

### **§ 39.7735 APPLICATION SUBMITTAL REQUIREMENTS**

For an application for a Planning Director Review or Building Permit Review to be deemed complete the following information is required:

(A) Co-location of antennas upon existing towers or structures.

(1) An accurate and to-scale site plan showing the location of the tower, or structure upon which the proposed antenna is to be mounted including guy anchors (if any), antennas, equipment cabinets and other uses accessory to the communication tower or antenna. The site plan shall include a description of the proposed antenna including use of concealment technology if applicable;

(2) A report/analysis from a licensed professional engineer documenting the following for each antenna

(a) Antenna height above ground, design, dimensions, wind load rating, gain and radiation pattern;

(b) Failure characteristics of the antenna and documentation that the site and setbacks are of adequate size to contain debris; and

(c) Ice hazards and mitigation measures that can be employed.

(3) A statement documenting that placement of the antenna is designed to allow future co-location of additional antennas if technologically possible.

(4) Plans showing the connection to utilities/right-of-way cuts required, ownership of utilities and access easements required.

(5) Documents demonstrating that necessary easements have been obtained.

(6) Documentation that the ancillary facilities will not produce sound levels in excess of those standards specified below in the Approval Criteria for lands not zoned Exclusive Farm Use.

(7) If ancillary facilities will be located on the ground, a landscape plan drawn to scale showing the proposed and existing landscaping, including type, spacing, and size.

(8) A map of the county showing the approximate geographic limits of the "cell" to be created by the facility. This map shall include the same information for all other facilities owned or operated by the applicant within the county, or extending within the county from a distant location, and any existing detached WCF of another provider within 1,000 feet of the proposed site.

(9) Documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIE) emissions standards set forth by the Federal Communications Commission as outlined in A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance, or a subsequent FCC publication delineating required radiofrequency performance standards.

(10) Documentation demonstrating that the FAA has reviewed and approved the proposal, and the Oregon Aeronautics Division has reviewed the proposal.

(B) Construction of a New Tower. For an application for either a Planning Director Review or Community Service Review to be deemed complete the following information is required:

(1) An accurate and to-scale site plan showing the location of the tower, guy anchors (if any), antennas, equipment cabinet and other uses accessory to the communication tower

or antenna. The site plan shall include a description of the proposed tower including use of concealment technology if applicable;

(2) A visual study containing, at a minimum, a graphic simulation showing the appearance of the proposed tower, antennas, and ancillary facilities from at least five points within a five mile radius. Such points shall include views from public places including but not limited to parks, rights-of-way, and waterways and chosen by the Planning Director at the pre-application conference to ensure that various potential views are represented.

(3) The distance from the nearest WCF and nearest potential co-location site.

(4) A report/analysis from a licensed professional engineer documenting the following:

(a) The reasons why the WCF must be located at the proposed site (service demands, topography, dropped coverage, etc.)

(b) The reason why the WCF must be constructed at the proposed height;

(c) Verification of good faith efforts made to locate or design the proposed WCF to qualify for an expedited review process. To this end, if an existing structure approved for co-location is within the area recommended by the engineers report, the reason for not co-locating shall be provided;

(d) Tower height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design such as, but not limited to, an explanation for the failure to employ concealment technology if applicable;

(e) Total anticipated capacity of the structure, including number and types of antennas which can be accommodated;

(f) Evidence of structural integrity of the tower structure as required by the Building Official;

(g) Failure characteristics of the tower; and

(h) Ice hazards and mitigation measures which can be employed.

(5) Documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards set forth by the Federal Communications Commission as outlined in A Local Government Official's Guide to Transmitting Antenna

RF Emission Safety: Rules, Procedures, and Practical Guidance or a subsequent FCC publication delineating required radio frequency performance standards.

(6) A signed agreement, stating that the applicant will allow co-location with other users, provided all safety, structural, and technological requirements are met. This agreement shall also state that any future owners or operators will allow co-location on the tower.

(7) A statement documenting a binding commitment to lease or option to lease an antenna mount upon the proposed tower by a service provider.

(8) A landscape plan drawn to scale showing the proposed and existing landscaping, including type, spacing, and size.

(9) Plans showing the connection to utilities/right-of-way cuts required, ownership of utilities and easements required.

(10) Documents demonstrating that any necessary easements have been obtained.

(11) Plans showing how vehicle access will be provided.

(12) Signature of the property owner(s) on the application form or a statement from the property owner(s) granting authorization to proceed with building permit and land use processes.

(13) Documentation that the ancillary facilities will not produce sound levels in excess of those standards specified below in the Approval Criteria for lands not zoned Exclusive Farm Use.

(14) A map of the county showing the approximate geographic limits of the "cell" to be created by the facility. This map shall include the same information for all other facilities owned or operated by the applicant within the county, or extending within the county from a distant location, and any existing detached WCF of another provider within 1,000 feet of the proposed site.

(15) Documentation demonstrating that the FAA has reviewed and approved the proposal, and the Oregon Aeronautics Division has reviewed the proposal.

(16) Full response to the Approval Criteria for lands not zoned Exclusive Farm Use specified below as applicable.

## **§ 39.7740      APPROVAL CRITERIA FOR LANDS NOT ZONED EXCLUSIVE FARM USE**



To be approved all applications for Planning Director Review, Community Service Review or Building Permit Review of a wireless communications facility (WCF) shall demonstrate compliance with the following:

(A) General and Operating Requirements

(1) The service provider of the WCF and its successors and assigns shall agree to:

(a) Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

(b) Negotiate in good faith for shared use of the WCF by third parties; and

(c) Allow shared use of the WCF if an applicant agrees in writing to pay reasonable charges for co-location.

(2) Radiofrequency Standards. The applicant shall comply with all applicable FCC RF emissions standards (FCC Guidelines).

(3) Noise. Noise levels shall not exceed 5 dBA above ambient levels or 55 dBA Sound Pressure Level (SPL), whichever is greater, on adjacent properties. Operation of a back-up generator in the event of power failure or the testing of a back-up generator between 8 AM and 8 PM are exempt from this standard. No testing of back-up power generators shall occur between the hours of 8 PM and 8 AM.

(4) Environmental Resource Protection. All wireless communication facilities shall be sited so as to minimize the effect on environmental resources. To that end, the following measures shall be implemented for all WCFs:

(a) The facility shall comply with Significant Environmental Concern regulations when applicable, including the conditions of an SEC permit for any excavation or removal of materials of archaeological, historical, prehistorical or anthropological nature;

(b) The facility shall comply with Grading and Erosion Control regulations of MCC 39.6200 through 39.6235 when applicable;

(c) The facility shall comply with Flood Hazard regulations of MCC 39.5000 through 39.5055 when applicable; and

(d) Alteration or disturbance of native vegetation and topography shall be minimized.

(B) Siting Requirements.

(1) Location. WCFs shall be located so as to minimize their visibility and the number of distinct facilities. The ranking of siting preferences is as follows: first, co-location upon an existing tower or existing structure; second, use of concealment technology; and third, a vegetatively, topographically, or structurally screened monopole.

(a) Co-location.

1. All co-located and multiple-user WCFs shall be designed to promote facility and site sharing. To this end wireless communications towers and necessary appurtenances, including but not limited to, parking areas, access roads, utilities and storage facilities shall be shared by site users when in the determination of the Planning Director or Hearings Officer, as appropriate. This will minimize overall visual impact to the community.

2. Existing sites for potential co-location, may include but are not limited to buildings, water towers, existing WCFs, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those sites. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for their WCF.

3. No commercial WCF operating at an effective radiated power (ERP) of more than 7 watts shall be located on any residential structure, including accessory buildings.

(b) Use of concealment technology.

1. When demonstrated that it is not feasible to co-locate the antenna(s) on an existing structure or tower, the WCF shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: concealment technology, use of compatible building materials and colors.

(c) A vegetatively, topographically, or structurally screened monopole.

1. A WCF tower or monopole not employing concealment technology shall not be installed on a site unless it blends with the surrounding existing natural and human-made environment in such a manner so as to be visually subordinate. Existing trees or significant vegetation should be retained to the greatest possible degree in order to help conceal a facility or tower. Vegetation of a similar species and a size acceptable to the approval authority shall be planted immediately following the loss of any

vegetation used to conceal a facility or tower. Vegetation used to demonstrate visual subordination shall be under the control of the applicant/co-applicant or tenant.

2. The facility shall make available un-utilized space for co-location of other telecommunication facilities, including space for these entities providing similar competing services.

3. A proposal for a new wireless communication service tower shall not be approved unless the Approving authority finds that the wireless communications equipment for the proposed tower cannot be accommodated on an existing or approved tower or structure due to one or more of the following reasons:

a. The wireless communications equipment would exceed the structural capacity of the existing or approved tower or structure, as documented by a qualified and licensed professional engineer, and the existing or approved tower/structure cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.

b. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or structure as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.

c. Existing or approved towers and structures within the applicant's search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.

d. The radiofrequency coverage objective cannot be adequately met.

4. Any proposed commercial wireless telecommunication service tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional facilities if the tower is over 100 feet in height or for at least one additional facility if the tower is between 60 and 100 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

5. Towers/monopoles shall not be sited in locations where there is no vegetative, structural, or topographic screening available.

6. The County may require independent verification of the analysis at the applicant's expense.

(2) Height. Notwithstanding the maximum structure height requirements of each zoning district, wireless communications facilities shall comply with the following requirements:

(a) Ground mounted facilities. The maximum height of a tower shall be 120 feet, unless:

1. The tower and facility uses concealment technology; or
2. It is demonstrated by an engineer that a greater height is required to provide the necessary service.

(b) Building or other structure mounted WCF shall not project more than ten additional feet above the highest point on the existing building or structure.

(3) Setback/Yard.

(a) No dwelling on the subject property shall be closer to a ground mounted facility than a distance equal to the total height of the WCF measured from finished grade or according to the yard requirements of the underlying zone, whichever is greater.

(b) All ground mounted towers shall be setback from any property line a minimum distance equal to the total height of the tower.

(c) All equipment shelters shall be set back from property lines according to the required yard of the underlying zone.

(d) A WCF setback and yard requirement to a property line may be reduced as much as fifty percent (50%) of the proposed tower height when it is found that the reduction will allow the integration of a WCF into an existing or proposed structure such as a light standard, power line support device, or similar structure or if the approval authority finds that visual subordination may be achieved.

(e) A reduction of the setback/yard requirement below fifty percent (50%) under (d) of this section may be authorized subject to the variance approval criteria, variance classification and landing field height limitation of this chapter.

(4) Storage.

(a) Wireless communications storage facilities (i.e., vaults, equipment rooms, utilities, and equipment cabinets or enclosures) shall be constructed of non-reflective materials (exterior surfaces only). The placement of equipment in underground vaults is encouraged.

(b) Wireless communications storage facilities shall be no taller than one story (fifteen feet) in height and shall be treated to look like a building or facility typically found in the area.

(5) Color and materials. All buildings, poles, towers, antenna supports, antennas, and other components of each wireless communications site shall initially be colored with "flat" muted tones. The color selected shall be one that in the opinion of the approval authority minimizes visibility of the WCF to the greatest extent feasible.

(6) Fences.

(a) A sight obscuring fence shall be installed and maintained around the perimeter of the lease area of a ground mounted facility not employing concealment technology. The sight-obscuring fence shall surround the tower and the equipment shelter.

(b) A ground mounted facility located in a public right-of-way may be exempted from fencing requirements.

(c) Chain link fences shall be painted or coated with a non-reflective color.

(7) Security. In the event a fence is required, WCFs shall insure that sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

(8) Lighting.

(a) A new WCF shall only be illuminated as necessary to comply with FAA or other applicable state and federal requirements.

(b) No other exterior lighting shall be permitted on premises.

(9) Signs. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

(10) Access driveways and parking. All access drives and parking areas shall be no longer or wider than necessary and be improved to comply with the requirements of the local Rural Fire District.

(a) Existing driveways shall be used for access whenever possible.

(b) New parking areas shall whenever feasible, be shared with subsequent WCFs and/or other permitted uses.

(c) Any new parking area constructed shall consist of a durable and dustless surface capable of carrying a wheel load of 4,000 pounds and be no larger than three hundred (350) square feet.

(11) Landscape and Screening. All WCFs shall be improved in such a manner so as to maintain and enhance existing native vegetation and suitable landscaping installed to screen the base of the tower and all accessory equipment, where necessary. To this end, all of the following measures shall be implemented for all ground mounted WCFs including accessory structures.

(a) A landscape plan shall be submitted indicating all existing vegetation, landscaping that is to be retained within the leased area on the site, and any additional vegetation that is needed to satisfactorily screen the facility from adjacent land and public view areas. Planted vegetation shall be of the evergreen variety and placed outside of the fence. The landscape plan shall be subject to review and approval of the Design Review process. All trees, larger than four inches (4") in diameter and four and a half feet high (41/2') shall be identified in the landscape plan by species type, and whether it is to be retained or removed with project development;

(b) Existing trees and other screening vegetation in the vicinity of the facility and along the access drive and any power/telecommunication line routes involved shall be protected from damage, during the construction period.

#### **§ 39.7745      APPROVAL CRITERIA FOR LAND ZONED EXCLUSIVE FARM USE**

A wireless communications facility located within an Exclusive Farm Use district shall demonstrate that the facility:

(A) Is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.

(B) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.283 (1)(c) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(1) Technical and engineering feasibility;

(2) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(3) Lack of available urban and non-resource lands;

(4) Availability of existing rights of way;

(5) Public health and safety; and

(6) Other requirements of state or federal agencies.

(C) The following standards shall apply in addition to those of ORS 215.283(1)(c) et. seq.

(1) Location pursuant to: MCC 39.7740(B)(1),

(2) Height. The maximum height of any tower shall be 200 feet from finished grade.

(3) Setback pursuant to: MCC 39.7740(B)(3).

(4) Storage pursuant to: MCC 39.7740(B)(4).

(5) Color and materials pursuant to: MCC 39.7740(B)(5).

(6) Fences pursuant to: MCC 39.7740(B)(6).

(7) Security pursuant to: MCC 39.7740(B)(7).

(8) Lighting pursuant to: MCC 39.7740(B)(8).

(9) Signs pursuant to: MCC 39.7740(B)(9).

(10) Access driveways and parking pursuant to: MCC 39.7740(B)(10).

(11) Landscaping and screening pursuant to: MCC 39.7740(B)(11).

#### **§ 39.7750      MAINTENANCE**

(A) The applicant/co-applicant or tenant shall maintain the WCF. Such maintenance shall include, but shall not be limited to painting, maintaining structural integrity, and landscaping.

(B) In the event the applicant/co-applicant or tenant/carrier fails to maintain the facility in accordance with permit conditions regarding visual impacts or public safety, Multnomah County may undertake the maintenance at the expense of the applicant or co-applicant landowner.

#### **§ 39.7755      ABANDONMENT**

(A) At such time that a carrier plans to abandon or discontinue, or is required to discontinue, the operation of a WCF, such carrier will notify Multnomah County Land Use Planning Division by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations.

(B) In the event that a carrier fails to give such notice, the WCF shall be considered abandoned if the antenna or tower is not operated for a continuous period of twelve months, unless the owner of said tower provides proof of continued maintenance on a quarterly basis.

(C) Upon abandonment or discontinuation of use, the person who constructed the facility, the person who operated the facility, carrier, or the property owner shall physically remove the WCF within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

(1) Removal of the antenna(s), mounts, equipment cabinets, security barriers, and foundations down to three feet below ground surface.

(2) Transportation of the antenna(s), mount, equipment cabinets, and security barriers to an appropriate disposal site.

(3) Restoring the site of the WCF to its pre-construction condition, except any remaining landscaping and grading.



(4) The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition.

(D) If a party as stated in (C) fails to remove a WCF in accordance with this section, Multnomah County shall have the authority to enter the subject property and physically remove the facility. Costs for the removal of the WCF shall be charged to the landowner of record in the event Multnomah County must remove the facility.

(E) If there are two or more carriers/operators of a single tower, then provisions of this section shall not become effective until all carriers/operators cease using the tower.

(F) Failure to remove an abandoned facility as required by this section shall constitute a violation and be subject to the penalties prescribed in this Chapter.

### **§ 39.7760 APPEALS**

Any person aggrieved by a decision of the Approval Authority made pursuant to MCC 39.7700 through 39.7765 may appeal that decision as provided in MCC 39.1160.

### **§ 39.7765 STATUTORY SEVERABILITY**

If any subsection, sentence, clause, phrase, or word of MCC 39.7700 through 39.7765 is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this subpart. The Multnomah County Board of Commissioners hereby declares that it would have passed and adopted this subpart and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional.

## **WATERFRONT USES, CS**

### **§ 39.7800 MARINAS AND FLOATING HOME MOORAGES**

The location of a floating home or the alteration of an existing floating home moorage shall be subject to approval of the approval authority:

(A) Definitions:

Floating Home – A moored structure that is secured to a pier or pilings and is used primarily as a domicile and not as a boat.

Floating Home Moorage – The provision of facilities for two or more floating homes.

(B) Location Requirements: New floating homes shall only be located within the 17 approved marina and moorage facilities located within and along the Multnomah Channel subject to existing limits on the number of dwelling units approved at each facility. Existing marina and moorage facilities may be reconfigured within their respective DSL lease areas. No new floating homes will be approved beyond the existing approved number of dwelling units.

(C) Criteria for Approval: In approving an application pursuant to this subsection, the approval authority shall find that:

- (1) The proposed development is in keeping with the overall land use pattern in the surrounding area;
- (2) The development will not adversely impact, or be adversely affected by normal fluvial processes;
- (3) All other applicable governmental regulations have, or can be satisfied; ~~and~~
- (4) The proposed development will not generate the untimely extension or expansion of public facilities and services including, but not limited to, schools, roads, police, fire, water and sewer.
- (5) The significant reconfigurations within existing marina and moorage facilities shall only occur through the Community Service and Conditional Use process subject to all applicable County zoning standards. A reconfiguration shall not create more than a single row of floating residential units.
- (6) Notification to the National Oceanic and Atmospheric Administration Fisheries Division (NOAA Fisheries) and to the Oregon Department of State Lands (DSL). Any comments received regarding compliance with state and federal law shall be considered by the approval authority.
- (7) As directed by Portland's Bureau of Environmental Services and/or Oregon's Department of Environmental Quality, marina and moorage owners must provide for safe and easy collection and disposal of sewage from marine uses in Multnomah Channel.
  - (a) Marinas and moorages with floating structures shall meet state standards for sewage collection and disposal similar to those standards that apply to dwellings on land.

(b) Boat slips serving boats with onboard cooking and/or sanitation facilities must be provided with an onsite mechanism for disposal of sewage, either through connections at each slip or through the availability of on-site alternative pump out facility which will be reasonably safe from accidental spillage.

(8) The number of floating homes, combos, and live-aboards at a marina or moorage facility shall not in combination exceed the number of floating residential units for which the facility has obtained County land use approval.

#### **§ 39.7805      PARKING**

(A) Two automobile spaces shall be provided for each houseboat.

(B) The parking area and all ingress and egress thereto shall be constructed two feet above the elevation of the 100 year flood boundary, and under the provisions of MCC 39.6500 through 39.6600.

#### **§ 39.7810      OTHER REQUIREMENTS**

(A) All ramps, walkways and moorage spaces shall be designed, constructed and maintained to provide maximum safety in all weather conditions.

(B) Lighting adequate to provide for the safety of residents and visitors shall be provided throughout a houseboat moorage.

(C) Siting and design of all pickup and delivery facilities shall insure maximum convenience with minimum adverse visual impacts.