

# Part 5: Overlays

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## 5.A – FLOOD HAZARD OVERLAY (FH)

### § 39.5000 [29.600]- PURPOSES.

The purposes of the Flood Hazard Overlay, MCC 39.5000 through MCC 39.5055 (FH), are to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas and to allow property owners within unincorporated Multnomah County to participate in the National Flood Insurance Program and to comply with Metro Title 3 Requirements.

### § 39.5005 [29.601] DEFINITIONS.

For purposes of this subchapter MCC 39.5000 through MCC 39.5055, the following terms and their derivations shall have the meanings provided below:

**Alteration** – To modify, change or make different.

**Areas of Special Flood Hazard** – All rural and urban unincorporated lands contained within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps (FIRM) as published by the Federal Emergency Management Agency (FEMA), and the area of inundation for the February, 1996 flood when located outside of the flood areas identified on the Flood Insurance Rate Maps within the Metro Jurisdictional Boundary.

The Areas of Special Flood Hazard identified by the Federal Insurance Administration in the scientific and engineering report entitled “Flood Insurance Study Multnomah County Oregon and Incorporated Areas”, with accompanying Flood Insurance Rate Maps (FIRM) effective December 18th, 2009, are hereby adopted by reference for the rural and unincorporated portions of Multnomah County. Maps produced by the Metro Data Regional Center that identify the area of inundation for the February 1996 flood are also adopted by reference. The Flood Insurance Study is on file at the Multnomah County Planning Office. The best available information for flood hazard area identification as outlined in MCC 39.5040 shall be the basis for regulation until a new FIRM is issued.

These maps may be periodically revised or modified by FEMA in accordance with prescribed procedures pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (P.L. 92-234). In order to employ the best available information and maintain compliance with Federal Flood Insurance Program regulations, Multnomah County shall adopt any

such revisions or modifications. Watercourses and areas of Special Flood Hazard located within the Columbia River Gorge National Scenic Area are subject to the standards in this subpart.

**Base Flood** – The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the “100-year flood.” Designation on the FIRM maps always includes the letter A to identify a zone of specified risk. (Zone A is the flood insurance rate zone that corresponds to the 1-percent annual chance floodplains that are determined in the Flood Insurance Study by approximate methods of analysis).

**Basement** – Any area of the building having its floor sub grade (below ground level) on all sides.

**Below-Grade Crawl Space** – An enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.

**Critical Facility** – A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals police, fire and emergency response installations, and installations which produce, use or store hazardous materials or hazardous waste.

**Design Flood Elevation** – The elevation of the base flood elevation, or in areas without maps, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies.

**Development** – Any ~~man~~ human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the areas shown within 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published by the Federal Emergency Management Agency (FEMA) or within any water-course.

**Elevated Building** – For insurance purposes, a non basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

**Elevation Certificate** – The document used to certify the FIRM Zone and base flood elevation of the development area of a property, and to determine the required elevation or floodproofing requirements of new and substantially improved structures.

**Encroachment** – To fill, construct, improve, or develop beyond the original bank line of the watercourse. Bank stabilization or restoration of a watercourse which does not protrude beyond the original banks line and does not protrude above the topography at the time the Flood Insurance Rate Map was developed is not considered an encroachment.

**Flood or Flooding** – A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters, and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

**Flood Insurance Rate Map (FIRM)** – The official map on which the Federal Insurance Administration has delineated both the areas of the special flood hazards and the risk premium zones applicable to the community.

**Flood Insurance Study** – The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

**Floodproofing Certificate** – Documentation of certification by an Oregon registered professional engineer or architect that the design and methods of construction of a non-residential building are in accordance with accepted practices for meeting the floodproofing requirements of this subchapter.

**Floodway** – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**Lowest Floor** – The lowest floor of the lowest enclosed area (including basement).

**Manufactured Home** – A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”

**New Construction** – Structures for which the “start of construction” commenced on or after the effective date of this ordinance ([Ordinance 1120, effective on September 11, 2008](#)).

**Recreational Vehicle** – A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, self-propelled or permanently towable by a light duty truck and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Start of Construction** – Includes substantial improvement to existing structures, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include the land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement to an existing structure, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**State Building Code** – Means the combined Oregon specialty codes.

**Structure** – A walled and/or roofed building including a gas or liquid storage tank that is principally above ground. A building with only one wall and no roof or a building with no walls and a roof, for example, is considered a structure.

**Substantial Damage** – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** – Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (1) Before the improvement or repair is started; or



(2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The costs to repair must be calculated for full repair to "before-damage" condition, even if the owner elects to do less. The total costs to repair include both structural and finish materials and labor including donated labor and materials.

(3) The value of these alterations to an existing structure is measured cumulatively to avoid exempting a substantial improvement implemented in phases over time.

(4) Substantial Improvement does not, however, include either:

(a) The portion of any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by local building officials and which are the minimum necessary to assure safe living conditions, or

(b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**Watercourse** – A channel in which a flow of water occurs, either continuously or intermittently with some degree of regularity. Watercourses may be either natural or artificial. Watercourse includes a river, stream, creek, slough, ditch, canal, or drainageway.

#### § 39.5010 [29.602] AREAS AFFECTED.

The provisions of MCC 39.5000 – 39.50555 shall apply to all areas of special flood hazard, as defined by MCC 39.5005. The provisions of MCC 39.5045 shall also apply to any relocation, encroachment or alteration of a watercourse.

#### § 39.5015 [29.603] PERMITS.

(A) No structure, dwelling or manufactured home shall be erected, located, altered, improved, repaired or enlarged and no other new development including but not limited to grading, mining, excavation and filling (see “Development” under MCC 39.5005) shall occur in areas of special flood hazard unless a Floodplain Development Permit specifically

authorizing the proposal has been obtained from Multnomah County. Variances to the Flood Hazard regulations are not allowed.

(1) Improvements to a structure, dwelling or mobile home or other development, which do not meet the definition of “Development” under MCC 39.5005, are exempted from obtaining a Floodplain Development Permit.

(B) Alterations, modifications or relocations to any watercourse as defined in MCC 39.5005 are subject to a Floodplain Development permit and the Watercourse Relocation and Alteration standards of MCC 39.5045.

(C) Transportation maintenance activities may be evaluated in an annual Flood Hazard permit. This permit will confirm that the typical Best Management Practices used to accomplish routine transportation maintenance projects meet applicable Flood Hazard regulations. Eligible activities include routine cleaning and maintenance of ditches and culverts, replacement culverts, unanticipated emergency response activities and the permitting of new driveway culverts crossing a county maintained ditch. After the fact notification of the location and scope of all transportation maintenance activities is required.

#### § 39.5020 [29.604] EXEMPTION FROM DEVELOPMENT STANDARDS.

The following are exempt:

(A) Land may be exempted from the requirements of MCC 39.5030 upon review and approval by the Director of an acceptable elevation certificate or survey, certified by a State of Oregon registered land surveyor, which demonstrates that the entire subject parcel is at least one foot above the base flood elevation. This exemption is only possible when flood elevation data is available. If a critical facility is proposed, the entire parcel must be at least three feet above the base flood elevation (or above the 500-year flood elevation, whichever is higher) in order to be considered exempt from the requirements of MCC 39.5030.

(B) The reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Historic Sites Inventory may be permitted without regard to the requirements of MCC 39.5030(B) through (D).

(C) Forest practices approved under the Forest Practices Act are not regulated by this subchapter. Forest practice buildings exempt from state building code per ORS Chapter

215 are subject to Flood Hazard Regulations of this subchapter in the same manner as agricultural buildings.

(D) The following drainage district maintenance activities are not regulated by this subchapter when regulated by an Army Corps of Engineers Nationwide 31 permit - Routine operations, repair, maintenance, alteration, rehabilitation, or replacement of existing drainage, flood control, and related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch clearing within the hydraulic cross-section in existing storm water conveyance drainageways, habitat restoration and enhancement projects, or other water quality and flood storage projects required to be undertaken pursuant to ORS chapters 547 or 554 or Titles 33 or 44 of the Code of Federal Regulations, provided that:

(1) The project is consistent with Division of State Lands, five-year renewable general authorization permit, five-year renewable Army Corps of Engineers Nationwide 31 permit and all other applicable local, regional, county and state laws and regulations. The preconstruction notification and annual reporting required by the Army Corp's Nationwide 31 permit must also be submitted to Multnomah County planning by the drainage districts for review and comment.

(2) The project does not encroach closer to a water feature than existing operations and development; and

(3) Vegetation native to the metro area is maintained, enhanced and restored, if disturbed; other vegetation is replaced, if disturbed, with non-invasive vegetation; and the planting of native vegetation and the removal of invasive non-native vegetation is encouraged.

#### § 39.5025 [29.605] APPLICATION INFORMATION REQUIRED.

An application for development subject to a Floodplain Development Permit shall include the following:

(A) A map showing the property line locations, the surveyed boundaries of the 100 year floodplain on the parcel, roads, and driveways, existing structures, watercourses and the

location of the proposed development(s), topographic elevations for the proposed development and areas of grading or filling required for the project. The FIRM map and panel number shall also be provided on the map.

(B) Detailed construction drawings showing compliance with the development standards specified in MCC 39.5030. A State of Oregon registered professional engineer or architect shall stamp the plans and include a statement that the plans meet the applicable requirements of MCC 39.5030.

(C) An elevation certificate based on construction drawings which have been signed by a State of Oregon registered professional land surveyor, or a floodproofing certificate signed by a State of Oregon registered professional engineer or architect, depending on the type of development proposed. The certificate shall be accompanied by a plan of the property which shows the location and elevation of a benchmark on the property.

(D) A written narrative specifying building materials and methods that will be utilized to comply with the requirements of the floodplain development permit and this subchapter.

(E) Evidence that the applicant has obtained, when necessary, prior approval from those Federal, State and/or local governmental agencies with jurisdiction over the proposed development.

#### § 39.5030 [29.606] DEVELOPMENT STANDARDS.

Unless otherwise stated below, the following development standards shall apply within all portions of unincorporated Multnomah County to all new construction, substantial improvement or other development in areas of special flood hazard, as defined in MCC 39.5005: (The General Development Standards of MCC 39.5030(A) are only applicable in the West of Sandy River Rural Planning area and/or within the Metro Jurisdictional Boundary)

(A) General Development Standards - Applicable only in the West of Sandy River Rural Planning Area and/or within the Metro Jurisdictional Boundary.

(1) Development, excavation and fill shall be performed in a manner that maintains or increases flood storage and conveyance capacity and does not increase the design flood elevation.

(2) All fill placed at or below the design flood elevation in areas of special flood hazard shall be balanced with at least an equal amount of soil material removal.

(3) Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.

(4) Temporary fills permitted during construction shall be removed and not be allowed in the floodway during the wet weather season.

(5) Uncontained areas of hazardous materials as defined by the Oregon Department of Environmental Quality shall be prohibited in areas of special flood hazard.

(B) Except as provided in subsection (A) above, this subsection applies to all structures within areas of special flood hazard in unincorporated Multnomah County as defined in MCC 39.5005.

(1) All new construction and substantial improvement shall:

(a) Comply with Oregon State Building Codes.

(b) Have the electrical, heating, ventilation, duct systems, plumbing, and air conditioning equipment and other service facilities located a minimum of one foot above the base flood elevation to prevent water from entering or accumulating within the components during conditions of flooding.

(c) Use materials and utility equipment resistant to flood damage.

(d) Using methods and practices that minimize flood damage.

(e) For areas that are fully enclosed below the lowest floor and that are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. (Note: this requirement is not applicable for floodproofed nonresidential structures).

1. Designs for meeting this requirement must be certified by a State of Oregon registered professional engineer or architect and must meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above the lowest adjacent exterior grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters and the covering device does not reduce the minimum required total net area of the opening.

(2) Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures. Positive drainage away from a structure's foundation shall also be provided to avoid ponding of water adjacent to the foundation after floodwaters recede.

(3) Below-grade crawlspace construction (see figure 2 below).

In addition to meeting the previous development standards for all structures, all below-grade crawlspaces shall meet the following standards. Below-grade crawlspace construction in accordance with the requirements listed below will not be considered a basement.

Figures 1 and 2.

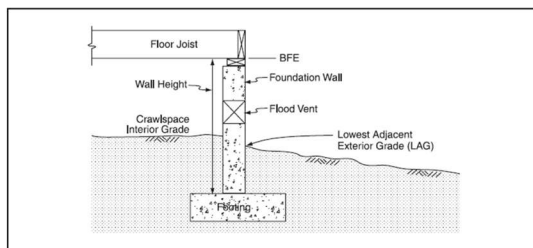


Figure 1 Preferred crawlspace construction.

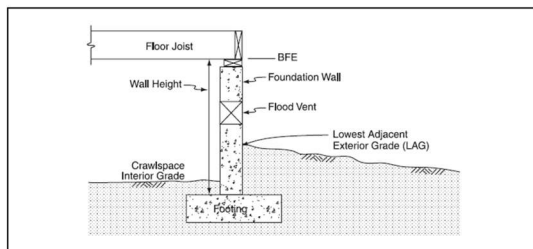


Figure 2 Below-grade crawlspace construction.

(a) The interior grade of a crawlspace below the base flood elevation shall not be more than two-feet below the lowest adjacent exterior grade.

(b) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four feet at any point.

(c) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. Drainage examples include natural drainage through porous well drained soils, perforated pipes, drainage tiles, or gravel/crushed stone drainage by gravity or mechanical means.

(d) The velocity of floodwaters shall not exceed five-feet per second for any proposed below grade crawlspace location. The Multnomah County Flood Insurance Study contains Floodway Data Tables presenting information on mean floodway velocities at each cross section along the river or stream. Other types of foundations, such as open pile or column foundations, that allow floodwaters to flow freely beneath the building, are recommended for areas exceeding five-feet per second flood velocities.

(e) The below-grade crawlspace area should be designed so that it is easily accessible for physical post-flood clean-up and ventilation. The land owner must record a notice acknowledging below-grade crawlspace construction is not recommended by the Federal Emergency Management Agency and that this type of construction can increase flood insurance premiums for homeowners.

(4) When applicable, the horizontal line of the base flood elevation shall be surveyed and clearly marked and labeled, by a State of Oregon registered professional land surveyor, on an inside wall of any structure or inside foundation wall when a crawlspace is proposed to provide a visual reference for the building inspector. This reference line is not intended to be permanent and can be removed, covered or painted over at the conclusion of all building inspections. This marking is not applicable when the entire structure, including above grade foundation walls, will be elevated above the base flood elevation.

(C) Residential Structures.

New construction and substantial improvement of any residential structure, including manufactured homes not considered a Critical Facility, shall:

(1) Have the lowest floor, including basement, elevated to at least one foot above the base flood elevation. All manufactured homes to be placed or substantially improved shall be

elevated on a permanent foundation such that the finished floor of the manufactured home is elevated to a minimum of 18 inches above the base flood elevation. The top of the dwelling stand for all manufactured homes subject to this provision shall be at least 12 inches above the base flood elevation (see 2002 Oregon Manufactured Dwelling and Parks Specialty Code, Chapter 3). Floating dwellings do not need to be elevated but must be able to rise with flood waters to the design flood elevation required by this section. This will require consideration of the piling heights. The lowest floor, including basement, shall be elevated to at least two feet above the base flood elevation where flood elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative federal, state or other source. Where flood elevation data is not available, a State of Oregon registered professional engineer or architect shall also verify that the proposed construction will be reasonably safe from flooding.

A garage attached to a residential structure can be constructed with the garage floor slab below the base flood elevation but must be designed to allow for the automatic entry of flood waters. Openings must meet the requirements of MCC 39.5030(B) and are required in two different exterior walls of the garage (two different walls or one wall and one garage door).

In addition to allowing the automatic entry of flood waters, the areas of the garage below the base flood elevation must be constructed with flood resistant materials. Garage doors without openings specifically designed to allow for the free flow of floodwaters do not meet these opening requirements. Gaps that may be present between the door segments and between the garage door and the garage door jam do not guarantee the automatic entry and exist of floodwaters. The human intervention necessary to open garage doors is not an acceptable means of meeting the opening requirements.

(2) Be placed on a permanent foundation and shall be anchored to prevent flotation, collapse and lateral movement by providing tie downs (anchor bolts, seismic tie-downs) and anchoring as specified in OAR 814-23-005 through 080 and State of Oregon 1 and 2 Family Dwelling Specialty Code, as appropriate to the construction type.

(3) Have structural components capable of withstanding hydrostatic and hydrodynamic loads, effects of buoyancy, flood depths, pressures, velocities and other factors associated with the base flood.



(4) Conduct a finished construction elevation survey of the lowest floor. This survey shall be completed by a State of Oregon registered land surveyor and must certify that the structure's lowest floor was elevated to at least one foot above the base flood elevation. The lowest floor, including basement, shall be elevated to at least two feet above the base flood elevation where flood elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative federal, state or other source. Where flood elevation data is not available, a State of Oregon registered professional engineer or architect shall also verify that the proposed construction will be reasonably safe from flooding.

(a) The finished construction elevation certificate and stamped documentation certifying that the structure has been built in compliance with the applicable provisions of MCC 39.5030 shall be submitted to Multnomah County Land Use Planning prior to occupancy of the structure.

(b) Prior to issuance of a building permit or start of development, a performance bond or cash deposit of \$1000.00 shall be required to assure that the finished construction elevation certificate is submitted. The deposit/bond may be used to obtain the elevation certificate, without notice, if it is not completed and submitted prior to occupancy of the dwelling. The performance bond or cash deposit shall be released upon submittal of the finished construction elevation certificate, unless utilized to obtain compliance.

(D) Nonresidential Structures.

New construction and substantial improvement of any commercial, industrial or other non-residential structure, including a detached garage, shall:

(1) Have the lowest floor including basement, elevated at least one foot above the base flood elevation and be anchored to prevent flotation, collapse, or lateral movement of the structure. Floating nonresidential structures do not need to be elevated but must be able to rise with flood waters to the design flood elevation required by this section. This will require consideration of the piling heights. The lowest floor, including basement, shall be elevated to at least two feet above the base flood elevation where flood elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative federal, state or other source. Where flood elevation data is not available, a

State of Oregon registered professional engineer or architect shall also verify that the proposed construction will be reasonably safe from flooding; or, together with attendant utility and sanitary facilities, shall:

- (a) Be floodproofed such that the structure, including the attendant utility and sanitary facilities, shall be substantially impermeable to the passage of water to an elevation at least one foot above the base flood elevation; and
- (b) Have structural components capable of withstanding hydrostatic and hydrodynamic loads, effects of buoyancy, flood depths, pressures, velocities and other factors associated with the base flood; and
- (c) Be certified by a State of Oregon registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans.

(2) The applicant shall provide either a finished construction elevation certificate prepared by a State of Oregon land surveyor for an elevated non-residential structure or a flood proofing certificate prepared by a State of Oregon registered professional engineer or architect for a non-elevated, non-residential structure.

- (a) The finished construction elevation certificate/floodproofing certificate and stamped documentation certifying the structure has been built in compliance with the applicable provisions of MCC 39.5030 shall be submitted to Multnomah County Land Use Planning prior to occupancy of the structure.
- (b) Prior to issuance of a building permit or start of development, a performance bond or cash deposit of \$1000.00 shall be required to assure that the finished construction elevation certificate and stamped documentation is submitted. The bond/deposit may be used to obtain the elevation certificate or documentation, without notice, if it is not completed and submitted prior to occupancy or use of the structure or development. The performance bond or cash deposit shall be released upon submittal of the finished construction elevation certificate or stamped documentation, unless utilized to obtain compliance.

(E) On Site Waste Disposal Systems, Wells, Water Systems and Sewer Systems.

All new and replacement water and sewer systems, including on-site waste disposal systems, shall be designed to:

- (1) Minimize infiltration of floodwaters into the system;
- (2) Minimize discharge from systems into floodwaters;
- (3) Avoid impairment or contamination during flooding.

(F) Recreational Vehicles

Recreational vehicles utilized on sites within Zones A1-A30, AH and AE on the community's FIRM shall either:

- (1) Be on the site for fewer than 180 consecutive days, or
- (2) Be fully licensed and ready for highway uses, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (3) Meet the requirements of MCC 39.5030(B) and (C).

(G) Critical Facilities

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the areas of special flood hazard. Construction of new critical facilities shall be permissible within the special flood hazard area if:

- (1) No feasible alternative is available,
- (2) The lowest floor is elevated three feet above the base flood elevation, or to the elevation of the 500-year flood, whichever is higher,
- (3) At least one access route to the critical facility shall be either located or elevated at or above the flood elevation referenced above to assure the route will remain passable during flood events.
- (4) Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced or released into floodwaters,

(5) The construction meets the requirements of MCC 39.5030(D) except the lowest floor elevation shall meet (G)(2) above.

(H) Land Division Proposals

County review of proposed land divisions is subject to separate criteria in the Multnomah County Land Division Ordinance which are designed to minimize flood damage.

§ 39.5035 [29.607] FLOODWAY REQUIREMENTS.

In areas identified as a floodway in MCC 39.5010, the following restrictions, in addition to the requirements of MCC 39.5030, shall apply:

(A) No development shall be permitted that would result in any measurable increase in base flood levels.

(1) Encroachment into the floodway, including fill, new construction, substantial improvements and other development, is prohibited, unless a detailed step backwater analysis and conveyance compensation calculations, certified by a State of Oregon registered professional engineer, are provided which demonstrates that the proposed encroachment will cause no measurable increase in flood levels (water surface elevations) during a base flood discharge.

(2) If subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of MCC 39.5030.

(B) In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the communities FIRM, unless:

(1) It is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community, and

(2) The applicable requirements of MCC 39.5030 are met.

(C) New manufactured dwellings are prohibited in the floodway. An existing, lawfully established manufactured dwelling located in the floodway may be replaced with either a manufactured dwelling, or a dwelling of traditional construction.

(D) A proposed structure accessory to a manufactured dwelling shall have the finished floor elevated a minimum of 18-inches above the base flood elevation.

§ 39.5040 [29.608] PROCEDURE WHEN BASE FLOOD ELEVATION DATA IS NOT AVAILABLE.

(A) For the purposes of administering MCC 39.5030 in areas where detailed base flood elevation data has not been provided by FEMA, the Land Use Planning Division shall obtain, review and utilize any base flood elevation and floodway data available from federal, state or local sources to assure that the proposed construction will be reasonably safe from flooding and may exercise local judgment based on historical data.

(B) In areas where detailed base flood elevation data has not been provided by FEMA, all proposals for subdivisions or other new developments greater than 50 lots or five acres, whichever is less, shall provide detailed base flood elevation data and floodway data.

§ 39.5045 [29.609] WATERCOURSE RELOCATION AND ALTERATION.

Prior to approving any relocation, encroachment or alteration of a watercourse, the Land Use Planning Division shall provide mailed notice of the proposal to adjoining communities and to the Department of Land Conservation and Development Floodplain Coordinator. Copies of such notice shall also be provided to the Federal Insurance Administration.

(A) No relocation, encroachment or alteration of a watercourse shall be permitted unless a detailed hydraulic analysis, certified by a State of Oregon Registered Professional Engineer, is provided which demonstrates that:

- (1) The flood carrying capacity for the altered or relocated portion of the watercourse will be maintained;
- (2) The area subject to inundation by the base flood discharge will not be increased;
- (3) The alteration or relocation will cause no measurable increase in base flood levels.

§ 39.5050 [29.610] COUNTY RECORDS.

Multnomah County or its designee shall obtain and maintain on file the final construction elevation (in relation to the National Geodetic Vertical Datum (NGVD) 1929 or NAVD 1988) of the lowest floor, including basement, of all new or substantially improved structures in areas subject to the provisions of this Section.

(A) For all new or substantially improved floodproofed structures in areas subject to the provisions of this Section, Multnomah County shall obtain and maintain on file the actual elevation (in relation to NGVD 1929 or NAVD 1988) to which the structure was floodproofed and shall also maintain the floodproofing certifications required pursuant to MCC 39.5030.

#### § 39.5055 [29.611] REVIEW AND APPROVAL FEE.

A fee for a flood plain review is imposed and the amount will be set by Board resolution.

### 5.B – GEOLOGIC HAZARDS OVERLAY (GH)

#### ~~HILLSIDE DEVELOPMENT AND EROSION CONTROL – HD~~

#### § 39.5070 [33.5500]- PURPOSES

The purposes of the ~~Hillside Development and Erosion Control~~ Geologic Hazards (GH) Overlay, MCC 39.5070 through MCC 39.5095, are to promote the public health, safety and general welfare, and minimize public and private losses due to earth movement hazards in specified areas and minimize erosion and related environmental damage in unincorporated Multnomah County, all in accordance with ORS 215, LCDC Statewide Planning Goal No. 7 and OAR 340– 41– 455 for the Tualatin River Basin, and the Multnomah County Comprehensive Framework Plan Policy No. 14 policies relating to natural hazards. In addition, the GH is intended to:

- (A) Protect human life;
- (B) Protect property and structures;
- (C) Minimize expenditures for rescue and relief efforts associated with earth movement failures;
- (D) Control erosion, production and transport of sediment; and

(E) Regulate land development actions including excavation and fills, drainage controls and protect exposed soil surfaces from erosive forces; and

(F) Control stormwater discharges and protect streams, ponds, and wetlands within the Tualatin River and Balch Creek Drainage Basins.

#### § 39.5075 [33.5505] PERMIT REQUIRED

~~Hillside Development~~ All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the Slope Hazard Map, or on lands with average slopes of 25 percent or more shall obtain a ~~Hillside Development~~ Geologic Hazard Permit as required in the GH, unless specifically exempted in MCC 39.5080.

#### § 39.5080 [33.5510] EXEMPT LAND USES AND ACTIVITIES

The following are exempt from the GH:

(A) Development activities approved prior to February 20, 1990; except that within such a development, issuance of individual building permits for which application was made after February 20, 1990 shall conform to site-specific requirements applicable herein.

(B) General Exemptions – Outside the Tualatin River and Balch Creek Drainage Basins, all land-disturbing activities outlined below shall be undertaken in a manner designed to minimize earth movement hazards, surface runoff, erosion, and sedimentation and to safeguard life, limb, property, and the public welfare. A person performing such activities need not apply for a permit pursuant to the GH, if:

- (1) Natural and finished slopes will be less than 25 percent; and,
- (2) The disturbed or filled area is 20,000 square feet or less; and,
- (3) The volume of soil or earth materials to be stored is 50 cubic yards or less; and,
- (4) Rainwater runoff is diverted, either during or after construction, from an area smaller than 10,000 square feet; and,
- (5) Impervious surfaces, if any, of less than 10,000 square feet are to be created; and,

(6) No drainageway is to be blocked or have its stormwater carrying capacities or characteristics modified.

(C) Categorical Exemptions – Notwithstanding subsections (A) and (B) (1) through (6) above, the following activities are exempt from the permit requirements, except that in the Tualatin River Drainage Basin, activities which effect water quality shall require a Permit pursuant to OAR 340-41-455 (3):

(1) An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation, nor exempt any excavation having an unsupported finished height greater than five feet.

(2) Cemetery graves, but not cemetery soil disposal sites.

(3) Excavations for wells, except that sites in the Tualatin Basin shall require Erosion Control Plans for spoils or exposed areas consistent with OAR 340-41-455 (3).

(4) Mineral extraction activities as regulated by MCC 39.7300 through 39.7330, except that sites in the Tualatin Basin shall require Erosion Control Plans for spoils or exposed areas consistent with OAR 340-41-455 (3).

(5) Exploratory excavations under the direction of certified engineering geologists or geotechnical engineers.

(6) Routine agricultural crop management practices.

(7) Residential gardening and landscape maintenance at least 100-feet by horizontal measurement from the top of the bank of a watercourse, or the mean high watermark (line of vegetation) of a body of water or wetland.

(8) Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazards.

(9) Forest practices as defined by ORS 527 (The State Forest Practices Act) and approved by the Oregon Department of Forestry.

#### § 39.5085 [33.5515] APPLICATION INFORMATION REQUIRED

An application for development subject to the GH shall include the following:



(A) A map showing the property line locations, roads and driveways, existing structures, trees with 8-inch or greater caliper or an outline of wooded areas, watercourses and include the location of the proposed development(s) and trees proposed for removal.

(B) An estimate of depths and the extent and location of all proposed cuts and fills.

(C) The location of planned and existing sanitary drainfields and drywells.

(D) Narrative, map or plan information necessary to demonstrate compliance with MCC 39.5090 (A). The application shall provide applicable supplemental reports, certifications, or plans relative to: engineering, soil characteristics, stormwater drainage, stream protection, erosion control, and/or replanting.

(E) A ~~Hillside Development~~ Geologic Hazard Permit may be approved by the Director only after the applicant provides:

(1) Additional topographic information showing that the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a known landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or

(2) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,

(3) A ~~HDP~~ GHP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with ~~his/her~~ their stamp and signature affixed indicating that the site is suitable for the proposed development.

(a) If the ~~HDP~~ GHP Form– 1 indicates a need for further investigation, or if the Director requires further study based upon information contained in the ~~HDP~~ GHP Form– 1, a geotechnical report as specified by the Director shall be prepared and submitted.

(F) Geotechnical Report Requirements

(1) A geotechnical investigation in preparation of a Report required by MCC 39.5085 (E)

(3) (a) shall be conducted at the applicant's expense by a Certified Engineering Geologist or Geotechnical Engineer. The Report shall include specific investigations required by

the Director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable safety from earth movement hazards.

(2) Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the Geotechnical Report to ensure safety of the proposed development.

(3) Observation of work required by an approved Geotechnical Report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name shall be submitted to the Director prior to issuance of the Permit.

(4) The Director, at the applicant's expense, may require an evaluation of ~~HDP~~ GHP Form- 1 or the Geotechnical Report by another Certified Engineering Geologist or Geotechnical Engineer.

(G) Development plans shall be subject to and consistent with the Design Standards For Grading and Erosion Control in MCC 39.5090 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards.

§ 39.5090 [33.5520] GRADING AND EROSION CONTROL STANDARDS FOR  
GEOLOGIC HAZARDS PERMIT

Approval of development plans on sites subject to a ~~Hillside Development~~ Geologic Hazard Permit shall be based on findings that the proposal adequately addresses the following standards. Conditions of approval may be imposed to assure the design meets the standards:

(A) Design Standards For Grading and Erosion Control

(1) Grading Standards

(a) Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The Director or delegate may require additional studies or information or work regarding fill materials and compaction;

(b) Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;

- (c) Cuts and fills shall not endanger or disturb adjoining property;
- (d) The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;
- (e) Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced streamflow for a storm of 10-year design frequency;

## (2) Erosion Control Standards

- (a) On sites within the Tualatin River Drainage Basin, erosion and stormwater control plans shall satisfy the requirements of OAR 340. Erosion and stormwater control plans shall be designed to perform as prescribed by the currently adopted edition of the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)" and the "City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)". Land-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340 is approved for alterations within the buffer area.
- (b) Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;
- (c) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff;
- (d) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;
- (e) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

1. A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;
  2. The buffer required in 1. may only be disturbed upon the approval of a mitigation plan which utilizes erosion and stormwater control features designed to perform as effectively as those prescribed in the currently adopted edition of the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)" and the "City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)" and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340;
- (f) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;
- (g) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;
- (h) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized;
- (i) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding;
- (j) All drainage provisions shall be designed to adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural watercourses, drainage swales, or an approved drywell system;
- (k) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion;
- (l) Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:

1. Energy absorbing devices to reduce runoff water velocity;
2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;
3. Dispersal of water runoff from developed areas over large undisturbed areas.

(m) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures;

(n) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.

(o) On sites within the Balch Creek Drainage Basin, erosion and stormwater control features shall be designed to perform as effectively as those prescribed in the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)". All land disturbing activities within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.

#### (B) Responsibility

(1) Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project;

(2) It is the responsibility of any person, corporation or other entity doing any act on or across a communal stream watercourse or swale, or upon the floodplain or right-of-way thereof, to maintain as nearly as possible in its present state the stream, watercourse, swale, floodplain, or right-of-way during such activity, and to return it to its original or equal condition.

(C) Implementation

(1) Performance Bond. A performance bond may be required to assure the full cost of any required erosion and sediment control measures. The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the control measures have or can be expected to perform satisfactorily. The bond may be waived if the Director determines the scale and duration of the project and the potential problems arising therefrom will be minor.

(2) Inspection and Enforcement. If inspection by County staff reveals erosive conditions which exceed those prescribed by the ~~Hillside Development~~ Geologic Hazard Permit, work may be stopped until appropriate correction measures are completed.

(D) Final Approvals

A Certificate of Occupancy or other final approval shall be granted for development subject to the provisions of the GH only upon satisfactory completion of all applicable requirements.

§ 39.5095 [33.5525] ~~HILLSIDE DEVELOPMENT AND EROSION CONTROL RELATED~~  
DEFINITIONS

**Certified Engineering Geologist** – Any person who has obtained certification by the State of Oregon as an engineering geologist.

**Cut** –

- (1) An excavation;
- (2) The difference between a point on the original ground surface and the point of lowest elevation on the final grade;
- (3) The material removed in excavation work.

**Development** – In addition to the definition of development in MCC 39.2000, for purposes of this Overlay, “development” also means, any human-made change defined as buildings or other structures, mining, dredging, paving, filling, grading in amounts greater than ten (10) cubic yards on any lot or excavation, and any activity that results in the removal of

more than 10 percent of the existing vegetation in a Water Resource Area or Habitat Area on a lot or parcel.

**Development Area** – The total area of alteration of the naturally occurring ground surface resulting from construction activities whether permanent or temporary.

**Drainage Area** – The subject property together with the watershed (acreage) contributing water runoff to and receiving water runoff from the subject property.

**Drainageway** – Any natural or artificial stream, swale, creek, river, ditch, channel, canal or other open water-course.

**Earth Movement** – Any type of land surface failure resulting in the downslope movement of material . The term includes, but is not limited to, soil creep, mudflow, rockslides, block failures, and massive landslides.

**Erosion** – The wearing away or removal of earth surface materials by the action of natural elements or forces including, but not limited to, wind, water or gravity.

**Excavation** – Any act by which earth, sand, gravel, rock or any similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated or bulldozed, including the conditions resulting therefrom.

**Fill** –

(1) Any act by which earth, sand, gravel, rock or similar material is pushed, placed, dumped, stacked, pulled, transported, or in any way moved to a new location above the existing natural surface of the ground or on the top of a stripped surface, including the condition resulting therefrom.

(2) The difference in elevation between a point on the original ground surface and the point of higher elevation on a finished grade.

(3) The material used to make a fill.

**Geotechnical Engineer** – A Civil Engineer, licensed to practice in the State of Oregon, who by training, education and experience is competent in the practice of geotechnical or soils engineering practices.

**Geotechnical Report** – Any information required in addition to GHP Form 1 which clarifies the geotechnical conditions of a proposed development site. Examples of this would be reports on test hole borings, laboratory tests or analysis of materials, or hydrologic studies.

**Grading** – Any stripping, cutting, filling, stockpiling or any combination thereof, including the land in its cut or filled condition.

**~~HDP~~ ~~GHP~~ Form– 1** – The form required for specified developments subject to the ~~Hillside Development and Erosion Control~~ Geologic Hazards Overlay. It contains a geotechnical reconnaissance and stability questionnaire which must be filled out and certified by a Certified Engineering Geologist or Geotechnical Engineer.

**Land-disturbing Activities** – Any act which alters earth, sand, gravel, or similar materials and exposes the same to the elements of wind, water, or gravity. Land-disturbing activities includes: excavations or fills, site grading, and soil storage.

**Mulch** – ~~Materials spread over the surface of the ground, especially freshly graded or exposed soils, to prevent physical damage from erosive agents such as storm water, precipitation or wind, and which shield soil surfaces until vegetative cover or other stabilization measures can take effect~~ Organic materials, such as straw, bark, jute, coconut fibers, or nut shells spread over the surface of the ground, especially freshly graded or exposed soils, to prevent physical damage from erosive agents such as storm water, precipitation or wind, and which shield soil surfaces until vegetative cover or other stabilization measures can take effect.

**Ordinary High Water Mark** – Features found by examining the bed and banks of a stream and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all ordinary years, as to mark upon the land a character distinct from that of the abutting upland, particularly with respect to vegetation. For streams where such features cannot be found, the channel bank shall be substituted. In braided channels and alluvial fans, the ordinary high water mark shall be measured to include the entire stream feature.

**Slope** –

- (1) Any ground whose surface makes an angle from the horizontal; or
- (2) The face of an embankment or cut section.



**Slope Hazard Map** – A series of maps maintained and updated from time to time by the Land Use Planning Office, Department of Community Services;

**Spoil Material** – Any rock, sand, gravel, soil or other earth material removed by excavation or other grading activities.

**Stream** – Areas where surface waters flow sufficient to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, stormwater runoff devices or other entirely artificial watercourses unless they are used to convey Class 1 or 2 streams naturally occurring prior to construction. Those topographic features resembling streams but which have no defined channels (e.g. swales) shall be considered streams when hydrologic and hydraulic analyzes performed pursuant to a development proposal predict formation of a defined channel after development.

**Stream Protection** – Activities or conditions which avoid or lessen adverse water quality and turbidity effects to a stream.

**Topographic Information** – Surveyed elevation information which details slopes, contour intervals and drainageways. Topographic information shall be prepared by a registered land surveyor or a registered professional engineer qualified to provide such information and represented on maps with a contour interval not to exceed 10 feet.

**Vegetation** – All plant growth, especially trees, shrubs, grasses and mosses.

**Vegetative Protection** – Stabilization of erosive or sediment-producing areas by covering the soil with:

- (1) Permanent seeding, producing long-term vegetative cover;
- (2) Short-term seeding, producing temporary vegetative cover;
- (3) Sodding, producing areas covered with a turf or perennial sod-forming grass; or
- (4) Netting with seeding if the final grade has not stabilized.

~~Water Body – Areas permanently or temporarily flooded which may exceed the deepwater boundary of wetlands. Water depth is such that water, and not the air, is the principal medium in which prevalent organisms live. Water bodies include rivers, creeks, lakes, and ponds.~~ Areas permanently or temporarily flooded including rivers, streams, sloughs, aquifers, wetlands, creeks, lakes, ponds, coastal waters, and drainages (including intermittent streams and seeps).

~~Watercourse – Natural and artificial features which transport surface water. Watercourse includes a river, stream, creek, slough, ditch, canal, or drainageway.~~ A channel in which a flow of water occurs, either continuously or intermittently with some degree of regularity. Watercourses may be either natural or artificial. Watercourse includes a river, stream, creek, slough, ditch, canal, or drainageway.

## 5.C – HERITAGE AND HISTORIC PRESERVATION

### 5.C.1 – HISTORIC PRESERVATION (HP)

#### § 39.5100 [36.4700]- PURPOSES.

The purposes of the Heritage Preservation Overlay, MCC 39.5100 through MCC 39.5170 (HP), are to implement various provisions of the Comprehensive Plan, the Statewide Planning Goals, and elements of County programs to preserve and conserve for public benefit those districts, sites, buildings, structures, and objects which are found to be significant in history, architecture, archeology, and culture; to assist heritage preservation projects and activities in the public and private sector; to authorize adaptive uses not otherwise permitted where beneficial to the purposes of preservation; to establish development standards and other regulatory techniques designed to achieve the purposes of heritage preservation.

#### ~~36.4705 ——— GENERAL FINDINGS AND POLICY.~~

~~The Board finds:~~

~~(A) The Statewide Planning Goals and the County's Comprehensive Framework Plan and Community Plans Policies implemented by the Heritage Preservation Subdistrict are Goal 5 and Policies No. 15, 16, 17, and 18;~~

~~(B) The Goals and these Policies provide for the preservation, maintenance, and beneficial use of districts, sites, buildings, structures, and objects which have been identified as having historical, architectural, archaeological, or cultural significance;~~

~~(C) Surveys conducted in unincorporated Multnomah County reveal the presence of a wide variety of such sites, buildings, and objects;~~

~~(D) Each site, building, or object has unique characteristics or circumstances such that no single overlay preservation zone would be adequate to address the range of issues involved;~~

~~(E) These individual situations thus require special sets of measures, each designed to apply the preservation techniques found most appropriate; and~~

~~(F) The creation and enactment of a special overlay subdistrict when a site, building, object or need is identified, is deemed to be the effective and flexible means to implement the policies and purposes of heritage preservation.~~

#### § 39.5105 [36.4710] AREA AFFECTED.

The HP applies to land designated HP (HP-1, HP-2, HP-3, etc.) on the Multnomah County Zoning Map.

#### § 39.5110 [36.4715] STANDARDS TO ESTABLISH AN HP OVERLAY.

(A) An amendment establishing an HP overlay shall include the following:

(1) The designation of the overlay as HP-1, HP-2, HP-3, etc., in the text and on the appropriate Sectional Zoning Map;

(2) A statement of the purposes of the overlay;

(3) Definitions of terms, as appropriate;

(4) A statement of the findings and policies on which the overlay is based, including reference to the related Community Plan or Comprehensive Plan provision which the overlay is designed to implement, or to the special problems or circumstances which the overlay is designed to address;

(5) A description of the relationships between the provisions of the HP overlay and those of the base zone;

- (6) A listing of the HP overlay uses authorized as Allowed Uses, Review Uses, or Conditional Uses, as appropriate;
- (7) A description of any approval procedures or criteria required to satisfy the overlay provisions;
- (8) Any development standards, dimensional requirements, or special provisions for authorized uses in the overlay;
- (9) A description of the nature of and approval procedures for any exceptions from overlay requirements;
- (10) A statement of the methods of appeal from a decision made under the provisions of the overlay; and
- (11) Any other provision deemed appropriate to the purposes of the HP overlay.

(B) The approval authority shall consider the report and recommendation thereon prepared by the Multnomah County Historical Sites Advisory Committee or the Oregon State Historic Preservation Office if no County Committee is active.

(1) The Planning Director shall notify the Chair~~man~~ and the Secretary of the Historic Sites Advisory Committee or the Oregon State Historic Preservation Office by First Class Mail of a proposal for establishment or designation of an HP overlay at least 30 days prior to action thereon by the Planning Commission.

(2) The Committee shall file its report and recommendation with the Planning Director.

(3) In the absence of the report and the recommendation of the Committee, the proposed overlay or designation shall be deemed to be recommended for approval.

## 5.C.2 – HISTORIC PRESERVATION - 1 (HP-1)

### § 39.5150 [36.4750]- PURPOSES

In addition to the purposes set forth in MCC 39.5100, the purposes of the HP-1 Overlay, MCC 39.5100, MCC 39.510, and MCC 39.5150 through MCC 39.5170 (HP-1), are to provide for the preservation and protection of buildings which satisfy the Historical Site Criteria in the Comprehensive ~~Framework~~ Plan and to permit authorization of adaptive uses not otherwise permitted where found to be beneficial to the purposes of heritage preservation.

~~§ 36.4760 — FINDINGS AND POLICY.~~

~~The Board finds:~~

~~(A) There are buildings within the unincorporated County area which qualify as historic landmarks by reason of their special historical character, their association with historical events or persons, their antiquity, their unique or representative architectural style, design or method of construction, or by reason of other aesthetic, cultural, economic, or educational significance or importance.~~

~~(B) Many buildings which merit designation as historical landmarks have been altered or destroyed in the absence of regulatory controls to insure preservation or of measures to authorize adaptive uses which would make preservation economically feasible.~~

~~(C) Creation and application of a specialized overlay subdistrict will implement the Statewide Planning Goals and the Comprehensive Plan Policies No. 15 and 18 with respect to buildings of historical significance.~~

§ 39.5160 [36.4765] USES.

(A) The following uses are permitted uses in the HP-1:

(1) A use existing or for which a valid building or land use permit was in effect on the effective date of the HP-1 classification; and

(2) Any use listed as an Allowed Use in the base zone.

(B) A use listed as Review Use in the base zone may be permitted when found to satisfy the approval criteria given in such zone and those given in MCC 39.5165.

(C) In the EFU and CFU Zones, a use listed as a Conditional Use in such zone may be permitted in such zone when found to satisfy the applicable approval criteria given in such zone and those listed in MCC 39.5165.

(D) In the MUA-20, RR, and RC Base Zones and notwithstanding the use provisions of those zones, a use listed as a Conditional Use in such zone may be permitted in such zone when found to satisfy the applicable approval criteria given in MCC 39.7000 through 39.7455 and those listed in MCC 39.5165.

**§ 39.5165 [36.4770] HP-1 REVIEW USE AND CONDITIONAL USE APPROVAL CRITERIA.**

In acting to approve a Review Use or Conditional Use under MCC 39.5160(B), (C), or (D), the approval authority shall find that the proposal:

- (A) Will maintain or restore the unique characteristics of the site and structure which are the basis of the HP-1 classification;
- (B) Will satisfy the dimensional requirements of the base zone and the development standards specified by this Chapter for the proposed use to the maximum extent possible, consistent with the nature of the existing improvements of historical significance;
- (C) Will permit an adaptive use which is necessary and appropriate to the preservation of the historical characteristics; and
- (D) Will have only minor adverse impacts on nearby properties, considering such factors as loss of residential privacy, increased vehicle or pedestrian traffic, noise, glare, or similar effects.

**§ 39.5170 [36.4780] PERMITS.**

The provisions of MCC 39.8450, "Permits for Historical Structures and Sites", shall apply to any building, structure, or premises classified HP-1.

**5.A – Airport Landing Field (CU)**

**§ 39.5180 [36.4010] PURPOSE.**

The purposes of ~~base zone~~ 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 **base zone**; 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.

**§ 39.5182 [36.4015] USES.**

An Airport Landing Field base zoneoverlay (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 base zone are as provided in ~~MCC 39.7060 through 39.7075.~~

**§ 39.5184 [36.4020] ALLOWED USES.**

Any use permitted in the base zone, except as provided in MCC 36.4035 (B), subject to the height limitations of MCC 36.4035 (A).

**§ 39.5186 [36.4025] 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.

**§ 39.5188 [36.4030] 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.

**§ 39.5190 [36.4035] 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 ~~to elevations depicted on a map or maps entitled Airport Landing Field Base zone Height Restrictions, and included as Attachment "A" of this Ordinance by this reference.~~

(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 base zone 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.

**5.E – NOISE IMPACT OVERLAY (NI)**

**§ 39.5200 [11.15.6070] Purposes**

The purposes of this Overlay, MCC 39.5200 through MCC 39.5235 (NI), are to put the owners of proposed new structures on notice that specific levels of aircraft noise can be expected over their property; reduce noise impact within noise-sensitive structures through the provision of sound insulation; and promote sound land use planning for noise impact areas through the consideration of Federal and State guidelines, Comprehensive Plan policies, and past County actions affecting land use near the airport.



(A) This Overlay applies to those lands designated NI on the Multnomah County Zoning Map. The initial boundaries of the NI zoning Overlay shall coincide with the 1983 PIA Noise Abatement Plan and may be updated pursuant to MCC 39.5235.

(B) For those lots or parcels partially within the NI, the exact building site shall be determined using the large scale maps. If the building site is outside the NI, the provisions of this Overlay do not apply.

#### ~~11.15.6072 Area Affected~~

~~A. — MCC .6070 through .6086 shall apply to those lands designated NI on the Multnomah County Zoning Map. The initial boundaries of the NI zoning district shall coincide with the 1983 PIA Noise Abatement Plan, and as may be updated pursuant to MCC .6086.~~

~~B. — Large scale maps of the NI zoning district boundaries shall be maintained by the County Division of Planning and Development for reference.~~

~~C. — For those lots or parcels partially within the NI zoning district boundary, the exact building site shall be determined using the large scale maps. If the building site is outside the NI zoning district boundary the provisions of this district do not apply.~~

#### **§ 39.5210 [11.15.6076] Uses**

(A) All uses allowed in the base zone are allowed in the NI when found to satisfy the applicable approval criteria given in such zone and those listed in MCC 39.5210 through 39.5235, except that:

(1) No new residential zoning shall be allowed in excess of that existing as of the date of adoption of the NI; and

(2) Structures used in manufacturing or industrial processing and structures that are accessory to a primary use (garages, storage buildings, etc.) are exempt from the NI.

#### **§ 39.5215 [11.15.6078] Performance Standard**

(A) On land within the 65 Ldn noise contour, All new or replacement structures, additions (when the addition is a minimum of 105 of the size of the original structure), and reconstructed structures (when the cost of reconstruction exceeds 75% of the value of the

original structure) shall be constructed with sound insulation or other means to achieve a day/night average interior noise level of 45 dBA.

(B) An Oregon registered engineer knowledgeable in acoustical engineering shall certify that the building plans comply with the standard set forth in Subsection (A) of this Section.

(1) The engineer must take into account the construction materials, type of foundation, soil type and other physical factors of the site in ~~his/her~~ **their** evaluation.

(2) The engineer must use the ANSI, ISO, ASTM or other nationally accepted standard for the transmission coefficients of various materials. Assume all openings (doors and windows) are closed for calculation purposes.

(3) Certification may also be accomplished by a study of existing structures located within the same Ldn Noise Contour and vicinity (block, subdivision, park or moorage) to determine the expected noise level of a proposed structure(s).

#### **§ 39.5220 [11.15.6080] Noise Easement Required**

As a condition of a building, or land use permit, the applicant shall sign and record a noise easement to the Port of Portland. Such easement shall authorize noise at levels established by the undated Ldn noise contour over the grantors property. Any increase of the Ldn noise level above that stated on the easement will not void nor be protected by such easement.

#### **§ 39.5225 [11.15.6082] Disclosure Statement Required**

As a condition of a building or land use permit for land within the 65 Ldn noise contour, the applicant shall sign and record a disclosure statement. Such statement shall provide notice to all prospective purchasers or tenants of the property that the premises may be impacted by noise from the Portland International Airport. A signed and recorded copy of such statement must be presented to the County prior to permit issuance.

#### **§ 39.5230 [11.15.6084] Appeals**

Any property owner or owners affected by the 65 Ldn noise contour line may appeal the validity or location of that line as it applies to their property, to the County Building Code Board of Appeals. The burden is on the appellant to prove that the 65 Ldn noise contour is misplaced or invalid as it applies to their property. In meeting this burden, the property owner shall provide a study prepared by a certified acoustical engineer which establishes the

estimated Ldn for such property. This study need not be based on long term monitoring of noise levels, and can be based on either existing noise data or brief periods of on-site monitoring or both, so long as the report is prepared in accordance with the standards and normal procedures of the acoustical engineering profession.

#### **§ 39.5235 [11.15.6086] Review and Modification**

(A) The Planning Commission may reconsider the NI should the 65 Ldn noise contour expand beyond its 1983 boundary. It is recognized that minor fluctuations within the 65 Ldn noise contour are projected during the next 20 years.

(B) Irrespective of Subsection (A), the Planning Commission shall review the NI every five (5) years. The purpose of the review will be to evaluate, and, if necessary, update the NI.

### **5.F – PLANNED DEVELOPMENT (PD)**

#### **§ 39.5300 [33.4300]- PURPOSES**

The purposes of the Planned Development Overlay, MCC 39.5300 through MCC 39.5350 (PD), are to provide a means of creating planned environments through the application of flexible and diversified land development standards; to encourage the application of new techniques and new technology to community development which will result in superior living or development arrangements; to use land efficiently and thereby reduce the costs of housing, maintenance, street systems and utility networks; to promote energy conservation and crime prevention; to relate developments to the natural environment and to inhabitants, employers, employees, customers, and other users in harmonious ways.

#### **§39.5305 [ 33.4305] AREAS AFFECTED**

The PD may be applied only in the BRC, MUA-20, OR, PH-RC, RC, RR, and SRC Zones.

#### **§ 39.5310 [33.4315] DEVELOPMENT PLAN AND PROGRAM CONTENTS**

(A) The preliminary Development Plan and Program shall consist of plans, maps or diagrams drawn in sufficient detail to indicate the nature of the plan elements and a written narrative descriptive of the program elements.

(1) Plan Elements.

(a) Proposed land uses and residential densities.

- (b) Means of access, circulation and parking.
- (c) Building types and locations.
- (d) Parks, playgrounds, paths and open spaces.
- (e) Preliminary site analysis diagram as defined in MCC 39.8025 (C).
- (f) A land division plan if the land is to be divided.

(2) Program Elements.

- (a) A narrative statement of the goals and objectives of the planned development.
- (b) Tables showing overall density of any proposed residential development and showing density by dwelling types and intensity of any commercial, industrial or other employment uses.
- (c) A narrative statement indicating how the proposed planned development complies with the applicable Comprehensive Plan Policies.
- (d) A general timetable of development.
- (e) The proposed ownership pattern.
- (f) An operation and maintenance proposal.

**§ 39.5315 [33.4320] CRITERIA FOR APPROVAL**

(A) Action on the Preliminary Development Plan and Program shall be based on findings that the following are satisfied:

- (1) ~~The requirements of MCC 33.0725 (D)~~ (3) The applicable provisions of the comprehensive plan;
- (2) The applicable provisions of MCC 39.9000 et seq., the Land Division Ordinance;
- (3) Any exceptions from the standards or requirements of the underlying district are warranted by the design and amenities incorporated in the Development Plan and Program, as related to the purposes stated in MCC 39.5300;

(4) The system of ownership and the means of developing, preserving and maintaining open space is suitable to the purposes of the proposal;

(5) The provisions of MCC 39.5330;

(6) The proposed development can be substantially completed within four years of the approval or according to the development stages proposed under MCC 39.5345;

(7) The Development Standards of MCC 39.5325, 39.5335 and 39.5340;

(8) The purposes stated in MCC 39.5300;

(B) Approval of the Final Development Plan and Program shall be based on findings that the following are satisfied:

(1) The final Plan and Program are consistent with the approved Preliminary Development Plan and Program and the modifications or conditions attached thereto;

(2) The Development Standards of MCC 39.5320;

(3) The criteria of MCC 39.8040 and the standards of MCC 39.8045.

#### § 39.5320 [33.4330] DEVELOPMENT STANDARDS

The Development Standards stated in MCC 39.5325 through 39.5340 shall apply to an approved Planned Development. In the case of a conflict between a standard of the base zone and that of the PD, the standard of the PD shall apply.

#### § 39.5325 [33.4335] MINIMUM SITE SIZE

A Planned Development overlay shall be established only on a parcel of land found to be suitable for the proposed development and of sufficient size to be planned and developed in a manner consistent with the purposes stated in MCC 39.5300.

#### § 39.5330 [33.4340] RELATIONSHIP OF THE PLANNED DEVELOPMENT TO ENVIRONMENT

(A) The Development Plan and Program shall indicate how the proposal will be compatible with the natural environment.

(B) The elements of the Development Plan and Program shall promote the conservation of energy, and may include such factors as the location and extent of site improvements, the orientation of buildings and usable open spaces with regard to solar exposure and climatic conditions, the types of buildings and the selection of building materials in regard to the efficient use of energy and the degree of site modification required in the proposal.

(C) The Development Plan and Program shall be designed to provide freedom from hazards and to offer appropriate opportunities for residential privacy and for transition from public to private spaces.

(D) The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings, structures and uses shall be designed to maximize safety and convenience and be compatible with neighboring road systems, buildings, structures and uses.

#### § 39.5335 [33.4345] OPEN SPACE

Open space in a Planned Development overlay means the land area used for scenic, landscaping or open recreational purposes within the development.

(A) Open space shall not include street rights-of-way, driveways or open parking areas.

(B) Locations, shapes and sizes of open space shall be consistent with the proposed uses and purposes of the Planned Development.

(C) Open spaces shall be suitably improved for intended use. Open spaces containing natural features worthy of preservation may be left unimproved or may be improved to assure protection of the features.

(D) The development schedule shall provide for coordination of the improvement of open spaces with the construction of other site improvements proposed in the Development Plan and Program.

(E) Assurance of the permanence of open spaces may be required in the form of deeds, covenants or the dedication of development rights to Multnomah County or other approved entity.

(F) The approval authority may require that instruments of conveyance provide that in the event an open space is permitted to deteriorate or is not maintained in a condition consistent with the approved plan and program, the County may at its option cause such maintenance to be done and assess the costs to the affected property owners. Any instruments guaranteeing the maintenance of open spaces shall be reviewed as to form by the County Attorney.

#### § 39.5340 [33.4350] DENSITY COMPUTATION FOR RESIDENTIAL DEVELOPMENTS

(A) In order to preserve the integrity of the Comprehensive Plan and relate a residential Planned Development to it, the number of dwelling units permitted shall be determined by dividing the total site area by the minimum lot area per dwelling unit required by the underlying district or districts in which the Planned Development is located.

(B) Optional Density Standards within the Urban Plan Area. The following standards for the calculation of residential density may be used singularly or in combination, when approved by the Planning Commission:

(1) The permitted number of dwelling units determined under subsection (A) above may be increased up to 25 percent upon a finding by the Planning Commission that such increased density will contribute to:

- (a) Satisfaction of the need for additional urban area housing of the type proposed;
- (b) The location of housing which is convenient to commercial, employment and community services and opportunities;
- (c) The creation of a land use pattern which is complementary to the community and its identity, and to the community design process;
- (d) The conservation of energy;
- (e) The efficient use of transportation facilities; and
- (f) The effective use of land and of available utilities and facilities.

(2) The permitted number of dwelling units may be increased above those computed under subsection (A) or (B) of this section, upon a finding by the Planning Commission that:

(a) The total number of persons occupying the site will not exceed the total otherwise permitted or authorized in the district, based upon the difference between the average family size occupying permitted units in the vicinity and the family size limited by the proposed number of bedrooms, the proposed number of kitchens, the age composition of prospective residents, or other similar occupancy limitations; and

(b) The proposal will satisfy the provisions of subsection (B) (1) of this section.

#### § 39.5345 [33.4355] STAGING

(A) The applicant may elect to develop the site in successive stages in a manner indicated in the Development Plan and Program. Each such stage shall satisfy the requirements of the PD.

(B) In acting to approve the Preliminary Development Plan and Program, the approval authority may require that development be completed in specific stages if public facilities are not otherwise adequate to service the entire development.

#### § 39.5350 [33.4360] PERMITTED USES

In a residential zone, the following uses may be permitted in a Planned Development overlay:

(A) Housing types may include only duplexes and single family detached or attached dwellings.

(B) In the LR-7 and the LR-5 districts, outside a Developed Neighborhood as designated in the Community Plan, the housing type may include mobile homes in a mobile home park, subject to the development standards of MCC 39.8610.

~~(B)~~ (C) A related commercial use which is designated to serve the development of which it is a part, upon approval by the Planning Commission.

~~(C)~~ (D) A Community Service use listed in MCC 39.7500 through 39.7525 and 39.8400 when designated to serve the development or the adjacent area of which it is a part, upon approval by the approval authority.

(1) A Community Service use, when approved under the provisions of MCC 39.7500 through 39.7525 and 39.8400 may also be designed to serve the adjacent area outside the



Planned Development if found by the approval authority to be appropriate and consistent with Comprehensive Plan policies.

(~~D~~E) A use or structure customarily accessory or incidental to a permitted or approved use.

(F) For an underlying commercial ~~or industrial~~ district within the Urban Plan Area, the following uses may be permitted in a Planned Development overlay:

- (1) Uses permitted in the underlying district.
- (2) Community Service Uses when approved by the Planning Commission under the provisions of MCC 39.8005 through 39.8020.
- (3) Any other use as approved by the Planning Commission when found to be consistent with the Development Plan and Program and the purposes of the PD.

## **5.G – PROTECTED AGGREGATE AND MINERAL SITES (PAM)**

### **§39.5400 [ 33.5700- PURPOSES**

The purposes of the Protected Aggregate and Mineral Resources Overlay, MCC 39.5400 through MCC 39.5445 (PAM) are:

- (A) To provide a mechanism to identify and, where appropriate, protect significant aggregate and mineral resource sites;
- (B) To allow surface mining subject to uniform operating standards; and
- (C) To regulate conflicts with surface mining activities.

### **§ 39.5405 [33.5705] AREA AFFECTED**

This Overlay shall apply to those lands designated PAM on the Multnomah County Zoning Map. On the Zoning Map shall also be a reference to the relevant site-specific Comprehensive Plan documents.

### **§ 39.5410 [33.5710] EXEMPTIONS**

- (A) The following activities are exempt from the PAM and from MCC 39.7300 through MCC 39.7330. Operators or land owners have the burden of qualifying for any exemption.

(1) Mining on forest lands auxiliary to forestry operations occurring in compliance with the Forest Practices Act as administered by the Oregon Department of Forestry.

(2) Lawful mining operating under a DOGAMI "Grant of Total Exemption" on December 3, 1994 on property owned or controlled by the operator. Abandonment, restoration, or alteration of this use shall be in compliance with the non-conforming use provisions of MCC 39.8300 through 39.8315.

(B) Mining less than 1,000 cubic yards of material in conjunction with mining an area of less than one acre is exempt from the requirements of MCC 39.5400 through 39.5445 and 39.7300 through 39.7330, but shall require the approval of a ~~Hillside and Erosion Control~~ Geologic Hazard Permit and any other permits as may be required in any overlay district.

(C) Mining a quantity in excess of (B), but mining less than 5,000 cubic yards of material or disturbing less than one acre of land within a period of 12 consecutive months until mining affects five or more acres is exempt from the requirement in MCC 39.7315 and 39.7320 to obtain a DOGAMI operating permit. However, mining at this level of activity shall:

(1) Be on a "protected site" as determined by, and subject to restrictions warranted by, the Goal 5 process;

(2) Be approved as a mining conditional use pursuant to the provisions and requirements of MCC 39.7300 through 39.7330; and

(3) Obtain approval of a ~~Hillside and Erosion Control~~ Geologic Hazard permit in conjunction with the mining conditional use approval. The ~~Hillside and Erosion Control~~ Geologic Hazard permit shall be required in place of all references in the comprehensive plan and this Chapter to obtaining a DOGAMI operating permit in recognition that this level of mining activity is exempted by DOGAMI rules for such a permit.

## § 39.5415 [33.5715] DEFINITIONS

As used in this Overlay and MCC 39.7300 through 39.7330, unless otherwise noted, the following terms and their derivations shall have the following meanings:

(A) **Conflicting Use** – A use authorized in the underlying zone which, if allowed, could adversely affect operations at a protected aggregate and mineral resource site. As used in this subsection, a conflicting use is also another inventoried significant Goal 5 resource

located on or adjacent to a protected aggregate or mineral site if that resource could force a change in mining or processing at the site.

(B) **Dust Sensitive Use** – A conflicting use which is primarily used for habitation.

Residential structures, churches, hospitals, schools, public libraries, and campgrounds are considered dust sensitive uses during their period of use. Forest uses and farm uses are not dust sensitive uses unless determined through the Goal 5 process.

(C) **ESEE Analysis** – The analysis of Economic, Social, Environmental and Energy consequences of allowing mining at a significant site, and allowing conflicting uses to displace mining at a significant site. The ESEE analysis is the basis for determining the level of protection to be given the resource.

(D) **Extraction Area** – The area of a protected aggregate and mineral resource site in which mining and associated processing is permitted.

(E) **Goal 5 Process** – The planning process required by Oregon Administrative Rules Chapter 660, Division 16. The Goal 5 process involves identifying resource sites, determining their significance, identifying conflicting uses, analyzing the economic, social, environmental and energy consequences of conflicting uses, determining the level of protection given to a re-source site, and implementing a program to protect significant sites.

(F) **Impact Area** – The area where uses may occur that could adversely affect the resource site or be adversely affected by use of the resource site.

(G) **Mining** – The excavation of sand, aggregate (gravel), clay, rock, or other similar surface or subsurface resources. Mining does not include:

- (1) Excavations conducted by a landowner or tenant on the landowner or tenant's property for the primary purpose of reconstructing or maintaining access roads,
- (2) Excavation or grading conducted in the process of farm or cemetery operations,
- (3) Excavation or grading conducted within a road right-of-way or other easement for the primary purpose of road construction, reconstruction or maintenance, or

(4) Removal, for compensation, of materials resulting from on-site construction for which a development permit and a construction time schedule have been approved by the county.

(H) **Noise Sensitive Use** – A conflicting use which is primarily used for habitation. Residential structures, churches, hospitals, schools, public libraries, and campgrounds are considered noise sensitive uses during their period of use. Forest uses and farm uses are not noise sensitive uses unless determined through the Goal 5 process.

(J) **Processing** – The washing, crushing, screening, and handling of aggregate and mineral resources. Batching and blending of asphalt or Portland cement concrete are included in the definition of processing.

(K) **Protected Site** – Significant resource sites which are identified through the Goal 5 Process as resources that the county will protect from conflicting uses. The special overlay district designation Protected Aggregate and Mineral Resources (PAM) shall only be applied to protected sites.

(L) **Restrictive Covenant** – An enforceable promise, given by the owner of a parcel whose use and enjoyment of that parcel may be restricted in some fashion by mining occurring on another parcel, not to object to the terms of a permit issued by a local government, state agency or federal agency. The restrictive covenant shall be recorded in the real property records of the county, shall run with the land, and is binding upon the heirs and successors of the parties. The covenant shall state that obligations imposed by the covenant shall be released when the site has been mined and reclamation has been completed.

(M) **Significant Site** – A site containing either significant aggregate resources or significant mineral resources. The county will judge the significance of mineral and aggregate resources on a case by case basis, under the standards and procedures in LCDC's Goal 5 interpretive rules.

**§ 39.5420 [33.5720] PAM OVERLAY; GENERALLY** (A) The PAM comprises two areas, the Extraction Area (PAM-EA) and the Impact Area (PAM-IA).

(B) The Extraction Area shall be applied to the portion of protected sites where mining and associated processing is to occur. The Extraction Area may consist of one or more parcels or portions of parcels, and may be applied to contiguous properties under different ownership.

The Extraction Area boundary may be modified through the Goal 5 process to reduce conflicts with conflicting uses existing when the overlay zone is applied. The Extraction Area shall be shown on the zoning map with the designation PAM-EA.

(C) The Impact Area shall be applied to parcels or portions of parcels adjacent to the Extraction Area and within the Impact Area deemed appropriate through the Goal 5 process. The Impact Area shall be shown on the zoning map with the designation PAM-IA.

#### § 39.5425 [33.5725] PROCEDURE FOR APPLYING THE PAM OVERLAY

(A) A PAM overlay shall be established by amendment of the Comprehensive ~~Framework~~ Plan and Zoning Map. The relevant factors for the establishment of a PAM overlay are within the Oregon Administrative Rules Chapter 660, Division 16; Comprehensive Plan Policy ~~16-B~~ [5.46](#); and the applicable provisions of MCC Chapter 39.

(B) Under the applicable provisions of OAR Chapter 660, Division 16 and Comprehensive Plan Policy ~~16-B~~ [5.46](#) and based upon the analysis of information about the location, quality, and quantity of the aggregate and mineral resource, the county shall make the following determinations regarding the inventory status of the resource site and, if appropriate, continuation of the Goal 5 process:

(1) If the information about the location, quality, and quantity of a resource site is not adequate to allow a determination of significance, the site shall be placed on a plan inventory of "potential sites" and shall remain on that inventory until information is available to determine whether or not the site is significant, or

(2) If the resource site does not meet the definition of a significant site, the site shall be placed on a plan inventory of "not significant sites", or

(3) If the resource site meets the definition of a significant site, the Goal 5 process shall be continued.

(C) Under the applicable provisions of OAR Chapter 660, Division 16 and Comprehensive Plan Policy ~~16-B~~ [5.46](#) and based upon the ESEE analysis, the county shall determine the amount of protection to be given each significant site. Each determination shall be incorporated into the comprehensive plan, and shall be reflected on the zoning maps. One of the following determinations shall be made:

(1) Protect the site fully and allow surface mining as a conditional use. The county shall place the site on the Protected Sites inventory, apply the PAM Overlay, specify the planned use of the site following reclamation, and prohibit the establishment of conflicting uses within the Extraction Area and the Impact Area. Conditional use approval of surface mining shall be pursuant to MCC 39.7300 through 39.7330 and shall not be subject to the conditional use provisions of MCC 39.7005 (C), 39.7015, and 39.7025.

(2) Balance protection of the site and conflicting uses, allow surface mining as a conditional use. The county shall place the site on the Protected Sites inventory, apply the PAM, specify the planned use of the site following reclamation, and identify which uses in the underlying zone are allowed outright, allowed conditionally, or prohibited. Conditional use approval of surface mining shall be pursuant to any site-specific requirements developed through the Goal 5 process and MCC 39.7300 through 39.7330. Review criteria and conditions shall not include the conditional use provisions of MCC 39.7005 (C), 39.7015, and 39.7025. Site-specific requirements developed through the Goal 5 process, MCC 39.5430 and 39.5435 shall govern development of conflicting uses.

(3) Allow conflicting uses fully and do not allow surface mining except as exempted in MCC 39.5410. The county shall then place the site on the "Not Protected Sites" inventory, not apply the PAM, and not protect the site from conflicting uses.

#### **§ 39.5430 [33.5730] EXTRACTION AREA (PAM-EA) -- USES**

(A) Except as provided in this Subsection, all uses allowed in the base zone are allowed in the PAM-EA when found to satisfy the applicable approval criteria given in such zone.

(1) Uses identified through the Goal 5 process to be prohibited within the PAM-EA shall not be permitted.

(2) Noise or dust sensitive uses not prohibited in (1) may be permitted under the conditional use procedural provisions of MCC 39.7000 through 39.7035 when found by the Hearing Authority to satisfy the approval criteria of MCC 39.5440 and the approval criteria of the base zone.

(3) Conflicting uses required by the Goal 5 process to be conditionally approved may be permitted under the procedural provisions of MCC 39.7000 through 39.7035 when found

by the Hearing Authority to satisfy the approval criteria of MCC 39.5440 and the approval criteria of the base zone.

(B) The following uses may be permitted subject to a finding by the Hearing Authority that all standards adopted as part of the Goal 5 process and the provisions of MCC 39.7000 through 39.7035 are met. Review by the Hearing Authority shall be under the procedural provisions of MCC 39.7000; 39.7005 (A) and (B); 39.7020 and 39.7035.

(1) Mining;

(2) Processing, except the batching or blending of aggregate and mineral materials into asphalt concrete within two miles of a planted commercial vineyard existing on the date of conditional use approval;

(3) Stockpiling of aggregate and mineral materials;

(4) Sale of mineral products excavated and processed on-site;

(5) Storage of equipment or vehicles used in on-site mining or processing;

(6) Buildings, structures, and activities necessary and accessory to mining or reclaiming aggregate or mineral resources.

#### **§ 39.5435 [33.5735] IMPACT AREA (PAM-IA) - ALLOWED USES**

(A) Except as provided in this Section, all uses allowed in the base zone are allowed in the PAM-IA when found to satisfy the applicable approval criteria given in such zone.

(B) Uses identified through the Goal 5 process to be prohibited within the PAM-IA shall not be permitted;

(C) Noise or dust sensitive uses not prohibited in (B) may be permitted under the conditional use procedural provisions of MCC 39.7000 through 39.7035 when found by the Hearing Authority to satisfy the approval criteria of MCC 39.5440 and the approval criteria of the base zone; and

(D) Conflicting uses required by the Goal 5 process to be conditionally approved may be permitted under the procedural provisions of MCC 39.7000 through 39.7035 when found by the Hearing Authority to satisfy the approval criteria of MCC 39.5440 and the approval criteria of the base zone.

## **§ 39.5440 [33.5740] USE APPROVAL CRITERIA**

(A) In acting to approve a use subject to this Section, the Hearing Authority shall find that:

- (1) The proposed use will not interfere with or cause an adverse impact on lawfully established and lawfully operating mining operations;
- (2) The proposed use will not cause or threaten to cause the mining operation to violate any applicable standards of this Chapter, or the terms of a state agency permit. The applicant for a new noise sensitive use shall submit an analysis prepared by an engineer or other qualified person, showing that applicable DEQ noise control standards are met or can be met by a specified date by the nearby mining operation; and
- (3) Any setbacks or other requirements imposed through the Goal 5 process have been met, or can be met by a specified date.

(B) Approval Conditions.

- (1) Compliance with the use approval criteria may be satisfied through the imposition of clear and objective conditions of approval.
- (2) Approval of any conflicting use in the extraction area or impact area shall be conditioned upon execution of a restrictive covenant in favor of the mining operator. The restrictive covenant shall incorporate all approval conditions, and an agreement not to object to the conduct of lawful operations conducted at the nearby surface mine.

## **§ 39.5445 [33.5745] TERMINATION OF THE PAM OVERLAY**

When the aggregate or mineral site has been re-claimed, the county may rezone land to remove the PAM without revising the ESEE Analysis for the site. Rezoning shall not relieve requirements on the part of the owner or operator to reclaim the site in accordance with ORS 517.750 through 517.900 and the rules adopted thereunder.

## **5.H – SIGNIFICANT ENVIRONMENTAL CONCERN OVERLAYS (SEC)**

### **5.H.1 – SIGNIFICANT ENVIRONMENTAL CONCERN GENERAL PROVISIONS**

## **§ 39.5500 [33.4500]- PURPOSES**



The purposes of the Significant Environmental Concern Overlays, MCC 39.5500 through MCC 39.5860 (collectively, the “SEC”) are to protect, conserve, enhance, restore, and maintain significant natural and ~~man~~ human-made features which are of public value, including among other things, river corridors, streams, lakes and islands, domestic water supply watersheds, flood water storage areas, natural shorelines and unique vegetation, wetlands, wildlife and fish habitats, significant geological features, tourist attractions, archaeological features and sites, and scenic views and vistas, and to establish criteria, standards, and procedures for the development, change of use, or alteration of such features or of the lands adjacent thereto.

§39.5505 [33.4505] AREA AFFECTED

(A) Except as otherwise provided in MCC 39.5510 or MCC 39.5515, ~~this section~~ the SEC shall apply to those lands designated SEC on the Multnomah County Zoning Map consisting of the following resource area designations:

| <u>Resource Area Designation</u>             |
|--|
| <u>SEC-sw: Scenic Waterway Resource Area</u> |
| <u>SEC-v: Scenic Views Resource Area</u>     |
| <u>SEC-w: Wetlands Resource Area</u>         |
| <u>SEC-s: Streams Resource Area</u>          |
| <u>SEC-wr: Water Resource Area)</u>          |
| <u>SEC-h: Wildlife Habitat Resource Area</u> |

(B) In the event of a mapping inconsistency, the SEC-s zoning Overlay shall be interpreted to be the defined Stream Conservation Area as defined in MCC 39.5750.

(C) SEC - Scenic Waterway (SEC-sw) - Land areas that are contained within the Sandy River Scenic Waterway as shown on the zoning maps adopted on (September 6, 1977, Ord. 149).

(D) SEC-Water Resource Area (SEC-wr) - Protected water features, riparian/vegetated corridors and the adjacent impact areas, that are identified as significant resources in the Goal 5 Inventory, and as established by these definitions, are the areas included within the SEC-wr Overlay District.

(1) Protected Water Features shall include:

(a) Wetlands that provide a water quality benefit - Wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands which meet any one of the following criteria. Wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.

1. The wetland is fed by surface flows, sheet flows or precipitation, and has evidence of flooding during the growing season, and has 60 percent or greater vegetated cover, and is over one-half acre in size;

2. The wetland qualifies as having "intact water quality function" under the 1996 Oregon Fresh water Wetland Assessment Methodology;

3. The wetland is in the Flood Management Area, and has evidence of flooding during the growing season, and is five acres or more in size, and has a restricted outlet or no outlet;

4. The wetland qualifies as having "intact hydrologic control function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or

5. The wetland or a portion of the wetland is within a horizontal distance of less than one-fourth mile from a water body which meets the Department of Environmental Quality definition of "water quality limited water body" in OAR Chapter 340, Division 41 (1996).

(b) Rivers, streams, and drainages downstream from the point at which 50-acres or more are drained to the water feature (regardless of whether it carries year-round flow); and

(c) Streams carrying year-round flow; and

(d) Streams designated as significant in the Goal 5 inventory; and

(e) Springs which feed stream and wetlands and have year-round flow; and

(f) Natural lakes.

(2) Riparian/Vegetated Corridors and Impact Area - The ~~standard~~ width of the riparian/vegetated corridor for all Protected Water Features ~~shall be two hundred (200) feet~~ varies and shall be as depicted on the Multnomah County Zoning Maps and is measured from the top of bank.

(3) The zoning maps used to designate the SEC-wr zoning Overlay were created digitally by interpreting various data sources and maps contained in the 2002 West of Sandy River Goal 5 ESEE report. Care was taken in the creation of the maps, but in some instances mapping inaccuracies have occurred during the process. For those areas included in the 2002 West of Sandy River Plan, the SEC-wr zoning Overlay shall be interpreted to be the ~~text-defined~~ Water Resource Area as defined in this subsection B.

(E) SEC-Habitat (SEC-h)- Includes nonriparian and nonwetland natural resource sites that contain habitat values such as wooded areas and areas with rare or endangered flora and fauna, as identified by the Goal 5 Inventory. Habitat areas include the significant Goal 5 habitat resource and a 25 foot buffer to protect the root zone of the vegetation. The boundaries of Significant Habitat Areas, which are designated as SEC-h, are established by the Goal 5 Natural Resource Inventory and include:

(1) Those areas identified on the map as "Riparian Corridor/Wildlife Habitat and Impact Area" that do not otherwise meet the definition of Water Resource Area in subsection (B) above; and

(2) Those areas identified on the map as "Isolated Upland Wildlife Habitat" that do not otherwise meet the definition of Water Resource Area in subsection (B) above.

(F) The zoning maps used to designate the SEC-s were created digitally by interpreting various data sources including the hand drawn maps contained in the Goal 5 ESEE reports and Metro's riparian and wildlife habitat inventories. Care was taken in the creation of the maps, but in some instances mapping inaccuracies have occurred during the process. In the event of a mapping inconsistency, the SEC-s zoning subdistrict shall be interpreted to be the defined Stream Conservation Area as defined in MCC 39.5750.

§ 39.5510 [33.4510] USES; SEC PERMIT REQUIRED

(A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.

(B) Any excavation or any removal of materials of archaeological, historical, prehistorical or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.

#### § 39.5515 [33.4515] EXCEPTIONS

(A) Except as provided in subsection (B) of this Section, an SEC permit shall not be required for the following:

(1) Farm use, as defined in ORS 215.203 (2) (a), including buildings and structures accessory thereto on "converted wetlands" as defined by ORS 541.695 (9) or on upland areas. This exception does not apply in the West of Sandy River Planning Area.

(2) The propagation of timber or the cutting of timber for public safety or personal use or the cutting of timber in accordance with the State Forest Practices Act.

(3) Customary dredging and channel maintenance and the removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, levees, groins, riprap, drainage ditch, irrigation ditches and tile drain systems as allowed by ORS 196.905 (6).

(4) The placing, by a public agency, of signs, markers, aids, etc., to serve the public.

(5) Activities to protect, conserve, enhance, and maintain public recreational, scenic, historical, and natural uses on public lands.

(6) The expansion of capacity, or the replacement, of existing communication or energy distribution and transmission systems, except substations.

(7) The maintenance and repair of existing flood control facilities.

(8) Change, alteration, or expansion of a use or structure lawfully established on or before (November 17, 1994 , or lawfully established within the Sauvie Island Multnomah Channel Planning Area on or before January 7, 2010 provided that:

(a) Within the SEC, SEC-w, and SEC-v, there is no change to, or alteration, or expansion of, the exterior of the structure;

(b) Within the SEC-h and SEC-s, there is no change to, or alteration or expansion of, the structure's ground coverage in excess of 400 square feet. With respect to expansion, this exception does not apply on a project-by-project basis, but rather applies on a cumulative basis to all expansions occurring after the date above; and

(c) Within the SEC-h, there is no change to, or alteration or expansion of, a driveway in excess of 400 square feet.

(9) Type A Home Occupation.

(10) Type B Home Occupation that requires the addition of less than 400 square feet of ground coverage to the structure.

~~(10)~~<sup>11</sup>) Alteration, repair, or replacement of septic system drainfields due to system failure.

~~(11)~~<sup>12</sup>) Single utility poles necessary to provide service to the local area.

~~(12)~~<sup>13</sup>) Right-of-way widening for existing rights-of-way when additional right-of-way is necessary to ensure continuous width.

~~(13)~~<sup>14</sup>) Stream enhancement or restoration projects limited to removal by hand of invasive vegetation and planting of any native vegetation on the Metro Native Plant List.

~~(14)~~<sup>15</sup>) Enhancement or restoration of the riparian corridor for water quality or quantity benefits, or for improvement of fish and wildlife habitat, pursuant to a plan that does not include placement of buildings or structures and does not entail grading in an amount greater than 10 cubic yards. This exemption is applicable to plans that are approved by Soil and Water Conservation District, the Natural Resources Conservation District, or the Oregon Department of Fish and Wildlife under the provisions for a Wildlife and Habitat Conservation Plan, and submitted to the County.

~~(15)~~<sup>16</sup>) In the SEC-v , a solar energy system, including solar thermal and photovoltaic, that is installed on an existing building, provided that:

(a) The installation of the solar energy system can be accomplished without increasing the footprint of the residential or commercial structure or the peak height of the portion of the roof on which the system is installed;

- (b) The solar energy system would be mounted so that the plane of the system is parallel to the slope of the roof; and
- (c) The external surfaces of the solar energy system are designated as anti-reflective or have a reflectivity rating of eleven percent or less.

~~(16)~~<sup>17</sup> Routine repair and maintenance of structures, roadways, driveways, utility facilities, and landscaped areas that were in existence prior to the effective date of this ordinance November 30, 2000.

(18) Response to emergencies pursuant to the provisions of MCC 39.6900( Responses to and Emergency/Disaster Event), provided that after the emergency has passed, adverse impacts are mitigated.

(B) Within Metro's 2009 jurisdictional boundary, an SEC-s permit is required for agricultural buildings, structures and development associated with farm practices and agricultural uses, except that agricultural fences shall not require an SEC-s permit.

#### § 39.5520 [33.4520] APPLICATION FOR SEC PERMIT

An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 39.5540 through 39.5860.

(A) An application for an SEC permit shall include the following:

- (1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 39.5540 through 39.5860.
- (2) A map of the property showing:
  - (a) Boundaries, dimensions, and size of the subject parcel;
  - (b) Location and size of existing and proposed structures;
  - (c) Contour lines and topographic features such as ravines or ridges;
  - (d) Proposed fill, grading, site contouring or other landform changes;

(e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;

(f) Location and width of existing and proposed roads, driveways, and service corridors.

§ 39.5525 [33.4525] APPLICABLE APPROVAL CRITERIA

(A) The approval criteria that apply to uses in areas designated ~~SEC-w, SEC-v, SEC-h and SEC-s~~ SEC-sw, SEC-v, SEC-w, SEC-s, SEC-wr, SEC-h on Multnomah County zoning maps shall be based on the type of protected resources on the property, as indicated by the subscript letter in the zoning designation, as follows:

| Zoning Designation       | Approval Criteria (MCC#)  |
|--------------------------|---|
| SEC-sw (scenic waterway) | 39.5600   |
| SEC-v (scenic views)     | 39.5650   |
| SEC-w (wetlands)         | 39.5700   |
| SEC-s (streams)          | 39.5750   |
| SEC-wr (water resource)  | 39.5560 and 39.5800   |
| SEC-h (wildlife habitat) | Type I Permit – 39.5850<br>Type II Permit – 39.5560 and 39.5860 |

~~(B) The zoning maps used to designate the Stream Conservation Areas (SEC-s zoning Overlays) were created digitally by interpreting various data sources including the hand drawn maps contained in the Goal 5 ESEE report<sup>s</sup> and Metro's riparian and wildlife habitat inventories. Care was taken in the creation of the maps, but in some instances mapping inaccuracies have occurred during the process. In the event of a mapping inconsistency, the SEC-s zoning Overlay shall be interpreted to be the defined Stream Conservation Area.~~

~~(3) The zoning maps used to designate the SEC-wr zoning Overlay were created digitally by interpreting various data sources and maps contained in the West of Sandy River Goal 5 ESEE report. Care was taken in the creation of the maps, but in some instances mapping~~

~~inaccuracies have occurred during the process. For those areas included in the West of Sandy River Plan, the SEC wr zoning Overlay shall be interpreted to be the text defined Water Resource Area.~~

(~~E~~B) An application for a use on a property containing more than one protected resource shall address the approval criteria for all of the designated resources on the property. In the case of conflicting criteria, approval shall be based on the ability of the proposed development to comply as nearly as possible with the criteria for all designated resources that would be affected.

(~~D~~C) For protected stream resources, the approval criteria shall be used to determine the most appropriate location, size and scope of the proposed development, in order to make the development compatible with the purposes of this section Overlay, but shall not be used to prohibit a use or be used to require removal or relocation of existing physical improvements to the property. Any proposed development must comply with the approval criteria in order to be approved.

~~(1) For Goal 5 resources designated "2A" or "3A", a proposed development must comply with the approval criteria in order to be approved.~~

~~(2) For Goal 5 resources designated "3C", the approval criteria shall be used to determine the most appropriate location, size and scope of the proposed development, in order to make the development compatible with the purposes of this section, but shall not be used to prohibit a use or be used to require removal or relocation of existing physical improvements to the property.~~

#### § 39.5530 [33.4530] SEC PERMIT - REQUIRED FINDINGS

A decision on an application for an SEC permit shall be based upon findings of consistency with the purposes of the SEC and with the applicable criteria for approval specified in MCC 39.5540 through 39.5860.

#### § 39.5535 [33.4550] SCOPE OF CONDITIONS

(A) Conditions of approval of an SEC permit, if any, shall be designed to bring the application into conformance with the applicable criteria of MCC 39.5540 through 39.5860 and any other requirements specified in the Goal 5 protection program for the affected resource. ~~Said conditions may relate to the locations, design, and maintenance of existing~~



~~and proposed improvements, including but not limited to buildings, structures and use areas, parking, pedestrian and vehicular circulation and access, natural vegetation and landscaped areas, fencing, screening and buffering, excavations, cuts and fills, signs, graphics, and lighting, timing of construction and related activities.~~ Conditions may relate, but are not limited to relating, to the locations, design, and maintenance of existing and proposed improvements, including but not limited to buildings, structures and use areas, parking, pedestrian and vehicular circulation and access, natural vegetation and landscaped areas, fencing, screening and buffering, excavations, cuts and fills, signs, graphics, and lighting, timing of construction and related activities, and mitigation.

(B) Approval of an SEC permit shall be deemed to authorize associated public utilities, including energy and communication facilities.

(C) The approval criteria for an SEC permit shall be used to determine the most appropriate location, size and scope of the proposed development in order to ensure that it meets the purposes of this Overlay, but shall not be used to deny economically viable use or be used to require removal or relocation of existing physical improvements to the property.

#### § 39.5540 [34.4555] CRITERIA FOR APPROVAL OF SEC PERMIT

The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

(A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.

(B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

(C) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

(D) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.

(E) The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.

(F) Significant fish and wildlife habitats shall be protected.

(G) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.

(H) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

(I) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.

(J) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

(K) The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.

(L) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.

(M) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

(N) The applicable policies of the Comprehensive Plan shall be satisfied.

## **5.H.2 – SEC Standards Applicable in the West of Sandy River Planning Area Only**

§ 39.5550 [36.4525] EXISTING USES IN THE WEST OF SANDY RIVER PLANNING AREA.

(A) Uses that legally existed in the West of Sandy River Planning Area on January 1, 2003, that are not included as Exceptions in MCC 39.5515, may utilize the provisions of this section. This section is intended to define the circumstances under which existing development can be improved or replaced under limited requirements in recognition of the preexisting status. The SEC provisions are also not intended to make existing uses non-conforming. However, approval of proposals for alteration of uses that were non-conforming prior to ~~the SEC ordinance~~ January 1, 2003, must obtain an SEC permit in addition to demonstrating compliance with the non-conforming use provisions of MCC 39.8300 through 39.8315.

(B) Change, expansion, or alteration of existing uses in the West of Sandy River Planning Area shall require an SEC permit as provided in MCC 39.5500 through 39.5860, except for changes to a structure as described in subsections (1) through (3) below:

(1) In areas subject to the provisions of the SEC-sw, change, or alteration of existing uses which do not require any modification to the exterior of the structure;

(2) Within the SEC-wr and SEC-h, addition of less than 400 square feet of ground coverage to the structure. This provision is intended to allow a maximum of 400 square feet of additional coverage to the structure that existed on ~~the effective date of this ordinance~~ January 1, 2003; and

(3) Within the SEC-h overlay, alteration or expansion of 400 square feet or less of such driveway.

(C) Replacement or restoration of existing structures in the West of Sandy River Planning Area that were unintentionally destroyed by fire or other casualty, or natural disaster within the same foundation lines shall not require an SEC permit. The redevelopment must be commenced within one year from the date of the loss, and may include addition of a maximum 400 square feet of ground coverage. Structures which are expanded up to 400 square feet under this provision, may not subsequently expand under the provision in subsection (A)(2) above.

(C) Within the SEC-wr, lawfully established structures in the West of Sandy River Planning Area that do not meet the casualty loss provisions of subsection (B) above may be replaced within the same foundation lines or area of ground coverage when the entire remaining vegetated corridor on the project site, or the first 50 feet closest to the stream, or

an area equal to the ground coverage of the building and attached structures and paved areas, whichever is less, is enhanced to "good" condition pursuant to MCC 39.5800 Table 2. Replacement shall be processed as a Type II review.

(D) If development under this section is proposed to be located closer to a protected water feature, approval of a permit under the provisions of MCC 39.5520 through 39.5800 shall be obtained.

§ 39.5555 [36.4530] BUILDABLE LOT ENCROACHMENT IN THE WEST OF SANDY RIVER PLANNING AREA.

In the West of Sandy River Planning Area, where a parcel is partially or wholly inside the SEC-wr Overlay Zone, the property owner may apply for encroachment in lieu of meeting the requirements in MCC 39.5800(A), (B), or (C) for development in the SEC- wr. The applicant shall demonstrate that:

(A) Without the proposed encroachment, the owner would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that no other application could result in approval of an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.

(B) The proposed encroachment is the minimum necessary to allow for the requested use, however not more than 1 acre of the site, including access roads and driveways, and areas necessary for utilities and facilities, is disturbed;

(C) The proposed encroachment will comply with MCC 39.5800 (E) Mitigation; and

(D) The proposed use complies with the standards of the **base zone**.

§ 39.5560 [36.4550] GENERAL REQUIREMENTS FOR APPROVAL IN THE WEST OF SANDY RIVER PLANNING AREA AREAS DESIGNATED AS SEC-WR OR SEC-H.

The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas located in the West of Sandy River Planning Area in addition to the provisions of MCC 39.5800 or 39.5860 as applicable.

(A) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

(B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.

(C) The ~~following~~ nuisance plants in MCC 39.5580 Table 1, in addition to the nuisance plants defined in MCC 39.2000, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone.

### 5.H.3 – SEC Standards Applicable in the Urban Planning Area Only

#### § 39.5570 [11.15.6413] EXISTING USES IN THE URBAN PLANNING AREA

(A) Uses that legally existed in the Urban Planning Area on January ~~XX~~ 7, 2010, that are not included as Exceptions in section MCC .39.5515, may utilize the provisions of this section. This section is intended to define the circumstances under which existing development can be improved or replaced under limited requirements in recognition of the pre-existing status. The SEC provisions are also not intended to make existing uses non-conforming. However, approval of proposals for alteration of uses that were non-conforming prior to the applicable SEC ordinance date, must obtain an SEC permit in addition to demonstrating compliance with the non-conforming use provisions of MCC 39.8300 through 39.8315.

(B) Change, expansion, or alteration of existing uses in the Urban Planning Area shall require an SEC permit as provided in MCC 39.5500 through 39.5860, except for changes to a structure as described in subsections (1) or (2) below;

(1) In areas subject to the provisions of the SEC Overlay, change, or alteration of existing uses which do not require any modification to the exterior of the structure;

(2) Within the SEC-wr and SEC-h - addition of less than 400 square feet of ground coverage to the structure. This provision is intended to allow a maximum of 400 square feet of additional coverage to the structure that existed on ~~the effective date of this ordinance~~ January 7, 2010.

(C) In the Urban Planning Area replacement or restoration of existing structures that were unintentionally destroyed by fire or other casualty, or natural disaster within the same foundation lines shall not require an SEC permit. The redevelopment must be commenced

within one year from the date of the loss, and may include addition of a maximum 400 square feet of ground coverage. Structures which are expanded up to 400 square feet under this provision, may not subsequently expand under the provision in subsection (A)(2) above.

(D) In the Urban Planning Area within the SEC-wr, lawfully established structures that do not meet the casualty loss provisions of subsection (B) above may be replaced within the same foundation lines or area of ground coverage when the entire remaining vegetated corridor on the project site, or the first 50 feet closest to the stream, or an area equal to the ground coverage of the building and attached structures and paved areas, whichever is less, is enhanced to "good" condition pursuant to MCC 39.5800 Table 2. Replacement shall be processed as a Type II review.

(E) If development under this section is proposed to be located closer to a protected water feature, approval of a permit under the provisions of MCC 39.5520 through 39.5800 shall be obtained.

§ 39.5575 [11.15.6423] GENERAL REQUIREMENTS FOR APPROVAL IN THE URBAN PLANNING AREA AREAS DESIGNATED AS SEC-WR.

The requirements in this section shall be satisfied for development in the SEC-wr areas located in the Urban Planning Area in addition to the provisions of MCC 39.5550 through 39.5570 as applicable.

(A) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

(B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.

(C) The following nuisance plants in MCC 39.5580 Table 1, in addition to the nuisance plants defined in MCC 39.2000, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone.

§ 39.5580 – NUISANCE PLANT LIST

**Table 1**

Nuisance Plant List:

| <b>Common Name</b>                 | <b><i>Scientific Name</i></b>                |
|------------------------------------|--|
| Lesser celandine                   | <i>Chelidonium majus</i>                     |
| Canada Thistle                     | <i>Cirsium arvense</i>                       |
| Common Thistle                     | <i>Cirsium vulgare</i>                       |
| Western Clematis                   | <i>Clematis<br/>ligusticifolia</i>           |
| Traveler' s Joy                    | <i>Clematis vitalba</i>                      |
| Poison hemlock                     | <i>Conium maculatum</i>                      |
| Field Morning-<br>glory            | <i>Convolvulus arvensis</i>                  |
| Night-blooming<br>Morning-glory    | <i>Convolvulus<br/>nyctagineus</i>           |
| Lady' s nightcap                   | <i>Convolvulus<br/>seppium</i>               |
| Pampas grass                       | <i>Cortaderia selloana</i>                   |
| Hawthorn, except<br>native species | <i>Crataegus sp. except<br/>C. douglasii</i> |
| Scotch broom                       | <i>Cytisus scoparius</i>                     |
| Queen Ann' s Lace                  | <i>Daucus carota</i>                         |
| South American<br>Waterweed        | <i>Elodea densa</i>                          |

| <b>Common Name</b>     | <b><i>Scientific Name</i></b> |
|------------------------|-------------------------------|
| Common Horsetail       | <i>Equisetum arvense</i>      |
| Giant Horsetail        | <i>Equisetum telemateia</i>   |
| Crane' s Bill          | <i>Erodium cicutarium</i>     |
| Robert Geranium        | <i>Geranium roberianum</i>    |
| English Ivy            | <i>Hedera helix</i>           |
| St. John' s Wort       | <i>Hypericum perforatum</i>   |
| English Holly          | <i>Ilex aquafolium</i>        |
| Golden Chain Tree      | <i>Laburnum watereri</i>      |
| Duckweed, Water Lentil | <i>Lemna minor</i>            |
| Fall Dandelion         | <i>Loentodon autumnalis</i>   |
| Purple Loosestrife     | <i>Lythrum salicaria</i>      |
| Eurasian Watermilfoil  | <i>Myriophyllum spicatum</i>  |
| Reed Canary grass      | <i>Phalaris arundinacea</i>   |
| Annual Bluegrass       | <i>Poa annua</i>              |
| Swamp Smartweed        | <i>Polygonum coccineum</i>    |



| <b>Common Name</b>        | <b><i>Scientific Name</i></b> |
|---------------------------|-------------------------------|
| Climbing Binaweed         | <i>Polygonum convolvulus</i>  |
| Giant Knotweed            | <i>Polygonum sachalinense</i> |
| English, Portugese Laurel | <i>Prunus laurocerasus</i>    |
| Poison Oak                | <i>Rhus diversiloba</i>       |
| Himalayan Blackberry      | <i>Rubusdiscolor</i>          |
| Evergreen Blackberry      | <i>Rubus laciniatus</i>       |
| Tansy Ragwort             | <i>Senecio jacobaea</i>       |
| Blue Bindweed             | <i>Solanum dulcamara</i>      |
| Garden Nightshade         | <i>Solanum nigrum</i>         |
| Hairy Nightshade          | <i>Solanum sarrachoides</i>   |
| Common Dandelion          | <i>Taraxacum otficinale</i>   |
| Common Bladderwort        | <i>Ultricularia vuigaris</i>  |
| Stinging Nettle           | <i>Utica dioica</i>           |
| Periwinkle (large leaf)   | <i>Vinca major</i>            |

| Common Name             | <i>Scientific Name</i>   |
|-------------------------|--------------------------|
| Periwinkle (small leaf) | <i>Vinca minor</i>       |
| Spiny Cocklebur         | <i>Xanthium spinosum</i> |
| Bamboo sp.              | <i>various genera</i>    |

#### 5.H.4 – Scenic Waterway (SEC-w)

#### § 39.5600 [36.4545] CRITERIA FOR APPROVAL OF SEC-SW PERMIT - SCENIC WATERWAY.

Except as otherwise provided in this Subpart, all development within the SEC-sw shall be subject to the following:

- (A) The application for the SEC-sw permit shall include a letter from the Oregon Parks and Recreation Department indicating that the proposed development has been reviewed and is, or can be, consistent with the provisions of the Oregon Scenic Waterways Management Plan.
- (B) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.
- (C) Agricultural land and forest land shall be preserved and maintained for farm and forest use.
- (D) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.
- (E) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion

(F) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

(G) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

(H) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.

(I) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

#### **5.H.5 – Significant Scenic Views (SEC-v)**

#### **§ 39.5650 [33.4565] CRITERIA FOR APPROVAL OF SEC-V PERMIT -SIGNIFICANT SCENIC VIEWS**

(A) For purposes of this Section, the following terms and their derivations shall have the meanings provided below:

(1) **Significant Scenic Resources** – Those areas designated SEC-v on Multnomah County sectional zoning maps.

(2) **Identified Viewing Areas** – Public areas that provide important views of a significant scenic resource, and include both sites and linear corridors. The Identified Viewing Areas are:

Bybee-Howell House

Virginia Lakes

Sauvie Island Wildlife Refuge

Kelley Point Park

Smith and Bybee Lakes

Highway 30

The Multnomah Channel

The Willamette River

Public roads on Sauvie Island

(3) **Visually Subordinate** – The subject development does not noticeably contrast with the surrounding landscape, as viewed from an identified viewing area. Development that is visually subordinate may be visible, but is not visually dominant in relation to its surroundings.

(B) In addition to the information required by MCC 39.5520, an application for development in an area designated SEC-v shall include:

- (1) Details on the height, shape, colors, outdoor lighting, and exterior building materials of any proposed structure;
- (2) Elevation drawings showing the appearance of proposed structures when built and surrounding final ground grades;
- (3) A list of identified viewing areas from which the proposed use would be visible; and,
- (4) A written description and drawings demonstrating how the proposed development will be visually subordinate as required by subsection (C) below, including information on the type, height and location of any vegetation or other materials which will be used to screen the development from the view of identified viewing areas.

(C) Any portion of a proposed development (including access roads, cleared areas and structures) that will be visible from an identified viewing area shall be visually subordinate. Guidelines which may be used to attain visual subordination, and which shall be considered in making the determination of visual subordination include:

- (1) Siting on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas.
- (2) Use of nonreflective or low reflective building materials and dark natural or earthtone colors.

(3) No exterior lighting, or lighting that is directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas. Shielding and hooding materials should be composed of nonreflective, opaque materials.

(4) Use of screening vegetation or earth berms to block and/or disrupt views of the development. Priority should be given to retaining existing vegetation over other screening methods. Trees planted for screening purposes should be coniferous to provide winter screening. The applicant is responsible for the proper maintenance and survival of any vegetation used for screening.

(5) Proposed developments or land use shall be aligned, designed and sited to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics.

(6) Limiting structure height to remain below the surrounding forest canopy level.

(7) Siting and/or design so that the silhouette of buildings and other structures remains below the skyline of bluffs or ridges as seen from identified viewing areas. This may require modifying the building or structure height and design as well as location on the property, except:

(a) New communications facilities (transmission lines, antennae, dishes, etc.), may protrude above a skyline visible from an identified viewing area upon demonstration that:

1. The new facility could not be located in an existing transmission corridor or built upon an existing facility;
2. The facility is necessary for public service; and
3. The break in the skyline is the minimum necessary to provide the service.

(D) Mining of a protected aggregate and mineral resource within a PAM Overlay shall be done in accordance with any standards for mining identified in the protection program approved during the Goal 5 process. The Application for SEC-v permit must comply only with measures to protect scenic views identified in the Goal 5 protection program that has been designated for the site.

(E) The approval authority may impose conditions of approval on an SEC-v permit in accordance with MCC 39.5535, in order to make the development visually subordinate. The extent and type of conditions shall be proportionate to the potential adverse visual impact of the development as seen from identified viewing areas, taking into consideration the size of the development area that will be visible, the distance from the development to identified viewing areas, the number of identified viewing areas that could see the development, and the linear distance the development could be seen along identified viewing corridors.

#### **5.H.6 – Significant Wetlands (SEC-w)**

##### **§ 39.5700 [33.4560] CRITERIA FOR APPROVAL OF SEC-W PERMIT - SIGNIFICANT WETLANDS**

Significant wetlands consist of those areas designated as Significant on aerial photographs of a scale of 1 inch = 200 feet made a part of the supporting documentation of the Comprehensive ~~Framework~~ Plan. Any proposed activity or use requiring an SEC permit which would impact those wetlands shall be subject to the following:

(A) In addition to other SEC Permit submittal requirements, the application shall also include:

- (1) A site plan drawn to scale showing the wetland boundary as determined by a documented field survey, the location of all existing and proposed watercourses, drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval of no greater than five feet;
- (2) A description and map of the wetland area that will be affected by the proposed activity. This documentation must also include a map of the entire wetland, an assessment of the wetland's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat;
- (3) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;
- (4) A study of any flood hazard, erosion hazard, or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards;

(5) Detailed Mitigation Plans as described in subsection (D), if required;

(6) Description of how the proposal meets the approval criteria listed in subsection (B) below.

(B) The applicant shall demonstrate that the proposal:

(1) Is water-dependent or requires access to the wetland as a central element of its basic design function, or is not water dependent but has no practicable alternative as described in subsection (C) below;

(2) Will have as few adverse impacts as is practical to the wetland's functional characteristics and its existing contour, vegetation, fish and wildlife resources, shoreline anchoring, flood storage, general hydrological conditions, and visual amenities. This impact determination shall also consider specific site information contained in the adopted wetlands inventory and the economic, social, environmental, and energy (ESEE) analysis made part of the supporting documentation of the comprehensive plan;

(3) Will not cause significant degradation of groundwater or surface-water quality;

(4) Will provide a buffer area of not less than 50 feet between the wetland boundary and upland activities for those portions of regulated activities that need not be conducted in the wetland;

(5) Will provide offsetting replacement wetlands for any loss of existing wetland areas. This Mitigation Plan shall meet the standards of subsection (D).

(C) A finding of no practicable alternative is to be made only after demonstration by the applicant that:

(1) The basic purpose of the project cannot reasonably be accomplished using one or more other practicable alternative sites in Multnomah County that would avoid or result in less adverse impact on a wetland. An alternative site is to be considered practicable if it is available for purchase and the proposed activity can be conducted on that site after taking into consideration costs, existing technology, infrastructure, and logistics in achieving the overall project purposes;

(2) The basic purpose of the project cannot be accomplished by a reduction in the size, scope, configuration, or density of the project as proposed, or by changing the design of

the project in a way that would avoid or result in fewer adverse effects on the wetland;  
and

(3) In cases where the applicant has rejected alternatives to the project as proposed due to constraints, a reasonable attempt has been made to remove or accommodate such constraints.

(4) This section is only applicable for wetland resources designated "3-C".

(D) A Mitigation Plan and monitoring program may be approved upon submission of the following:

(1) A site plan and written documentation which contains the applicable information for the replacement wetland as required by MCC 39.5700 (A);

(2) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;

(3) A Mitigation Plan which demonstrates retention of the resource values addressed in MCC 39.5700 (B) (2);

(4) Documentation that replacement wetlands were considered and rejected according to the following order of locational preferences:

(a) On the site of the impacted wetland, with the same kind of resource;

(b) Off-site, with the same kind of resource;

(c) On-site, with a different kind of resource;

(d) Off-site, with a different kind of resource.

#### **5.H.7 – Streams (SEC-s)**

##### **§ 39.5750 [33.4575] CRITERIA FOR APPROVAL OF SEC-S PERMIT -STREAMS**

(A) For purposes of this Section, the following terms and their derivations shall have the meanings provided below:

(1) **Development** – Any act requiring a permit stipulated by Multnomah County Ordinances as a prerequisite to the use or improvement of any land, including a building,



land use, occupancy, sewer connection or other similar permit, and any associated grading or vegetative modifications.

(2) **Nuisance and invasive non-native plants** – Those plants listed in the latest edition of the Metro Nuisance Plant List and the Prohibited Plant List, and include those plants listed in the latest edition of the State of Oregon Noxious Weed List.

(3) **Protected Streams** -- Those streams which have been evaluated through a Goal 5 ESEE analysis and protected by Ordinance and those streams and wetlands mapped by Metro's Title 13 as Habitat Conservation Areas as modified through the planning process are designated SEC-s on the Multnomah County Zoning Maps. ~~consist of those streams which have been found through a Goal 5 ESEE analysis to be to be either "2-A", "3-A", or "3-C", are identified and protected by Ordinance 830 and those streams and wetlands mapped by Metro's Title 13 as Habitat Conservation Areas as modified through the planning process and are designated SEC-s on the Multnomah County Sectional Zoning Maps.~~

(4) **Stream Conservation Area** – For the protected streams originally designated by Ordinance 830 (~~West Hills Rural Area Plan~~), the Stream Conservation Area designated on the zoning maps as SEC-s is an area extending ~~300 feet~~ upslope from and perpendicular to the centerline on both sides of a protected stream. ~~Within Metro's jurisdictional boundaries, the~~ The width of the Stream Conservation Area ~~protected by Ordinance 1152, adopted January 7, 2010, varies and shall be as depicted on the~~ Multnomah County Zoning Maps and is from the centerline on both sides of the protected stream for the width of the mapped overlay. Any development proposed within a Stream Conservation Area shall be required to demonstrate that the development satisfies the standards of MCC 39.5750 (B) through (E).

(B) Except for the exempt uses listed in MCC 39.5515, no development shall be allowed within a Stream Conservation Area unless approved by the Approval Authority pursuant to the provisions of MCC 39.5750 (C) through (F).

(C) In addition to other SEC Permit submittal requirements, any application to develop in a Stream Conservation Area shall also include:

(1) A site plan drawn to scale showing the Stream Conservation Area boundary, the location of all existing and proposed structures, roads, watercourses, drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval

equivalent to the best available U.S. Geological Survey 7.5' or 15' topographic information;

(2) A detailed description and map of the Stream Conservation Area including that portion to be affected by the proposed activity. This documentation must also include a map of the entire Stream Conservation Area, an assessment of the Stream Conservation Area's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat;

(3) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;

(4) A study of any flood hazard, erosion hazard, and/or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards as required by subsection (E) (5) below;

(5) A detailed Mitigation Plan as described in subsection (D), if required; and

(6) A description of how the proposal meets the approval criteria listed in subsection (D) below.

(D) For the protected stream resources, the applicant shall demonstrate that the proposal:

(1) Will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state, as documented in a Mitigation Plan. A Mitigation Plan and monitoring program may be approved upon submission of the following:

(a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by subsection (C) above;

(b) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;

(c) A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in subsection (D) (1) above;

(d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.

(E) Design Specifications: The following design specifications shall be incorporated, as appropriate, into any developments within a Stream Conservation Area:

(1) A bridge or arched culvert which does not disturb the bed or banks of the stream and are of the minimum width necessary to allow passage of peak winter flows shall be utilized for any crossing of a protected streams.

(2) All storm water generated by a development shall be collected and disposed of on-site into dry wells or by other best management practice methods which emphasize groundwater recharge and reduce peak stream flows.

(3) Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area.

(4) Any trees over 6" in caliper that are removed as a result of any development shall be replaced by any combination of native species whose combined caliper is equivalent to that of the trees removed.

(5) Satisfaction of the erosion control standards of MCC 39.5090.

(6) Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area.

(7) Demonstration of compliance with all applicable state and federal permit requirements.

(F) For those Stream Conservation Areas located within Metro's jurisdictional boundaries, the following requirements apply in addition to subsections (C) through (E) above:

(1) The planting of any invasive non-native or noxious vegetation as listed in subsection (A)(4) above is prohibited. In addition, the species listed in MCC 39.5580 Table 1 shall not be planted.

(2) The revegetation of disturbed areas shall primarily use native plants. A list of native plants can be found in the latest edition of the Metro Native Plant List.

(3) Outside storage of hazardous materials as determined by DEQ is prohibited, unless such storage began before the effective date of ~~this~~ the applicable SEC ordinance; or, unless such storage is contained and approved during development review.

(G) For Protected Aggregate and Mineral (PAM) resources within a PAM Overlay, the Mitigation Plan must comply only with measures identified in the Goal 5 protection program that has been designated for the site.

#### **5.H.8 – Water Resources (SEC-wr)**

##### **§ 39.5800 [36.4555] CRITERIA FOR APPROVAL OF SEC-WR PERMIT -WATER RESOURCE**

(A) Except for the exempt uses listed in MCC 39.5515 and the existing uses pursuant to MCC 39.5550, no development shall be allowed within a Water Resource Area unless the provisions of subsections (A) or (B) or (C) below are satisfied. An application shall not be approved unless it contains the site analysis information required in MCC 39.5520(A) and (C), and meets the general requirements in MCC 39.5560.

(B) Development on Low Impact Sites - Development on parcels in locations that would have low impacts on Water Resource Areas may be exempt from the Alternatives Analysis in subsection (B) below. Development on sites that meet the following criterion may be allowed pursuant to the other applicable requirements of this Overlay including the Development Standards of subsection (D) and the provisions for Mitigation in subsection (E):

(1) The development site is at least one hundred (100) feet from top of bank or top of ravine, which ever results in a greater distance from the Protected Water Feature.

Top of ravine is the break in the > 25% slope. Slope should be measured in 25-foot increments away from the water feature until the slope is less than 25% (top of ravine), up to a maximum distance of 200' from the water feature. Where multiple resources are present (e.g., stream with wetlands along banks), the starting point for measurement should be whichever offers greatest resource protection.

(C) Alternatives Analysis - Development proposed within a Water Resource Area may be allowed if there is no alternative, when the other requirements of this Overlay including the Development Standards of subsection (D) and the provisions for Mitigation in subsection (E) are met. The applicant shall prepare an alternatives analysis which demonstrates that:

- (1) No practicable alternatives to the requested development exist that will not disturb the Water Resource Area; and
- (2) Development in the Water Resource Area has been limited to the area necessary to allow for the proposed use;
- (3) Development shall occur as far as practically possible from the stream; and
- (4) The Water Resource Area can be restored to an equal or better condition; or
- (5) Any net loss on the property of resource area, function and/or value can be mitigated.

(D) Buffer Averaging - Development may be allowed to encroach into the 200' SEC-wr overlay zone or "buffer" when the provisions of (1) through (6) below are satisfied. These provisions are intended to allow development to extend a specific amount into the edges of the overlay zone without an alternatives analysis in exchange for increasing the area of vegetated corridor on the property that is in good condition.

- (1) Site assessment information pursuant to MCC 39.5520(A) and (C) has been submitted.
- (2) The riparian/vegetated corridor is certified to be in a marginal or degraded condition pursuant to Table 2 of this section. Buffer averaging is not allowed to encroach in areas certified to be in good condition.
- (3) The maximum encroachment does not exceed 20% of the frontage length of the vegetated corridor by 20% of the required width.
- (4) The entire remaining vegetated corridor on the project site or the first 50 feet closest to the stream (whichever is less) will be enhanced to "good" condition pursuant to Table 2 of this section.
- (5) The area of encroachment will be replaced with added buffer area at a 1:1 ratio.

(6) The replacement area will be incorporated into the remaining vegetated corridor on the project site and meet the "good" condition pursuant to Table 2 of this section, regardless of its distance from the resource area.

(E) Development Standards- Development within the Water Resource Area shall comply with the following standards:

(1) Development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to minimize impacts on the natural resource while allowing for the enjoyment of the natural resource.

(2) Development in areas of dense standing trees shall be designed to minimize the numbers of trees to be cut. No more than 50 percent of mature standing trees (of 6-inch DBH greater) shall be removed without a one-for-one replacement with comparable species. The site plan for the proposed activity shall identify all mature standing trees by type, size, and location, which are proposed for removal, and the location and type of replacement trees.

(3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, so as to provide a transition between the proposed development and the natural resource, to provide food, water, and cover for wildlife, and to protect the visual amenity values of the natural resource.

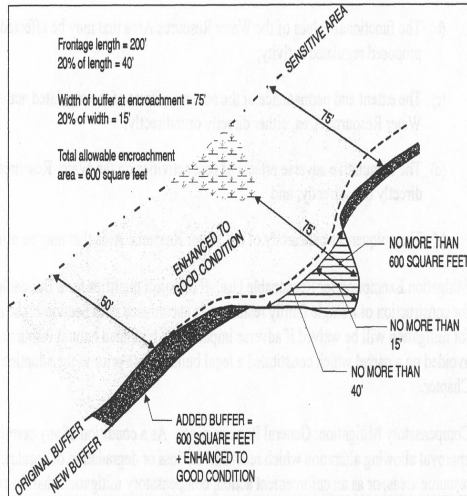
(4) The Water Resource Area shall be re-stored to "good condition" and maintained in accordance with the mitigation plan pursuant to subsection (E) below and the specifications in Table 2 of this section.

(5) To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Resource Area. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment.

(6) Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in MCC 39.5580 Table 1, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare

areas. Nuisance plants shall be replaced with non-nuisance plants by the next growing season.

Figure 1 3.



(7) Prior to construction, the Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by this Overlay. Such markings shall be maintained until construction is complete.

(8) Stormwater quantity control and quality control facilities:

(a) Stormwater management shall be conducted in a manner that does not increase the flow of stormwater to the stream above pre-development levels.

(b) The stormwater quantity control and quality control facility may only encroach a maximum of 25 feet into the outside boundary of the Water Resource Area of a primary water feature; and

(c) The area of encroachment must be replaced by adding an area equal in size and with similar functions and values to the Water Resource Area on the subject property.

(F) Mitigation - Mitigation shall be required to offset the impacts of development within the SEC-wr. This subsection section establishes how mitigation can occur.

(1) Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated natural resource areas.

(a) When a proposed development could cause adverse impacts to a natural resource area, the preferred sequence of mitigation as defined in 1 through 5 below shall be followed unless the applicant demonstrates that an overriding public benefit would warrant an exception to this preferred sequence.

1. Avoiding the impact altogether by not taking a certain action or parts of actions on that portion of the site which contains the regulated natural resource area;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
3. Compensating for the impact by repairing, rehabilitating, or restoring the affected environment;
4. Compensating for the impact by replacing, enhancing or providing substitute resources or environments on-site.
5. Compensating for the impact by replacing, enhancing or providing substitute resources or environments off-site.

(b) When evaluating potential impacts to the natural resource, the County may consider whether there is an overriding public benefit, given:

1. The extent of the public need for the proposed development;
2. The functional values of the Water Resource Area that may be affected by the proposed development;
3. The extent and permanence of the adverse effects of the development on the Water Resource Area, either directly or indirectly;
4. The cumulative adverse effects of past activities on the Water Resource Area, either directly or indirectly; and
5. The uniqueness or scarcity of the Water Resource Area that may be affected.

(2) Compensatory Mitigation: General Requirements. As a condition of any permit or other approval allowing development which results in the loss or degradation of regulated natural resource areas, or as an enforcement action, compensatory mitigation shall be required to offset impacts resulting from the actions of the applicant or violator.



(a) Any person who alters or proposes to alter regulated natural resource areas shall restore or create natural resource areas equivalent to or larger than those altered in order to compensate for resource losses.

(b) The following ratios apply to the creation or restoration of natural resource areas. The first number specifies the amount of natural resource area to be created and the second specifies the amount of natural resource area to be altered or lost.

Creation (off-site)      2:1

Restoration (off-site)   1.5:1

Creation (on-site)      1.5:1

(Restoration (on-site)   1:1

(c) Only marginal or degraded water resource areas as described in Table 2 of this section may be the subject of a restoration project proposed as part of a Mitigation Plan.

(d) Highest priority sites for mitigation are marginal or degraded corridors that are closest to a natural drainage, and areas which will increase contiguous areas of standing trees, shrubs, and natural vegetation along drainages.

(e) The off-site mitigation shall be as close to the development as is practicable above the confluence of the next downstream tributary, or if this is not practicable, within the watershed where the development will take place or as otherwise specified by the County.

(f) Compensation shall be completed prior to initiation of development where possible.

(g) In order to ensure that on-site mitigation areas are established and maintained, the property owner shall record the mitigation plan approval in the deed records of Multnomah County. In order to ensure that off-site mitigation areas will be protected in perpetuity, the owner shall cause a deed restriction to be placed on the property where the mitigation is required. The deed restriction shall be irrevocable unless a statement of release is signed by an authorized representative of Multnomah County.

(3) Mitigation Plan Standards - Natural resource mitigation plans shall contain the following information:

- (a) A description of adverse impacts that could be caused as a result of development.
- (b) An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated.
- (c) A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.
- (d) A map drawn to scale, showing where the specific mitigation activities will occur.
- (e) An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams must be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.

**Table 2**

Riparian/Vegetated Corridor Standards

| Existing Riparian/Vegetated Corridor Condition  | Requirements of Riparian/Vegetated Corridor Protection, Enhancement, and/or Mitigation  |
|---|---|
| <p>Good Corridor</p> <p>Combination of native trees, shrubs, and groundcover covering greater than 80% of the area</p> <p>and</p> <p>Greater than 50% tree canopy exists (aerial measure)</p> | <p>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/ vegetated corridor meets condition criteria.</p> <p>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand.</p> <p>Provide the County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore condition and mitigate any habitat or water quality impacts related to development. See Planning Director procedures.</p> <p>Revegetate impacted area per approved plan to re-establish “good” corridor conditions</p> |

| Existing Riparian/Vegetated Corridor Condition  | Requirements of Riparian/Vegetated Corridor Protection, Enhancement, and/or Mitigation   |
|---|--|
| <p>Marginal Corridor</p> <p>Combination of native trees, shrubs, and groundcovers covering 50%-80% of the area and/or</p> <p>26-50% tree canopy exists (aerial measure)</p> <p>(Restoration up to “good” corridor required)</p> | <p>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/vegetated corridor meets condition criteria.</p> <p>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand or mechanically with small equipment, as appropriate to minimize damage to existing native vegetation.</p> <p>Provide County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore to a good corridor condition. See Planning Director procedures.</p> <p>Vegetate corridor to establish “good” corridor conditions</p> |

| Existing Riparian/Vegetated Corridor Condition  | Requirements of Riparian/Vegetated Corridor Protection, Enhancement, and/or Mitigation  |
|---|---|
| <p>Degraded Corridor</p> <p>Combination of native trees, shrubs, and groundcovers covering is less than 50% of the area</p> <p>and/or</p> <p>Less than 25% tree canopy exists (aerial measure)</p> <p>and/or</p> <p>Greater than 10% of the area is covered by invasive, non-native species</p> <p>(Restoration up to “good” corridor required)</p> | <p>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/vegetated corridor meets condition criteria.</p> <p>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand or mechanically as appropriate.</p> <p>Provide County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore to a good corridor condition. See Planning Director procedures.</p> <p>Vegetate corridor to establish “good” corridor conditions</p> |

### 5.H.9 – Wildlife Habitat (SEC-h)

§ 39.5850 [33.4567] SEC-H CLEAR AND OBJECTIVE STANDARDS

(A) At the time of submittal, the applicant shall provide the application materials listed in MCC 39.5520(A) and 39.5860(A). The application shall be reviewed through the Type I procedure and may not be authorized unless the standards in MCC 39.5860(B)(1) through (4)(a)-(c) and (B)(5) through (7) are met. For development that fails to meet all of the

criteria listed above, a separate land use application pursuant to MCC 39.5860 may be submitted.

(B) The proposed development shall meet the applicable storm water and grading and erosion control requirements of MCC 39.6210 through 39.6235. Ground disturbance within 100 feet of a watercourse as defined by MCC 39.2000 shall be limited to the period between May 1st and September 15th. Revegetation and soil stabilization must be accomplished no later than October 15th.

(C) The nuisance plants listed in MCC 39.5580 Table 1 shall not be used as landscape plantings within the SEC-h Overlay Zone.

(D) For development that fails to meet all of the standards listed in this section, a separate land use application pursuant to MCC 39.5860 may be submitted.

#### § 39.5860 [33.4570] CRITERIA FOR APPROVAL OF SEC-H PERMIT - WILDLIFE HABITAT

(A) In addition to the information required by MCC 39.5520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:

(1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;

For the purposes of this section, a forested area is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.

(2) Location of existing and proposed structures;

(3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;

(4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.

(B) Development standards:

(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

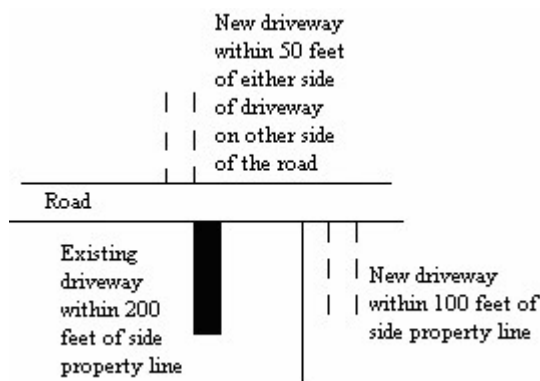
(3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

(4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

(a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or

(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.

(c) Diagram showing the standards in (a) and (b) above.



For illustrative purposes only.

(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County “Design and Construction Manual,” adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).

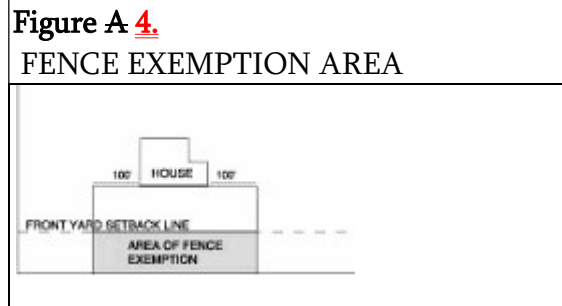
1. The modification shall be the minimum necessary to allow safe access onto the public road.
2. The County Road Official shall provide written findings supporting the modification.

(5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.

(6) Fencing within a required setback from a public road shall meet the following criteria:

- (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.
- (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.
- (c) Cyclone, woven wire, and chain link fences are prohibited.
- (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.
- (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development. (See Figure A ~~4~~ below.)





(f) Fencing standards do not apply where needed for security of utility facilities.

(7) The following nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.

(C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

(1) The applicant cannot meet the development standards of subsection (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or

(2) The applicant can meet the development standards of subsection (B), but demonstrates that the alternative conservation measures exceed the standards of subsection (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in subsection (B).

(3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), the wildlife conservation plan must demonstrate the following:

(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.
  - (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.
  - (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.
- (4) For a property meeting subsection (C)(1) above, the applicant may utilize the following mitigation measures for additions instead of providing a separate wildlife conservation plan:
- (a) Each tree removed to construct the proposed development shall be replaced on a one to one ratio with a six foot tall native tree.
  - (b) For each 100 square feet of new building area, the property owner shall plant, one, 3-4 foot tall native tree or three native tree seedlings. The trees shall be planted to improve wildlife habitat first within non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas before being placed in forested areas or adjacent to landscaped yards.
  - (c) Existing fencing located in the front yard adjacent to a public road shall be consistent with subsection (B)(6).
  - (d) For non-forested “cleared” areas that require nuisance plant removal pursuant to subsection (B)(7), the property owner shall set a specific date for the work to be completed and the area replanted with native vegetation. The time frame must be within two years from the date of the permit.
- (5) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, the wildlife conservation plan must demonstrate the following:
- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of

clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

(c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes. Existing fencing located in the front yard adjacent to a public road shall be consistent with subsection (B)(6).

(d) For mitigation areas, all trees, shrubs and ground cover shall be native plants selected from the Metro Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the total developed area (including buildings, pavement, roads, and land designated as a Development Impact Area) on a Lot of Record will be one acre or more, the applicant shall comply with Mitigation Option 2:

1. *Mitigation Option 1.* In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the development site. Trees that are removed from the development site shall be replaced as shown in the table below. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

**Tree Replacement Table:**

| Size of tree to be removed<br>(inches in diameter) | Number of trees and shrubs to be planted |
|--|--|
| 6 to 12  | 2 trees and<br>3 shrubs                  |

|          |                           |
|----------|---------------------------|
| 13 to 18 | 3 trees and<br>6 shrubs   |
| 19 to 24 | 5 trees and<br>12 shrubs  |
| 25 to 30 | 7 trees and<br>18 shrubs  |
| over 30  | 10 trees and<br>30 shrubs |

**2. Mitigation Option 2.** In this option, the mitigation requirement is calculated based on the size of the disturbance area associated with the development. Native trees and shrubs are required to be planted at a rate of five (5) trees and twenty-five (25) shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

(e) **Location of mitigation area.** All vegetation shall be planted within the mitigation area located on the same Lot of Record as the development and shall be located within the SEC-h overlay or in an area contiguous to the SEC-h overlay; provided, however, that if the vegetation is planted outside of the SEC-h overlay then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. (Note: an off-site mitigation option is provided in a streamlined discretionary review process). The mitigation area shall first be located within any existing non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas and last in forested areas or adjacent to landscaped yards.

- (f) Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.
- (g) Trees shall not be used as anchors for stabilizing construction equipment.
- (h) Native soils disturbed during development shall be conserved on the property.
- (i) An erosion and sediment control plan shall be prepared in compliance with the Grading and Erosion Control standards set forth in MCC 39.6210 through MCC 39.6235.
- (j) **Plant size.** Replacement trees shall be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs shall be in at least a 1-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height.
- (k) **Plant spacing.** Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on-center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on-center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.
- (l) **Plant diversity.** Shrubs shall consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.
- (m) **Nuisance plants.** Any nuisance plants listed in ~~(B)(7)~~ MCC 39.5580 Table 1 shall be removed within the mitigation area prior to planting.
- (n) **Planting schedule.** The planting date shall occur within one year following the approval of the application.
- (o) **Monitoring and reporting.** Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

(6) For Protected Aggregate and Mineral (PAM) resources within a PAM Overlay, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.

(D) Optional Development Impact Area (DIA). For the purpose of clustering home sites together with related development within the SEC-h overlay, an applicant may choose to designate an area around the home site for future related development and site clearing. For the purposes of establishing the appropriate mitigation for development within the DIA, existing vegetation within the DIA is presumed to be ultimately removed or cleared in the course of any future development within the DIA. Establishment of a DIA is subject to all of the applicable provisions in this section and the following:

(1) The maximum size for a DIA shall be no greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

(2) Any required mitigation for the DIA site under an approved wildlife conservation plan shall be completed within one year of the final approval of the application.

(3) The DIA shall contain an existing habitable dwelling or approved dwelling site.

(4) No more than one DIA is permitted per Lot of Record.

(5) The DIA can be any shape, but shall be contiguous and shall fit within a circle with a maximum diameter of 400 feet.

(6) For new dwellings that will be located on a Lot of Record that does not currently contain a dwelling, the DIA should be located within 200 feet of a public road or in the case of properties without road frontage, as close as practicable (accounting for required setbacks and fire safety zones) to the entry point of the vehicular access serving the property.

(7) No part of a DIA may be located in a SEC-s Overlay, mapped wetland, or flood hazard zone.

(8) All development within the DIA is subject to all development criteria in effect for the underlying zone and overlay zones at the time of development. Approval of a DIA does not preclude the applicant's responsibility to obtain all other required approvals.

(9) Once a DIA is approved and all pre-development conditions of approval are met, development within the DIA may commence at anytime thereafter provided the applicable approval criteria of this section are the same as the criteria under which the DIA was originally approved. This provision does not waive the approval timeframe and/or expiration of any other permit approvals.

## **5.I – WILLAMETTE RIVER GREENWAY (WRG)**

### **§ 39.5900 [34.5800]- PURPOSES**

The purposes of the Willamette River Greenway Overlay, MCC 39.5900 through MCC 39.5940 (WRG), are to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River; to implement the County's responsibilities under ORS 390.310 to 390.368; to establish Greenway Compatibility Review Areas; and to establish criteria, standards and procedures for the intensification of uses, change of uses, or the development of lands within the Greenway.

### **§ 39.5905 [34.5805] AREA AFFECTED**

The WRG shall apply to those lands designated WRG on the Multnomah County Zoning Map.

### **§39.5910 [ 34.5810] USES - GREENWAY PERMIT REQUIRED**

All uses allowed in the base zone are allowed in the WRG when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5920, subject to approval of a WRG permit pursuant to this Subpart.

### **§ 39.5915 [34.5815] DEFINITIONS**

For the purposes of this Subpart, the following terms and their derivations shall have the following meanings. Definitions (A) through (E) are derived from paragraph a. of the Order Adopting Preliminary Willamette River Greenway Plan of the Oregon Land Conservation and Development Commission, dated December 6, 1975.

(A) Change of use - means making a different use of the land or water than that which existed on December 6, 1975. It includes a change which requires construction, alterations of the land, water or other areas outside of existing buildings or structures and which

substantially alters or affects the land or water. It does not include a change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated. Change of use shall not include the completion of a structure for which a valid permit has been issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building. Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change of use for purposes of this order.

(B) Development - means the act, process or result of developing.

(Footnote: The definitions of develop and development should be read in harmony with the definitions of intensification and change of use since it is not the intention of the Commission to include in the definitions of develop and development any of the items excluded specifically from the meanings of intensification or change of use.)

(C) Develop - means to bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights of access.

(D) Farm Use - means (a) "the current employment of land including that portion of such lands under buildings supporting accepted farming practices for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. Farm use includes the preparation and storage of the products raised on such land for ~~man's~~ human use and animal use and disposal by marketing or otherwise. It does not include the use of land subject to the provisions of ORS Chapter 321 . . . ".

"It includes, for this purpose, the installation of irrigation pumps, and the use of existing pumps on the banks of the Willamette River, and the construction and use of dwellings customarily provided in conjunction with farm use when such dwellings are located 150 feet or more from the ordinary low-water, line of the Willamette River. It also includes the



construction and use of buildings other than dwellings customarily provided in conjunction with farm use whether or not within 150 feet of the ordinary low-water line. If a dwelling is destroyed or torn down, it may be replaced in kind with another dwelling even though it is within 150 feet of the ordinary low-water line. (b) "Current employment of land for farm use includes (A) land subject to the soil-bank provisions of the Federal Agricultural Act of 1956, as amended (P.S. 84540, 70 Stat. 188); (B) land lying fallow for one year as a normal and regular requirement of good agricultural husbandry; (C) land planted in orchards or other perennials prior to maturity; and (D) any land constituting a woodlot of less than 20 acres contiguous to and owned by the owner of land specially assessed at true cash value for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use." (c) "As used in this subsection, 'accepted farming practice' means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use."

(Footnote: The definition of farm use is taken from ORS 215.203(2). The addition to the paragraph relating to farm dwellings is to incorporate the permitted non-farm uses for customary farm dwellings provided in ORS 215.283 but modified so as to permit only new farm dwellings which will be 150 feet or more from ordinary low water.)

(E) Intensification - means any additions which increase or expand the area or amount of an existing use, or the level of activity. Remodeling of the exterior of a structure not excluded below is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the completion of a structure for which a valid permit has been issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or protection of property are not an intensification of use. Residential use of land within the Greenway includes the practices and activities customarily related to the use and enjoyment of one's home. Landscaping, construction of driveways, modification of existing structures, or construction or placement of such subsidiary structures or facilities adjacent to the residence as are usual and necessary to such use and enjoyment shall not be considered an intensification for the purposes of this order. Seasonal increases in gravel operations shall not be considered an intensification of use.

(F) Water-dependent use – means a use which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for waterborne transportation or recreation. Water-dependent use also includes development, which by its nature, can be built only on, in, or over a water body (including a river). Bridges supported by piers or pillars are water-dependent uses.

#### § 39.5920 [34.5820] EXCEPTIONS

A Greenway Permit shall not be required for the following:

- (A) Farm Use, as defined in ORS 215.203 (2) (a), including buildings and structures accessory thereto on "converted wetlands" as defined by ORS 196.905 (9) or on upland areas;
- (B) The propagation of timber or the cutting of timber for public safety or personal use;
- (C) Gravel removal from the bed of the Willamette River, conducted under a permit from the State of Oregon;
- (D) Customary dredging and channel maintenance and the removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, levees, groins, riprap, drainage ditch, irrigation ditches and tile drain systems as allowed by ORS 196.905 (6);
- (E) The placing, by a public agency, of signs, markers, aids, etc., to serve the public;
- (F) Activities to protect, conserve, enhance and maintain public recreational, scenic, historical and natural uses on public lands;
- (G) On scenic easements acquired under ORS 390.332 (2) (a), the maintenance authorized by that statute and ORS 390.368;
- (H) The use of a small cluster of logs for erosion control;
- (I) The expansion of capacity, or the replacement, of existing communications or energy distribution and transmission systems, except substations;
- (J) The maintenance and repair of existing flood control facilities; and
- (K) Uses legally existing on October 6, 1977, the effective date of Ordinance 148; provided, however, that any change or intensification of such use shall require a Greenway Permit.

## §39.5925 [ 34.5825] GREENWAY PERMIT APPLICATION

An application for a Greenway Permit shall address the elements of the Greenway Design Plan and shall be filed as follows:

(A) For an Allowed Use or a Review Use, in the manner provided in MCC Chapter 39 Part 1 as a Type II Permit;

(B) For a Conditional Use as specified either in the base zone or in MCC 39.7000 through 39.7455, or for a Community Service Use as specified in MCC 39.7500 through 39.7810, or for a change of zone classification, or for any other Type III Permit as specified in MCC Chapter 39 Part 1, the Greenway Permit Application shall be combined with the required application for the proposed action and filed in the manner provided in MCC Chapter 39 Part 1.

## § 39.5930 [34.5830] WRG PERMIT - REQUIRED FINDINGS

A decision on a Greenway Permit application shall be based upon findings of compatibility with the elements of the Greenway Design plan listed in MCC 39.5935.

## ~~§ 34.5835 —~~ DECISION BY PLANNING DIRECTOR

~~(A) A decision on a Greenway Permit application for an Allowed Use or a Review Use shall be made by the Planning Director. The Director may approve the permit, disapprove it, or approve it with such modifications and conditions as may be consistent with the Comprehensive Plan or necessary to assure compatibility with the elements of the Greenway Design Plan. Such conditions may relate to the locations, design, and maintenance of existing and proposed improvements, including but not limited to buildings, structures and use areas, parking, pedestrian and vehicular circulation and access, natural vegetation and landscaped areas, fencing, screening and buffering, excavations, cuts and fills, signs, graphics, exterior colors, and lighting.~~

~~(B) Within ten business days following receipt of a completed Greenway Permit application, the Planning Director shall file a decision with the Director of the Department of Community Services and shall mail a copy of the decision to the applicant and to other persons who request the same.~~

~~(C) A decision by the Planning Director on a Greenway Permit application shall include written conditions, if any, and findings and conclusions. The conditions, findings, and conclusions shall specifically address the relationships between the proposal and the elements of the Greenway Design Plan.~~

~~(Ord. 1061, Amended, 05/26/2005, eff. 7/1/2005; Ord. 997, Re-pealed and Replaced, 10/31/2002; Ord. 991, Amended, 09/26/2002; 953 §2, Reorg&Renum, 11/30/2000)~~

#### ~~§ 34.5840 — DECISION BY HEARINGS OFFICER~~

~~(A) A decision on a Greenway Permit application for a Conditional Use as specified either in the underlying district or in MCG 34.6300 through 34.6765, or for a Community Service Use as specified in MCG 34.6000 through 34.6230, shall be made by the Hearings Officer in conjunction with the decision on the use proposal associated therewith.~~

~~(B) Action by the Hearings Officer on a Greenway Permit application shall be pursuant to provisions for a Type III Permit as described in MCG Chapter 37.~~

~~(C) The findings and conclusions made by the Hearings Officer, and the conditions or modifications of approval, if any, shall specifically address the relationships between the proposal and the elements of the Greenway Design Plan.~~

~~(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 991, Amended, 09/26/2002; 953 §2, Reorg&Renum, 11/30/2000)~~

#### ~~§ 34.5845 — SCOPE OF APPROVAL~~

~~Approval of a Greenway Permit shall be deemed to authorize associated public utilities, including energy and communication facilities.~~

~~(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)~~

#### ~~§ 34.5850 — APPEALS~~

~~(A) A decision by the Planning Director on a Greenway Permit application may be appealed to the Hearings Officer in the manner provided in MCG 37.0640.~~

~~(B) A decision by the Hearings Officer on a Greenway Permit application may be appealed to the Land Use Board of Appeals (LUBA).~~

~~(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 991, Amended, 09/26/2002; 953 §2, Reorg&Renum, 11/30/2000)~~

#### § 39.5935 [34.5855] GREENWAY DESIGN PLAN

The elements of the Greenway Design Plan are:

- (A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and the river.
- (B) Reasonable public access to and along the river shall be provided by appropriate legal means to the greatest possible degree and with emphasis on urban and urbanizable areas.
- (C) Developments shall be directed away from the river to the greatest possible degree, provided, however, that lands in other than rural and natural resource base zones may continue in urban uses.
- (D) Agricultural lands shall be preserved and maintained for farm use.
- (E) The harvesting of timber, beyond the vegetative fringes, shall be conducted in a manner which shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent practicable or will be restored within a brief period of time on those lands inside the Urban Growth Boundary.
- (F) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflicts with farm uses.
- (G) Significant fish and wildlife habitats shall be protected.
- (H) Significant natural and scenic areas and viewpoints and vistas shall be preserved.
- (I) Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.
- (J) The natural vegetation along the river, lakes, wetlands and streams shall be enhanced and protected to the maximum extent practicable to assure scenic quality, protection from erosion, screening of uses from the river, and continuous riparian corridors.
- (K) Extraction of known aggregate deposits may be permitted, pursuant to the provisions of MCC 39.7300 through 39.7330, when economically feasible and when conducted in a

manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation.

(L) Areas of annual flooding, flood plains, water areas and wetlands shall be preserved in their natural state to the maximum possible extent to protect the water retention, overflow and natural functions.

(M) Significant wetland areas shall be protected as provided in MCC 39.5940.

(N) Areas of ecological, scientific, historical or archaeological significance shall be protected, preserved, restored, or enhanced to the maximum extent possible.

(O) Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the character of the Greenway.

(P) The quality of the air, water and land re-sources in and adjacent to the Greenway shall be preserved in development, change of use, or intensification of use of land designated WRG.

(Q) A building setback line of 150 feet from the ordinary low waterline of the Willamette River shall be provided in all rural and natural resource base zones, except for non-dwellings provided in conjunction with farm use and except for buildings and structures in conjunction with a water-related or a water dependent use.

(R) Any development, change of use or intensification of use of land classified WRG, shall be subject to design review, pursuant to MCC 39.8000 through 39.8050, to the extent that such design review is consistent with the elements of the Greenway Design Plan.

(S) The applicable policies of the Comprehensive Plan are satisfied.

#### § 39.5940 [34.5865] SIGNIFICANT WETLANDS

Significant wetlands consist of those areas designated as Significant on aerial photographs of a scale of 1"=200' made a part of the supporting documentation of the Comprehensive **Framework** Plan. Any proposed activity or use requiring an WRG permit which would impact those wetlands shall be subject to the following:

(A) In addition to other WRG Permit submittal requirements, the application shall also include:

- (1) A site plan drawn to scale showing the wetland boundary as determined by a documented field survey, the location of all existing and proposed structures, roads, watercourses, drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval of no greater than five feet;
- (2) A description and map of the wetland area that will be affected by the proposed activity. This documentation must also include a map of the entire wetland, an assessment of the wetland's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat;
- (3) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;
- (4) A study of any flood hazard, erosion hazard, or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards;
- (5) Detailed Mitigation Plans as described in subsection (D), if required;
- (6) Description of how the proposal meets the approval criteria listed in subsection (B) below.

(B) In addition to the criteria listed in MCC 39.5935 the applicant shall demonstrate that the proposal:

- (1) Is water-dependent or requires access to the wetland as a central element of its basic design function, or is not water dependent but has no practicable alternative as described in subsection (C) below;
- (2) Will have as few adverse impacts as is practical to the wetland's functional characteristics and its existing contour, vegetation, fish and wildlife resources, shoreline anchoring, flood storage, general hydrological conditions, and visual amenities. This impact determination shall also consider specific site information contained in the adopted wetlands inventory and the economic, social, environmental, and energy (ESEE) analysis made part of the supporting documentation of the comprehensive plan;

- (3) Will not cause significant degradation of groundwater or surface-water quality;
  - (4) Will provide a buffer area of not less than 50 feet between the wetland boundary and upland activities for those portions of regulated activities that need not be conducted in the wetland;
  - (5) Will provide offsetting replacement wetlands for any loss of existing wetland areas.
- This Mitigation Plan shall meet the standards of subsection (D).

(C) A finding of no practicable alternative is to be made only after demonstration by the applicant that:

- (1) The basic purpose of the project cannot reasonably be accomplished using one or more other practicable alternative sites in Multnomah County that would avoid or result in less adverse impact on a wetland. An alternative site is to be considered practicable if it is available for purchase and the proposed activity can be conducted on that site after taking into consideration costs, existing technology, infrastructure, and logistics in achieving the overall project purposes;
- (2) The basic purpose of the project cannot be accomplished by a reduction in the size, scope, configuration, or density of the project as proposed, or by changing the design of the project in a way that would avoid or result in fewer adverse effects on the wetland; and
- (3) In cases where the applicant has rejected alternatives to the project as proposed due to constraints, a reasonable attempt has been made to remove or accommodate such constraints.

(D) A Mitigation Plan and monitoring program may be approved upon submission of the following:

- (1) A site plan and written documentation which contains the applicable information for the replacement wetland as required by MCC 39.5935 and subsection (A) of this section;
- (2) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;
- (3) A Mitigation Plan which demonstrates retention of the resource values addressed in subsection (B) (2) above;



(4) Documentation that replacement wet-lands were considered and rejected according to the following order of locational preferences:

- (a) On the site of the impacted wetland, with the same kind of resource;
- (b) Off-site, with the same kind of resource;
- (c) On-site, with a different kind of resource;
- (d) Off-site, with a different kind of resource.