

1600 SE 190th Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

STAFF REPORT FOR THE PLANNING COMMISSION CONTINUED HEARING DECEMBER 3, 2018

Amendments Relating to Ground Disturbing Activity Including Minimal Impact Projects, Grading and Erosion Control (*Erosion and Sediment Control*), Agricultural Fill, Stormwater Drainage Control, Hillside Development (*Geologic Hazards*) and Large Fill Permits (PC-2016-5384)

Staff Contact:

Adam Barber, Deputy Planning Director
adam.t.barber@multco.us (503) 988-0168

SECTION 1.0 INTRODUCTION

This Proposal, PC-2016-5384, relates to the regulation of ground disturbing activities. The Planning Commission held Work Sessions on this proposal February 6, 2017 and July 2, 2018. A public hearing was held November 5, 2018, which was continued to the December 3rd Planning Commission meeting. In general summary, this Proposal is intended to:

1. Implement Comprehensive Plan policies relating to ground disturbing activities;
2. Regulate fill activities that support a farming practice;
3. Clarify and strengthen regulations within, and distinctions between, categories of ground disturbance regulation (Minimal Impact Project; Grading and Erosion Control (to be renamed Erosion and Sediment Control); Agricultural Fill; Hillside Development (to be renamed Geologic Hazards); and Large Fill); and
4. Clarify stormwater drainage control requirements.

SECTION 2.0 PROPOSED CODE AMENDMENTS

Proposed code amendments are separated by topic area and provided within the following attachments to this staff report. The proposed code amendments are provided in Chapter 39, the consolidated land use code recently adopted by the Board of Commissioners, and in Chapter 38, applicable inside the Columbia River Gorge National Scenic Area.

Attachment A.1 – Chapter 39 amendments relating to Minimal Impact Project Permits, Erosion and Sediment Control Permits, Agricultural Fill Permits and Stormwater Drainage Control requirements

Attachment A.2 – Chapter 39 Geologic Hazards Permit amendments

Attachment A.3 – Chapter 38 (Columbia River Gorge National Scenic Area) Geologic Hazards Permit amendments

Attachment A.4 – Chapter 39 Large Fill Permit amendments

Attachment A.5 – Chapter 39 Definitions

Attachment A.6 – Chapter 39 Administrative Procedures

SECTION 3.0 EXPLANATION OF CODE REVISIONS MADE SINCE NOVEMBER 5TH HEARING

An explanation of code revisions made since the November 5th hearing (identified using blue text in Attachments A.1-A.5) is provided below, separated by staff report Attachment number. No new changes are proposed to Attachment A.6.

Attachment A.1 – Chapter 39 amendments relating to Minimal Impact Project Permits, Erosion and Sediment Control Permits, Agricultural Fill Permits and Stormwater Drainage Control requirements

Topic	Summary of Issue	Staff Comment
Residential Gardening Exemption MCC 39.6215(G) (Attachment A.1, p. 7)	After the November 5 meeting concluded, a community member verbally requested an increase in the maximum square footage for the residential gardening exemption in MCC 39.6215(G) applicable to MIP and ESC permits. The reasoning was because 2,500 square feet of garden space would not provide enough space for a large family relying on garden vegetables as a major food source.	The maximum area for the residential gardening exemption has been increased from 2,500 to 5,000 sf. Internet research suggests roughly 200 square feet of garden area per person is a reasonable garden size providing year round vegetables. However, staff believes increasing the maximum area for gardening to 5,000 square feet is not unreasonable given the current code does not establish any size limit. Increasing the maximum area under the exemption to 5,000 square feet should provide families adequate opportunity to grow food year round, and also to grow other items for personal use through the exemption such as flowers.
Natural Resource/Enhancement Conservation Plan Exemption MCC 39.6215(K) (Attachment A.1, p. 8)	Commissioner Kabeiseman questioned whether an applicant preparing a natural resources enhancement or restoration plan “in consultation with” a local soil and water conservation district is the most appropriate description to use in the MIP and ESC permit exemption (see MCC 39.6215(K)). In particular, the Commissioner was concerned that the wording could allow an applicant to	Staff discussed this question with Jim Cathcart, West Multnomah Soil & Water Conservation District Manager, after the November 5 th meeting. Mr. Cathcart clarified that a soil and water conservation district will prepare the plan, which is then “accepted” by the property owner. Code language has been modified as described by Mr. Cathcart. Mr. Cathcart recommended striking the requirement that the conservation plan must be provided to the county

	<p>“consult” with a district and then not include any of the district’s recommendations in the plan.</p>	<p>before commencement of any ground disturbing activity because such a requirement is unusual in the context of an exempt activity and the district can share a copy of the plan with the county if requested. The requirement for the plan to be submitted to the county has been retained. Such a requirement exists for a similar exemption to the Significant Environmental Concern permit (see MCC 39.5515(A)(15)):</p> <p><i>(15) 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, <u>and submitted to the County.</u></i></p> <p>Obtaining a copy of the plan prior to initiation of the work will help the county respond to any questions or complaints from the community about project scope in a timely fashion.</p>
<p>New Fill Standard</p> <p>MCC 39.6220(B)(13) (Attachment A.1, p. 10)</p>	<p>Ms. Chesarek recommended to staff after the November 5th meeting concluded that staff should consider adding a standard that would not allow compensation for fills through the Minimal Impact Project Permit, Geologic</p>	<p>A prohibition on accepting compensation for the placement of fill has been added to the MIP permit standards in MCC 39.6220(B)(13). This same prohibition currently is proposed in the AF permit and, as explained below, has been added to the ESC and GH permit. These additions</p>

	Hazards Permit or for the Large Fill permit, which Ms. Chesarek refers to in Attachment E.	align with staff's interpretation of the various permit allowances.
Clarifying intent of ESC standard relating to measurement of unsupported cuts or fills MCC 39.6225(B)(4) (Attachment A.1, p. 13)	Community member Carol Chesarek recommended clarifying whether the standard based on the height of unsupported cuts or fills applies to average or maximum heights (Attachment E).	<p>The underlined language below has been added to MCC 39.6225(B)(4) so that all cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height <u>at any point</u> shall meet a setback from any property line. The required setback is a distance at least twice the height of the cut or fill, unless an engineering assessment certifies that adjoining property will not be disturbed.</p> <p>The underlined language below has also been added to MCC 39.6225(B)(4) so that all unsupported cuts and fills greater than 4 feet in height <u>at any point</u> shall require professional geotechnical review. This addition is consistent with the intent of the requirement.</p>
NEW ESC standards MCC 39.6225(B)(24) (Attachment A.1, p. 15)	Prohibiting compensation accepted for fill placement (Attachment E).	As previously discussed; amendments have been made to ESC standards 39.6225(B)(24) to establish a prohibition on accepting compensation for fill placement. The ESC permit authorizes ground-disturbing activity associated with a permitted use but it does not authorize a commercial activity for fill disposal.
Amended AF standards MCC 39.6230(B)(3), (9) (Attachment A.1, p. 17)	<p>Staff recommended a clarification regarding compensation for placement of agricultural fill.</p> <p>Community member Carol Chesarek recommended a setback of 8x the height of the fill for slopes exceeding 20% grade.</p>	<p>Amendments are proposed to AF standard 39.6230(B)(3) to clarify that <u>the property owner</u> shall not accept compensation for placement of fill. Staff felt this clarification would help avoid an argument that a contractor, for example, could not accept compensation for selling a property owner fill material.</p> <p>Clarification is also provided in MCC 39.6230(B)(9) that fill exceeding 25% grade shall be setback from the site</p>

		property lines a distance equal to or greater than the maximum height of the fill. Staff is recommending this amendment because: (1) 25% is a more consistent trigger used in other permits for elevated technical review, and (2) a smaller setback than 8x the height of the fill is proposed because it is more appropriate given potential impacts a large fill setback may have on farming activities.
Stormwater Drainage Control MCC 39.6235(E) (Attachment A.1, p. 19)	Grammatical Correction	The word <u>and</u> was added to MCC 39.6235(E) for grammatical purposes.

Attachment A.2 – Chapter 39 Geologic Hazards Permit amendments, &

Attachment A.3 – Chapter 38 (Columbia River Gorge National Scenic Area) Geologic Hazards Permit amendments

Topic	Summary of Issue	Staff Comment
GH Exemptions MCC 39.5080(A), (G) (Attachment A.2, p. 7) MCC 38.5510(A), (E) (Attachment A.3, p. 8)	<p>Community member Carol Chesarek recommended in Attachment E clarifying the unsupported excavation measurement in MCC 39.5080(A) / MCC 38.5510(A).</p> <p>Another community member recommended increasing the maximum square footage for the residential gardening exemption in MCC 39.5080(G) / MCC 38.5510(E) after the close of the meeting on November 5th.</p>	<p>Proposed amendments clarify that unsupported finished excavation <u>depth</u> greater than four feet requires permit review. Previous draft referred to excavation <u>height</u>, which is a slightly more awkward way to describe the vertical dimension of a hole.</p> <p>Maximum area of residential gardening exemption increased from 2,500 to 5,000 sf based on community feedback as previously described.</p>

Clarifying intent of GH standard MCC 39.5090(D) (Attachment A.2, p. 12) MCC 38.5520(D) (Attachment A.3, p. 13)	Community member Carol Chesarek recommended amendments relating to measurement of unsupported cuts or fills.	<p>The underlined language below has been added to MCC 39.5090(D) / MCC 38.5520(D) so that all cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height <u>at any point</u> shall meet a setback from any property line. The required setback is a distance at least twice the height of the cut or fill, unless an engineering assessment certifies that adjoining property will not be disturbed.</p> <p>Language has also been added to MCC 39.5090(D) / MCC 38.5520(D) that all unsupported cuts and fills greater than 4 feet in height <u>at any point</u> shall require professional geotechnical review, which is consistent with the intent of this subsection.</p>
NEW GH standards MCC 39.5090(Y) (Attachment A.2, p. 14) MCC 38.5520(V) (Attachment A.3, p. 15)	Prohibiting compensation accepted for fill placement (Attachment E).	Amendments have been made to MCC 39.5090(Y) / MCC 38.5520(V) to prohibit accepting compensation for fill placement through the GH permit.

Attachment A.4 – Chapter 39 Large Fill Permit amendments

Topic	Summary of Issue	Staff Comment
LF standard relating to timing of operation MCC 39.7215(B)(4) (Attachment A.4, p. 6)	Community member Carol Chesarek recommended limiting LF operation timing to no more than 5 days a week (Attachment E).	Common holidays and Sundays are currently prohibited operation dates for the LF permit. Staff has added Saturdays to that list so that the public will have more certainty regarding operation timing and can expect quiet on weekends. This amendment modifies MCC 39.7215(B)(4).

Attachment A.5 – Chapter 39 Definitions

Topic	Summary of Issue	Staff Comment
New definition MCC 39.2000 (Attachment A.5, p. 1)	Community member Carol Chesarek recommended defining “Earth Materials.” (Attachment E)	The definition of ‘Earth Materials’ used in Columbia River Gorge National Scenic Area (Chapter 38) has been added to MCC 39.2000. Defining similar terms consistently across chapters of county land use codes, where possible, reduces complexity and simplifies implementation. Staff sees no reason to re-define this term differently than currently defined in Chapter 38.

Below is a summary of key policy questions raised by Commission members and public comments during the November 5th hearing that did not result in further code amendments.

Topic	Summary of Issue	Staff Comment
New Fill Standard MCC 39.6220 (Attachment A.1, p. 10)	Community member Carol Chesarek recommended prohibiting fill within the drip line of mature trees (Attachment E).	No new standard has been added regarding placement of fill within tree driplines. This topic was discussed by the Commission at the November hearing and staff did not hear support for this concept.
NEW ESC standard MCC 39.6225(B)(20) (Attachment A.1, p. 15)	Community member Carol Chesarek recommended requiring removal of certain materials after construction is completed (Attachment E).	Current code prohibits non-erosion pollution associated with construction such as from pesticides, fertilizers, construction chemicals, etc. Ms. Chesarek is recommending that the standard be modified to require materials associated with construction (such as fertilizers) to be removed from the site after construction is completed. It would be unrealistic to require removal of materials such as fertilizers and pesticides that may be used over time on the property and such a standard would

		change the focus of the permit to include post construction activities. The existing standard addresses non-erosion pollution during construction, which is the focus of the ground disturbing activity permits.
NEW GH standards MCC 39.5090(T) (Attachment A.2, p. 14) MCC 38.5520(R) (Attachment A.3, p. 15)	Community member Carol Chesarek recommended requiring removal of certain materials after construction is completed.	No code changes recommended as explained above.
LF buffer requirements MCC 39.7215(B)(2)(a) (Attachment A.4, p. 6)	Community member Carol Chesarek recommended clarifying the LF buffer requirements (Attachment E).	The suggested edit to MCC 39.7215(B)(2)(a) that buffers must be preserved <u>and protected from the fill</u> is not necessary. The standard requires that vegetation shall be preserved which is synonymous with protection according to the Webster's definition. Adding additional terms with the same meaning to the standard can have the unintended consequence of causing confusion during future code interpretation.
Extent of SECh in comparison to EFU/CFU zones and high value soils	The Commission contemplated whether Large Fills should also be prohibited within the Significant Environmental Concern- habitat (SECh) overlay. The Commission asked staff to prepare maps showing the relationship between high value soils, EFU/CFU zoning and the SECh overlay.	<p>The requested maps showing the extent of the EFU/CFU zones, High Value Farmland Soils, SEC-h and a combined map showing all these features are presented in Attachment B.1-B.4. Staff recommends, from an equity standpoint, that the Commission not add SECh to the list of LF prohibited areas if the policy intent is to preserve some level of opportunity for LF uses in the West Hills.</p> <p>Prohibiting LF in the SECh would prohibit LFs in the West Hills but still allow that use in certain areas within all other</p>

		plan areas outside the Columbia River Gorge National Scenic Area (where LF is not a listed use).
Firewood Cutting	Does the cutting of firewood fall under the existing permit exemption for forest practices (example is MCC 39.6215(I))?	Cutting firewood would not be subject to a ground disturbing activity permit as long as motorized equipment is not used to disturb the ground surface (eg. stump pulling). Therefore, staff does not believe code amendments addressing firewood cutting are necessary.
Amending slope percentage thresholds & fill volume thresholds	Community member Carol Chesarek recommended amending slope thresholds in ESC, AF & GH permits from 33 to 25 percent and reducing the existing 5,000 cubic yard Large Fill permit threshold (Attachment E). Thresholds identify when additional geotechnical review is required and the appropriate permit review process.	Staff did not change existing code thresholds. These issues, along with other geotechnical best management practices can be researched and considered as part of the upcoming Geologic Hazards project, which is the more appropriate venue for this assessment.
Adding new limitation on exempt GH activity	Community member Carol Chesarek recommended adding a new 10,000 square foot limit on tree and shrub removal in GH exemption in MCC 39.5080(N) & MCC 38.5510(L) (Attachment E).	<p>The existing GH exemptions allow up to 20,000 square feet of disturbed area, which would include ground disturbance associated with tree and shrub removal. Ms. Chesarek does not recommend reducing the existing 20,000 sf threshold and instead recommends adding an additional threshold related to 10,000 square feet of tree and shrub removal. Ms. Chesarek may be suggesting a trigger should be added associated with tree and shrub removal that does <u>not</u> involve ground-disturbing activity.</p> <p>This issue should be considered holistically in the context of slope stability best management practices as part of the Geologic Hazard project. No code changes related to this issue are recommended at this time.</p>

New LF Prohibition	Community member Carol Chesarek recommended adding a prohibition on accepting compensation for fill placement as part of a LF permit (Attachment E).	<p>A prohibition on compensation has not been added because the LF permit is a Community Service Use Commercial Operation permit similar to a landfill where payment would typically be expected for the ability to dispose of fill material. In fact, acknowledgment that Large Fill uses are largely dependent on market conditions is found in the Large Fill purpose statement (MCC 39.7200(D)).</p> <p>However, the recommended prohibition on accepting compensation has been added to the other ground disturbing permits including AF, MIP, ESC and GH, which in isolation do not authorize a commercial activity.</p>
Definitions	Public comment from Friends of the Columbia Gorge in Attachment C.1 recommend striking any duplicative definitions in MCC 38.5503 (Geologic Hazards) that currently exist in MCC 38.0015 (Definitions) for the terms ‘Best Management Practices’, ‘Cut’, ‘Development’, ‘Fill’, ‘Ordinary High Water Mark’ and ‘Stream.’	<p>GH definitions proposed in MCC 38.5503 will only be applied to a Geologic Hazard permit and will not apply to a National Scenic Area (NSA) permit application. An NSA permit is subject to the definitions of 38.0015, which are not being modified.</p> <p>Staff discussed the comment received in Attachment C.1 with staff from the Columbia River Gorge Commission who confirmed the proposed definitions in 38.5503 are consistent with the Management Plan and do not require further modification.</p>

SECTION 4.0 ATTACHMENTS

Attachment A.1 – Chapter 39 amendments relating to Minimal Impact Project Permits, Erosion and Sediment Control Permits, Agricultural Fill Permits and Stormwater Drainage Control requirements

Attachment A.2 – Chapter 39 Geologic Hazards Permit amendments

Attachment A.3 – Chapter 38 (Columbia River Gorge National Scenic Area) Geologic Hazards Permit amendments

Attachment A.4 – Chapter 39 Large Fill Permit amendments

Attachment A.5 – Chapter 39 Definitions

Attachment A.6 – Chapter 39 Administrative Procedures

Attachment B.1 – CFU EFU Zoning Map

Attachment B.2 – High Value Farmland Map

Attachment B.3 - SEC-H Zoning Map

Attachment B.4 – Combined Map

Attachment C.1 – Comments Submitted 11.5.18 by Steven D. McCoy, Friends of the Columbia Gorge

Attachment C.2 – Chapter 38 Definition Assessment submitted 11.5.18 by Multnomah County Land Use Staff

Attachment D – Comments Submitted 11.2.18 by Jim Cathcart, West Multnomah Soil and Water Conservation District

Attachment E – Comments Submitted 11.5.18 by Carol Chesarek

Attachment F – Comments Submitted 11.5.18 by Logan Ramsey including 4.18.16 email, July 9, 1947 meeting minutes from unidentified source, copy of May 7, 1947 Report of the Parks Committee