

DEPARTMENT OF COMMUNITY SERVICES  
LAND USE PLANNING DIVISION  
MULTNOMAH COUNTY PLANNING COMMISSION

MINUTES OF NOVEMBER 5, 2018

- I. **Call to Order:** Chair John Ingle called the meeting to order at 6:30 p.m. on Monday, November 5, 2018 at the Multnomah Building, Room 101, located at 501 SE Hawthorne Blvd., Portland, OR.
- II. **Roll Call:** Present - Ingle, Katharina Lorenz, Victoria Purvine, Tim Wood, Bill Kabeiseman and Chris Foster  
Absent – Alicia Denney, Jim Kessinger, and Susan Silodor
- III. **Approval of Minutes: September 10, 2018.**  
Motion by Kabeiseman; seconded by Lorenz.  
Motion passed unanimously.
- IV. **Opportunity to Comment on Non-Agenda Items:**  
None.
- V. **Hearing: Amendments Relating to Ground Disturbing Activity including Minimal Impact Projects, Grading and Erosion Control, Agricultural Fill, Stormwater and Drainage Control, Hillside Development and Large Fill Permits (PC-2016-5384)**

Ingle read into the record the Legislative Hearing Process for the Planning Commission for a public hearing, and the process to present public testimony. The Commissioners disclosed no actual or potential financial or other interests which would lead to a member's partiality. There were no objections to the Planning Commission hearing the matter.

Adam Barber, Multnomah County Senior Planner, presented the staff report, noting the changes since the July 2, 2018 worksession. The proposed code amendments are described in further detail with an accompanying attachment. Attachment A.1 includes Minimal Impact Project, Erosion & Sediment Control, Agricultural Fill and Stormwater Drainage Control. A.2 is Geologic Hazards outside of the Columbia River Gorge National Scenic Area (NSA), A.3 is Geologic Hazards within the NSA, A.4 is Large Fill, A.5 includes Definitions and A.6 is Administrative Procedures.

Barber proceeded to go through each ground disturbing activity in detail, explaining the concepts & objectives of each permit. At the end of his presentation, he introduced written testimony he received before the hearing. The first is dated November 2, 2018 from Jay Udelhoven, the Executive Director of the East Multnomah Soil & Water Conservation District (EMSWCD), supporting the proposed new exemption for the Natural Resource enhancement or restoration projects that are prepared in consultation with EMSWCD.

The second was submitted by Steven McCoy, staff attorney with the Friends of the Columbia River Gorge, dated November 5, 2018. Barber noted that Mr. McCoy takes issue with approximately six definitions of the proposed Geologic Hazards permit in the NSA that he states are not consistent with the Columbia River Gorge NSA Management Plan. Barber noted that we have not heard this concern from staff with the Columbia River Gorge Commission, who actually

oversee the management plan. The Friends is a partner agency and we value their opinion, but they are not a regulatory agency like the Columbia River Gorge staff.

Barber stated this is a complex project and we spent a lot of time balancing definitions. We are not prepared to recommend any specific changes tonight because changing a definition in one area can have amplification throughout the code.

In anticipation of testimony this evening, Barber asked if the Commissioners would consider continuing the hearing until a date, time and location certain so staff has time to work with the agencies. The next meeting is scheduled for December 3, 2018, if the Commission feels a continuation is warranted.

Ingle opened the hearing to public testimony.

Clair Clock, NE Salzman Rd, Corbett, a retired farmer and semi-retired conservation specialist at Clackamas County. He was impressed by the detail by the staff and the effort that has gone into this particular document. One thing he brought up is accelerating water going onto a property because of land use uses, and commented on the accumulative effect of 10K disturbances on a single property. He commended the group for engaging other agencies and offering landowners a simple, low-cost way to get a plan without high cost geo-tech requirements. That will help alleviate the negative public perception of the planning department.

Lorenz asked Mr. Clock to expand on what he means by the cumulative effects of the 10K disturbances. Clock said, if you disturb 10,000 s.f. on one part of the property, and do that ten times around the rest of the property, you can have an accumulative effect. If you have rolling hills with highly erodible soil, you might have a problem.

Susan Andrews, NW Springville Rd, Portland, is in support of the new amendments, especially for the agricultural fill. She read an excerpt of an email she sent to Planning Director, Michael Cerbone about a year ago outlining some concerns they had about a fill operation in their neighborhood. She sent the email in frustration, anger and desperation in terms of trying to get the issue addressed. "Dear Michael, the dump trucks started again on Wednesday, the 26<sup>th</sup> and have run non-stop to the same site since then, with the exception of Sunday. On Saturday, we tracked the truck frequency and it was 17 loads an hour. At 486 c.f. per truck, or 20 tons per truck, this is roughly 75,000 c.f., or over 3,000 tons of dirt coming in per day in an area that had two landslides which blocked the road last winter, and which is likely again to be hazardous to our road and neighbor properties. That is 12,000 tons of dirt already in just those four days. We also, as I remind you, live in a Significant Environmental Concern overlay, an SEC-h. In the time I have been tracking this since 2015, it appears that we have had 400,000 c.f. of fill added at this particular site and I think the County in the past determined that is was not all topsoil for agricultural improvement. If you guys have not fined them significantly for prior violations, you're basically encouraging this property owner to continue to bring in fill because he's paid to take the dump truck loads. The County ends up with the cost of dealing with slides and repairs on our road and the neighbors deal with the risk of slides onto their property, as well as the dangers related to hundreds of dump trucks on our rural roads, which are used by tractors, bicycles, livestock, wildlife, and those of us walking across the street to pick up our mail. This has gone on for years, and it's not the same as having a construction site or agricultural site that has a short term disturbance."

So you could imagine, if you have that amount of truck traffic on a small two lane road, the issues with gravel coming out of the trucks and making the road slippery. This is a site where there is a slope and a geological hazard zone. There are many reasons why I thought there was nothing going on from the County's standpoint, so I'm really thrilled to see something happening. Thank you for the work you put into the details.

Dione Fugere, SE Division Dr, Troutdale, this is my first public hearing, but I wanted to be here because of something that recently happened on our property. I live in the middle of farms and support some type of reasonable attempt to make sure that farms are playing by the same rules the rest of us are playing by. But will these new regulations increase the permitting requirements and costs for homeowners for reasonable use of their land? We recently brought in topsoil to plant blueberries and the County process was such an ordeal. Instead of this reasonable process, they said as part of land use planning, it's our process to have your septic reviewed. So now we have to pay for a septic review. My thought is, wait, the dirt's over here, there's a ravine, and the septic is way back there on the other end of the property and now we need a septic review? It just doesn't make sense. The County honestly does have such a bad reputation. I understand and I support environmental protection, but when you can't just do reasonable activity on your land, it's just getting too much.

Barber said this project is mostly about clarifying existing regulations in the context of common projects. What is being proposed are some new exemptions that are not on the books now, but there would be no change to coordination with sanitation, which sounds like an issue you were not expecting. Ms. Fugere said, why would I think by adding some dirt on the front of my two acres, a septic system on the back end should be involved and that I would have to pay several hundred dollars for that? I don't know how that's a reasonable expectation. Barber said luckily you know where your drainfield is, but we have seen people put fill on their drainfield thinking their drainfield was somewhere else because they did not actually know where it was. Fugere said doesn't the County have the ability to look it up? Barber said that is what is happening here with our contract, we contract with the City of Portland Sanitarian. Fugere said, at the homeowner's expense? Our home is twelve years old, so it's all there and it's all very clear, so that's just the concern that I'm expressing. Barber said, I understand.

Chris Sokol, NW Skyline Blvd, Portland, this is the first time that I have appeared for a meeting and I appreciate the opportunity to share my opinion and concerns. I felt it was important to come and support an amendment that has a little bit more teeth and more specificity. We had an experience with an adjoining piece of property that was recently purchased apparently by someone from out of state. They removed a two story structure without a permit and clear-cut all of the trees on the front part of the property that has environmental overlays. This was done without knowledge of Multnomah County. I assumed they had a permit to remove this building, but apparently they pushed the debris over the side into the headwaters of Balch Creek. I called Multnomah County, the mitigation program, and spoke to Sharon Graham, who was new to her position. I left messages for two weeks and she finally returned the call. By that time, everything had been clear-cut and demolished and she said there's really nothing we can do. It took a full month to get someone from Multnomah County to come out and take a look at the project. They finally posted a stop work order, which was removed by the contractor who continued working. I contacted Sharon Graham again and it took another week for them to get back out. So my experience has been a really frustrating one. Development is going to happen, but it needs to happen in a sensitive way that protects sensitive environmental areas. Basically, the developers got everything that they wanted, they clear-cut, they removed a building, they pushed everything into

the headwaters of the creek, and they really had no hand slap at all. So rather than going through the correct planning process, there was no enforcement and I sadly bring that to your attention. I've written a lot of letters, sent pictures of clear-cutting, of old growth trees taken out, and it took a full month to get anyone to come out and help us. And it took the assistance of the Forest Park Neighborhood Association who wrote additional letters of support. I appreciate having that kind of support and knowledge in our neighborhood, but we really need to have a better enforcement situation. Hopefully these regulations will have a little more specificity for that.

George Sowder, NW Skyline Blvd, Portland, I read through Adam's report and was very impressed. In my memory, there has been one significant farm fill that had rather disastrous erosion control failure onto Kaiser Road in Cornelius Pass. So I think having the agricultural fill requirement is excellent, and I like the way it spells out exactly what agricultural fills are. The other comment I have is in slope hazard areas, 25 degrees is considered to be a significant criterion, so when I was reading through this, there are many places where I found essentially four foot fill, 33 degrees, and I didn't know where the 33 degrees came from. Why isn't it 25 degrees? I would urge you to make it twenty-five. If there is some real significant reason it needs to be thirty-three, that's okay, but I don't know the reason why.

Barber said as I prepared for the hearing tonight, I read through the proposal again and I had the same observation. And it's percent, rather than degrees; Sowder said I meant percent. Barber said the Hillside Development regulations hinge on a 25% threshold, while other sections of the code refer to 33%. I think those are triggers that have been inserted into the code at different times for different projects and different purposes. So I would recommend we tackle that as part of another project which relates to updating our slope hazard maps. I would want to talk to the Oregon Department of Geology & Mineral Industries, and do research on what the appropriate threshold is. I want to make sure we do not over-regulate, and ensure the community is safe.

Sowder wanted to add that he was on the advisory committee that helped develop policies for the code revision, and we discussed twenty instead of twenty-five.

Carol Chesarek, NW Germantown Rd, Portland, thank you for the opportunity to offer comments tonight. These are my own personal comments, but I am also serving as president of the Forest Park Neighborhood Association, so I hear these stories all the time. I want to compliment Adam, I think he's done a brilliant job of simplifying and updating this code language. This is really important work for us and I think it will make it easier for property owners to understand the rules, and for County staff to enforce them. We've had quite a number of unpermitted operations that appear to violate the spirit and intent of the current rules, and the County has a hard time enforcing them. I'm particularly pleased with the new agricultural fill and large fill permit rules. If any of you aren't familiar with the Forest Park neighborhood, we're up in the West Hills with steep slopes, slide hazards and large quantities of high quality wildlife habitat. She then submitted her written testimony dated November 5, 2018, for the record, and went through the recommended changes.

Logan Ramsey, NW Skyline Blvd, Portland, one thing that struck me was your statement that you want to keep things simple. And to me, this whole packet is very complex and not simple. I support a steeper slope than the 33%. One of the things that had me thinking was a letter by somebody who I don't think is here tonight, that was sent in April of 2016. (Mr. Ramsey submitted an email dated 4/18/16 from Terry Cook re: the Comprehensive Plan into the record.) The concern was the extent of restrictions on his private property, and that's my main concern. I've been cutting

my own firewood on that property for 37 years and I'm not sure the reference to forestry would allow me to still do that. I'd also like to introduce some things that people are aware of, but probably don't think really have application much anymore. (He submitted another piece of testimony, not clear on the source.) This references when they set up Forest Park in 1947, and the Commissioners were concerned that we shouldn't put ourselves in a position of not acquiring the property, yet putting such restrictions on it that is of no value to the owner. We should be careful of that. Mr. Smith testified that nobody wants to take away a home from a home owner or unreasonably interfere with any use of the property. They also struck a statement that they would withhold water and sewer service to restrict development. I know this seems, probably, far afield from this but...and Commissioner Cooper said I think the council are unanimous in excluding that part of the report, which was to withhold the water and sewer service. Commissioner Peterson said that's already out.

Basically, this has a lot to do with the Multnomah County Planning Commission because the Multnomah County Commissioners deeded the tax foreclosed property that it had in its stockpile because most tax foreclosed properties are put back on the market and sold for back taxes. But they've been holding on to the several thousand acres, 3,600 acres, to put it into a park. I'm certainly not opposed to Forest Park, but a bunch of restrictions that smack of restrictions that are being put in place because of its proximity to Forest Park, then it raises the issue; are these restrictions valid? And I guess whatever you guys decide makes it valid. I've already given at the altar of Forest Park. We sold two properties totaling over 100 acres to Metro and the City and Friends of Forest Park for \$12,000 an acre. This wasn't that many years ago and that was a poor price then and it's certainly a poor price now. But when we accepted that, I interpreted that we wouldn't be dumped on with a whole bunch of new restrictions, and yet, that's what's happened. In my estimation, these restrictions are being put in place because of my proximity right next door to Forest Park and I guess that's what I get for speaking my mind.

Barber said, Mr. Ramsey, we sent notice of this hearing to all of the property owners in our jurisdiction, I think it was around 4,400 notices that went out, and there was no distinction about any particular geography. I can assure you proximity to Forest Park was not relevant to the notice area at all.

Mr. Ramsey said, probably the notices you sent out were either to the Columbia Gorge issues or the West Hills. I'm not saying you see the relevance of being on the firing line for the sake of Forest Park, but I do. So if you took, I assume it's something like 2,000 notices that went to east Multnomah County, probably the remainder would be in the West Hills. Barber said and Sauvie Island is another geography we plan for as well. Mr. Ramsey said, yes, I missed Sauvie's Island. And there was one additional letter, this just has to do with the agreement that the City take the tax foreclosed property and place it in Forest Park. (Report of the Parks Committee of the Portland City Planning Commission on a Forest Park to be Dedicated on the Hillside West of St. Helens Road and North of MacLeay Park, dated May 7, 1947, was submitted into the record.) So that's all I can think of at the moment.

Ingle said, Mr. Ramsey, I'm going to assume that you are not in favor of what staff is proposing. Mr. Ramsey said, that's correct.

Ingle closed the public testimony and noted the request for a continuation to December 3<sup>rd</sup>, and to decide whether to keep the record open for written comment, and to allow additional public testimony at the December 3<sup>rd</sup> continued hearing.

Kabeiseman said he would like to ask some questions of staff. Foster said he also had questions for staff relating to Carol Chesarek's testimony. He said regarding fill around mature trees being placed under the drip line; I agree that's a terrible thing to do, but I'm not sure a regulation like that belongs in Erosion Control. The second point is regarding adding SEC-h to the list of excluded areas for large fills. In the West Hills, for example, we've already excluded farm and forest land, so what we're talking about is a little bit of rural residential land, and that land is predominately high value soils, which is also not possible. So the SEC there is almost nil, as far as I can tell.

Kabeiseman asked if the SEC-h is limited to the West Hills or if it would also apply to East County. Foster said there's not a lot of SEC-h in East County. Cerbone said the prevalent areas are certainly the West Hills. Foster said we're not adding any more exempt land by adding that in the West Hills. Cerbone said we can take a look and see what that overlap is.

Kabeiseman said I understand Commissioner Foster thought we may not be gaining anything by doing SEC-h, but there might be changes later, and the question is not whether we gain anything in terms of land areas as much as, is it appropriate to prevent these types of fills in wildlife habitat? I can see some arguments on either side, so that is policy I would want to talk about. The other issue is the idea of the Natural Resource Enhancement Restoration programs. I am a little worried about the idea "prepared in consultation with". What does that mean, because somebody might consult and they go in different directions, so is that "in consultation with"? Maybe tighten that up and make sure we get where we want to on that. Barber asked if he had a recommended amendment to that descriptor. We spoke to staff at the Soil & Water Conservation Districts about this interaction and they don't approve plans. They have a cooperative relationship with the landowner and only assist to the degree that the landowner would like to engage. Kabeiseman said I do not have language, but want to make sure we have that nailed down if we can. Also, one of Mr. Ramsey's concerns was about tree cutting. If I remember correctly, that is something that has come up before. We have an exemption for residential gardening disturbing less than 2,500 s.f., so would it make sense to add tree cutting for personal use in the exemptions.

Barber said there are two reasons why we do not see tree cutting in the Erosion Control codes. First, we typically see the roots left intact; for firewood use, you fell the tree and you cut it, so it would not find itself in the context of an erosion permit. Secondly, we have not looked at that as a land use issue, it is personal use and we typically have not called out personal uses. Cerbone said in my recollection, this came up in another instance when Mr. Ramsey provided testimony, and the harvesting of firewood fell under the Forest Practices Act. But we can look it up and confirm. If that is the case, there is no need for an exemption.

Ingle said in Carol's letter, she thinks "No compensation, monetary or otherwise, is received for receipt or placement of the fill" should be added to the Geologic Hazards permit standard and Large Fill permit. I know we have it elsewhere, but I'm wondering if we had discussed that? Barber said I don't recall the Commission deliberating on that issue. We have seen that issue only in the context of agriculture topsoil projects. The Large Fill operation is typically where a landowner is accepting compensation. For geologic hazards, we do not typically see people bring fill into an unstable area. Cerbone said if it is brought in, it would be under the supervision of a geotechnical engineer.

Lorenz said regarding compensation, it makes me a little uncomfortable telling somebody they cannot get paid for bringing fill onto their property. It seems we are overstepping our boundaries. I

don't know if it's been talked about internally or if there is precedence elsewhere in the code. Barber said we've talked about it internally quite a bit, and it removes the incentive for projects that may not be legitimate farming practices. As far as precedent in the code, we do have provisions that prohibit compensation for parking and things like that. I would say this is a core standard to the Ag fill permit, and this is a really important question that you are raising, so it would be helpful to hear your thoughts on this. Whether or not that is appropriate is up to the Planning Commission to consider, but I think this will have an effect on how much activity we see in the future.

Foster said agricultural fills can be big money making operations, and cover for the agricultural fill is just an excuse. I think George cited a case on Kaiser Road and Germantown, which is a classic example. That didn't start out as an agricultural fill, it only became an agricultural fill after he got caught. There should be a sound farming basis for compensation, so I say no. This is one way we can put a check on things that aren't legitimate agricultural activities. I wouldn't add it to the other zones, but in the case of agricultural, the purpose should be clearly agricultural and not a money making scheme. Lorenz said I agree with that, it just makes me uncomfortable saying it's not allowed.

Cerbone said a person can get any of the permits. So if they don't choose to pursue an agricultural fill permit, they could pursue another permit where they could. If you left it the way it's currently drafted, they could pursue another option where they could receive compensation. Foster said not if it's on high value farmland. Cerbone said that's true.

Barber said remember, these permits, except for the Large Fill, are intended to look at erosion and sediment issues, they are not about starting a business. So the more I think about it, under the current regulations, you cannot accept compensation through the Geologic Hazards, the Grading & Erosion Control, or Minimal Impact, so we are just clarifying that is not an option in the Agricultural Fill permit. Specifically because that is where the issues popped up. I have not had that issue pop up in the other permits.

Ingle called for a motion. Kabeiseman moved that we continue this to the December 3<sup>rd</sup> hearing at 6:30 p.m., at this location for further deliberations and leave the public record open for an additional two weeks with no public testimony at the December 3<sup>rd</sup> hearing. Foster seconded.

Katherine Thomas, Assistant County Attorney, made a recommendation to consider leaving the record open until the next hearing because we have had situations where folks submit comments because they are not aware that the record is closed. That puts staff in a bit of a challenging position because they are not quite sure what to do with it. If they bring it to you at the hearing, the person who submitted the comment late may have some advantage over someone who thought they could not submit because the record was closed. It is something to consider as you make this motion. I know it is hard to get comments at the last minute, but it can put staff in a bind as to how to address them if the record is closed.

Kabeiseman said the concern I have is, it also puts staff and us in a bind when we get comments that we have not seen and do not have time to process before our hearing. So which bind do you like better? Cerbone said my preference would be to keep it open because we would rather consider all of the public testimony at this level before you make a formal recommendation to the Board. He suggested also allowing testimony at the December 3<sup>rd</sup> hearing.

Kabeiseman amended his motion to continue the hearing until 6:30 p.m., Monday, December 3<sup>rd</sup> at this location with the record open to written comments through that time and allow additional public testimony on the 3<sup>rd</sup>. Foster agreed.

Foster said it would really be helpful if we could get your public comments before the meeting. Barber added, I often gets comments on the Monday of the hearing and that is not a really good day for me to digest comments and be thoughtful. I would recommend, at a minimum, the Friday before a hearing, and even better, the Wednesday or Thursday before.

Ingle said I assume that staff is going to incorporate some of the things we initially talked about; the ODA amendment, we don't need to restate that in the motion? Thomas said the motion to continue is enough for now because you are not making a vote on the actual substance of the matter.

Motion passed unanimously.

#### **VI. Briefing: Geologic Hazards Regulations (PC-2018-10262)**

Barber stated we wanted to prime the Commissioners on a project related to updating our slope hazard map that would be used in the Geologic Hazards permit we just talked about. We will also look at the technical regulations that help assure our citizens are safe when they are in one of these geologic hazard areas to make sure the standards align with the best practices.

We call this project Geologic Hazards Regulations, which is the new permit title for Hillside Development. We are using a number of sources to start to think about the scope of this project, primarily the Multnomah County Comprehensive Plan, where there are a number of policies that direct us to look at the latest science related to landslide mapping and regulation.

We also have the Multnomah County Multi-Jurisdictional Natural Hazards Mitigation Plan, which is a plan that engaged east county cities in 2017, to recognize that many of the hazards we face, like landslides and wildfires and floods, do not stop at these jurisdictional boundaries. So instead of every jurisdiction having their own plan, we joined together in the hopes of finding efficiency. So it may be more than one jurisdiction working on mitigating a particular hazard.

There is also the Climate Action Plan which has some objectives that relate to mitigating landslides. This is a timely project because the Oregon Department of Geology and Mineral Industries (DOGAMI) recently released a study to identify where landslides have happened, and where they may potentially happen in the future, which is known as susceptibility. In looking at those maps, we have a pretty good picture of landslide risks in our jurisdiction.

Barber proceeded with an overhead presentation of his briefing.

Kabeiseman said I was surprised the landslide maps increased area by only about three percent, yet buildings went from 1,272 to 4,811. Cerbone said some of those areas on historic mapped landslides are actually not on steep slopes. Historically, we did not have the information to determine where it was appropriate and where it was not, so a lot of these structures are built on the fan from the landslide. Now that we have this new data, we can overlay that. Kabeiseman said you indicated that the new data gives us a lot more information. That data also increases the level of complexity, so we want to be smart about how to use that complexity and not make it

overwhelming for landowners. Cerbone said DLCDC is in the process of writing guidelines for how to implement this new level of data, and we will work closely with them.

**VII. Director's Comments:**

Cerbone said he is in the process of hiring an assistant planner, so we should hopefully have a new team member soon. Barber also noted that we have three upcoming vacancies on the Planning Commission, Commissioners Lorenz, Denney, and Silodor. We launched a recruitment that closed in early October and received thirteen applications. I will have updates as soon as I can.

Meeting adjourned at 8:55 p.m.

**The next Planning Commission meeting is scheduled for December 3, 2018.**

Recording Secretary,

Kathy Fisher