

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON**

**ORDINANCE NO. 1309**

Amending MCC Chapters 29, 38 and 39 to Make Technical Corrections and Other Housekeeping Code Amendments.

(Language ~~stricken~~ is deleted; underlined language is new.)

**The Multnomah County Board of Commissioners Finds:**

- a. Periodically, there is a need to amend County land use policies or regulations to address a change in law or circumstance; to implement elements of the Multnomah County Comprehensive Plan; or to make technical corrections for, among other things, clarification and consistency (commonly referred to as “housekeeping amendments”). Having identified such need, the Multnomah County Planning Commission recommended the adoption of this ordinance to the Board of County Commissioners. The Planning Commission made such recommendation through adoption of the resolution described below and pursuant to its authority in MCC 39.1645, 38.0340 and in ORS 215.110.
- b. Planning Commission Resolution No. PC 2020-13166 relates to technical corrections and similar “housekeeping” amendments to the Zoning Code to ensure, among other things, clarity and consistency in the Code.
- c. Code amendments include elimination of unnecessarily gendered terms, technical amendments involving code citation and numbering corrections, spelling corrections, and clarifying text.
- d. Amendments include corrections to code errors and omissions resulting from the 2018 code consolidation project.
- e. Amendments to the Code Compliance rules and Significant Environmental Concern rules to make it easier to make minor property improvements such as solar installations and heat pumps.
- f. Amendments include updates to reflect changes in the Oregon Revised Statutes, such as specifying that for the purposes of non-conforming uses, a use is not considered interrupted or abandoned for any period while a federal, state or local emergency order temporarily limits or prohibits the use or the restoration or replacement of the use.
- g. The Planning Commission held a public hearing on July 25, 2022, during which all interested persons were given the opportunity to appear and be heard. Notice of the Planning Commission’s hearing was published in the Oregonian newspaper and on the website of the Multnomah County Land Use Planning Program. Individual notice under ORS 215.503 (commonly referred to as “Ballot Measure 56 notice”) was not required because this ordinance will not amend any element of the county’s comprehensive plan, enact a new comprehensive plan, change any base zoning classification, or limit or prohibit any land use previously allowed in any affected zone.

h. The Planning Commission's recommendation is sound and derives from the proper execution of its duties and authority. It is in the public interest to adopt this ordinance.

**Multnomah County Ordains as Follows:**

**Section 1.** MCC 29.105 is amended as follows:

**§ 29.105 PLANS AND SPECIFICATIONS.**

\* \* \*

(D) Exception: The building official may waive the submission of plans, calculations or other data ~~if he finds upon finding~~ that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this code.

**Section 2.** MCC 29.573 is amended as follows:

**§ 29.573 RULES FOR DRAINAGE FACILITIES.**

\* \* \*

(E) Construction details and inspection, including:

- (1) Materials;
- (2) ~~Manholes~~ Maintenance-holes;

\* \* \*

**Section 3.** MCC 38.0030 is amended as follows:

**§ 38.0030 EXISTING USES AND DISCONTINUED USES.**

\* \* \*

(D) Changes to Existing Uses and Structures: Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to this Management Plan.

~~(1) Expansion of Existing Commercial and Multifamily Residential Uses: In the Special Management Area, existing commercial and multi-family residential uses may expand as necessary for successful operation on the Dedicated Site, subject to MCC 38.0045. Expansion beyond the Dedicated Site is prohibited.~~

(2) Conversion of Existing Industrial Uses in the General Management Area: In the General Management Area, existing industrial uses may convert to less intensive uses, subject to MCC 38.0045. A less intensive use is a commercial, recreation or residential use with fewer adverse effects upon scenic, cultural, natural and recreation resources.

(32) Uses involving the exploration, development or production of sand, gravel or crushed rock in the Special Management Areas may continue when:

\* \* \*

**Section 4.** MCC 38.0045 is amended as follows:

**§ 38.0045 REVIEW AND CONDITIONAL USE APPLICATIONS – SUBMITTAL REQUIREMENTS.**

\* \* \*

(C) The Planning Director may require some or all required application materials in (1) through (4) above to be submitted electronically.

**Section 5.** MCC 38.0320 is amended as follows:

**§ 38.0320 OFFICERS AND STAFF.**

(A) Each year ~~The the~~ Commission shall, ~~at or before its first meeting in April each year,~~ elect and install from among its members a chair and vice-chair. The Commission may elect and install from among its members a second vice-chair. If there is a vacancy in any officer position, the Commission shall fill such vacancy by appointing an officer at the first regular meeting following the vacancy.

\* \* \*

**Section 6.** MCC 38.0560 is amended as follows:

**§ 38.0560 CODE COMPLIANCE AND APPLICATIONS.**

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all applicable provisions of the Multnomah County ~~Land Use Code~~ and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or
- (2) It is necessary to protect public safety; or
- (3) It is for work related to and within a valid easement over, on or under an affected property.

(4) It brings a non-conforming structure or non-conforming use into compliance with current regulations; or

(5) The Planning Director determines the development qualifies as a minor project. For purposes of this provision, a minor project is defined as small in scale, located outside a Flood Hazard zone or Geologic Hazard overlay, intended for the primary benefit of the residents, farm uses, or natural habitat on the subject property and will meet all other applicable zoning and building regulations. A minor project shall qualify under at least one of the following categories:

(a) Request for trade permits (such as electrical, mechanical and/or plumbing) that does not change the use of a structure or property; or

(b) Free standing renewable energy and heating systems including, but not limited to solar (including solar panels), geothermal and wind generated systems; or

(c) Roof mounted solar renewable energy (including solar panels) and solar heating systems not exceeding the size of a structure's roof area, or roof height; or

(d) Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators, energy storage systems, water pumps, and similar equipment; or

(e) Heating oil, propane and similar tanks; or

(f) Development requests to protect or enhance natural resources, such as but not limited to water quality or wildlife habitat.

\* \* \*

**Section 7.** MCC 38.0685 is amended as follows:

**§ 38.0685 EXPIRATION AND EXTENSION OF A TYPE I DECISION.**

\* \* \*

(F) Notwithstanding Subsections (A), (B), (C), (D) or (E) of this section, for uses in Chapter 38 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.

**Section 8.** MCC 38.0690 is amended as follows:

**§ 38.0690 EXPIRATION OF A TYPE II OR TYPE III DECISION.**

\* \* \*

(H) Notwithstanding Subsections (A), (B), (C), (D), (E), (F) or (G) of this section, for uses in Chapter 38 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.

**Section 9.** MCC 38.0780 is amended as follows:

**§ 38.0780 EX PARTE CONTACT, CONFLICT OF INTEREST AND BIAS.**

\* \* \*

(B) Conflict of Interest.

(1) Planning Commission. A member of the Planning Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest: the member or the spouse, ~~brother, sister~~ sibling, child, parent, ~~father-in-law, mother~~ parent-in-law of the member; any business in which the member is then serving or has served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the Planning Commission where the action is being taken.

\* \* \*

**Section 10.** MCC 38.2025 is amended as follows:

**§ 38.2025 REVIEW USES.**

(A) The following uses may be allowed on lands designated GGF, pursuant to MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

(1) On lands designated GGF– 20 and GGF– 40, one single-family dwelling on a legally created and existing parcel upon enrollment in the state’s forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with MCC 38.7305 and MCC 38.7315. A declaration shall be signed by the landowner and recorded into county deed records specifying that the owners, successors, ~~heirs-~~ beneficiaries and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated GGF– 20, GGF–40, GGF– 80, GGA– 20 and GGA– 40.

\* \* \*

(B) The following uses may be allowed on lands designated GSF pursuant to MCC 38.0530 (B) when the use or development will be sited to minimize the loss of land suitable for the production of forest products and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

\* \* \*

(6) One single family dwelling on a parcel of 40 contiguous acres or larger if an approved Forest Management Plan demonstrates that such dwelling shall be necessary for and accessory to forest uses. The Forest Management Plan shall demonstrate the following:

\* \* \*

(f) A declaration is signed by the landowner and recorded into county deed records specifying that the owners, successors, ~~heirs~~ beneficiaries, and assigns of the subject property are aware that adjacent and nearby operations are entitled to carry on accepted agricultural or forest practices.

\* \* \*

**Section 11.** MCC 38.2225 is amended as follows:

**§ 38.2225 REVIEW USES.**

(A) The following uses may be allowed on lands designated GGA pursuant to the provisions of MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

\* \* \*

(9) On lands designated GGA– 40, a second single-family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling which is included in, or is eligible for inclusion in, the National Register of Historic Places based on the criteria for use in evaluating the eligibility of cultural resources contained in the National Register Criteria for Evaluation (36 CFR Part 60.4), and it meets one or more of the following:

\* \* \*

(c) The dwelling embodies the distinctive characteristics of a type, period, or method of construction, or represent the work of a ~~master~~ skilled craftsman, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or

\* \* \*

(11) On lands designated GGA– 40, a single family dwelling for an agricultural operator’s relative provided that:

(a) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator’s spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, ~~brother or sister or sibling~~ sibling;

\* \* \*

(c) The operation is a commercial enterprise as determined by MCC 38.2225 (A) ~~(5)-(8)~~ (8) (c).

\* \* \*

**Section 12.** MCC 38.2230 is amended as follows:

**§ 38.2230 CONDITIONAL USES.**

(A) The following conditional uses may be allowed on lands designated GGA, pursuant to the provisions of MCC 38.0045 and 38.7300.

\* \* \*

(15) On lands designated GGA– 40, on a parcel which was legally created and existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural use upon a demonstration that:

\* \* \*

**Section 13.** MCC 38.7035 is amended as follows:

**§ 38.7035 GMA SCENIC REVIEW CRITERIA**

\* \* \*

(B) All Review Uses and Conditional Uses topographically visible from Key Viewing Areas:

\* \* \*

(14) The following standards shall apply to new landscaping used to screen development from key viewing areas:

\* \* \*

(d) Landscaping shall be installed as soon as practicable, and prior to project completion. ~~Applicant~~–The property owner(s), and their successor(s) in interest are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

\* \* \*

**Section 14.** MCC 38.7045 is amended as follows:

**§ 38.7045 GMA CULTURAL RESOURCE REVIEW CRITERIA.**

\* \* \*

(G) If the Evaluation of Significance demonstrates that the affected cultural resources are not significant, the Planning Director shall submit a copy of all cultural resource survey reports to the Gorge Commission, SHPO, the tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC 38.7045 (E) (1). In such circumstances, SHPO and the tribal governments are provided this copy for concurrence.

\* \* \*

(2) The Planning Director shall find the cultural resources significant and require an Assessment of Effect if the Evaluation of Significance or comments received indicate either of the following:

(a) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for use in evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4). Cultural resources are eligible for the National Register of Historic Places if they possess integrity of location, design, setting, materials, ~~workmanship~~ artisanship, feeling, and association. In addition, they must meet one or more of the following criteria:

\* \* \*

3. Embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a ~~master~~ skilled craftsperson, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or

\* \* \*

(H) An Assessment of Effect shall meet the following standards:

(1) The Assessment of Effect shall be based on the criteria published in Protection of Historic Properties (36 CFR Part 800.5) and shall incorporate the results of the Reconnaissance or Historic Survey and the Evaluation of Significance. All documentation shall follow the requirements listed in 36 CFR Part 800.11.

\* \* \*

(b) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, ~~workmanship~~ artisanship, feeling, or association [36 CFR Part 800.5]. Adverse effects on cultural resources include, but are not limited to:

\* \* \*

**Section 15.** MCC 38.7320 is amended as follows:

**§ 38.7320 TEMPORARY HEALTH HARDSHIP DWELLING.**

\* \* \*

(B) The Planning Director may grant a Temporary Health Hardship Permit to allow occupancy of a temporary dwelling on a parcel in conjunction with a single-family dwelling allowed in the base zone based on the following findings:

(1) The person with the health hardship is either one of the property owners or is a relative of one of the property owners occupying the principal dwelling. For the purposes of this section a relative is defined as a grandparent, grandchild, parent, child, ~~brother or sister~~ sibling, ~~wife, husband~~ spouse, ~~brother-in-law, sister-sibling-in-law, son-in-law, daughter~~ child-in-law, ~~mother-in-law, father~~ parent-in-law, ~~aunt, uncle~~ sibling of a parent, niece, nephew child of a sibling, first cousin, step-parent, step-child, step-grandparent, or step-grandchild ~~either by blood or legal relationship~~.



**Section 16.** MCC 38.7380 is amended as follows:

**§ 38.7380 SPECIAL USES IN HISTORIC BUILDINGS.**

\* \* \*

(F) The following criteria apply to all proposed Special Uses in Historic Buildings in addition to the Site Review Criteria of MCC 38.7000-38.7085.

\* \* \*

(4) Agricultural and Forest Lands.

\* \* \*

(c) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, ~~heirs~~ beneficiaries and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on nearby lands.

\* \* \*

**Section 17.** MCC 38.7705 is amended as follows:

**§ 38.7705 DEFINITIONS.**

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

\* \* \*

*Person* means a natural person, firm, partnership, association, social ~~or fraternal~~ organization, corporation, trust, estate, receiver, syndicate, branch of government, or any group or combination acting as a unit.

\* \* \*

**Section 18.** MCC 38.8010 is amended as follows:

**§ 38.8010 IMPROVEMENT AGREEMENT.**

\* \* \*

(B) Provision that the applicant file with the County Engineer a maintenance bond, on forms

provided by the Engineer, guaranteeing the materials and ~~workmanship~~ quality in the improvements required by this Chapter against defects for a period of 12 months following the issuance of a certificate of acceptance by the County Engineer; and

\* \* \*

**Section 19.** MCC 39 is amended as follows:

**CHAPTER 39 – MULTNOMAH COUNTY ZONING CODE**

§§:

**PART 1 – ADMINISTRATION, PROCEDURES, ENFORCEMENT, PERMITS AND FEES**

***PART 1.A - GENERAL PROVISIONS***

- 39.1000- Title
- 39.1005 Policy Purpose
- 39.1010 Severability
- 39.1015 Zoning Map

\* \* \*

***PART 1.B – PROCEDURES***

\* \* \*

- 39.1223 Notice to Other Parties of Adopted Changes

\* \* \*

- 39.1250 Code Compliance and Applications

\* \* \*

***PART 1.C – VIOLATIONS, ENFORCEMENT AND FINES***

\* \* \*

- ~~39.1515 Code Compliance and Applications~~

\* \* \*

- 39.4645 Access

**PART 4.C.6 – ORIENT ~~COMMERCIAL RESIDENTIAL~~ COMMERCIAL INDUSTRIAL (OCI)**

- 39.4650- Purpose

\* \* \*

***PART 8.E – ACCESSORY STRUCTURES BUILDINGS – CONDITION OF APPROVAL***

39.8860- Condition of Approval – Accessory Buildings

\* \* \*

**Section 20.** MCC 39.1015 is added as follows:

**39.1015 ZONING MAP.**

(A) The designations, locations and boundaries of the respective districts and certain combinations thereof described in this Chapter are established as shown by appropriate color designations, symbol or short title identification upon the Multnomah County Zoning Map. The Zoning Map consists of a series of bound and indexed Sectional Zoning Maps numbered sheets until such time as the districts and subdistricts depicted on each respective Sectional Zoning Map are replaced by maps generated as electronic layers within a Geographic Information System (GIS). All GIS generated Zoning Maps replacing the Sectional Zoning Maps shall be legislatively adopted. The GIS-generated Zoning Maps depicting districts and subdistricts shall be periodically readopted to reflect more accurate mapping information as it becomes available. The Zoning Map and all pertinent information shown thereon is incorporated herein and is to be deemed as much a part of this Chapter as if fully set forth; however, if a conflict appears between the Zoning Map and the written portion of this Chapter, the written portion shall control.

(B) A paper version of the Zoning Map and each amendment thereto shall be and remain on file in the office of the Planning Director.

(1) The set of paper Zoning Maps with the cover page dated the 15th of November, 1962 and signed by the Board shall be deemed to be the accurate depiction of:

(a) The Zoning Maps first adopted for successive geographic areas from April 19, 1955 through December 11, 1958; and

(b) The Zoning Maps in effect from the date of first adoption through November 15, 1962.

(2) Unless clearly shown otherwise, a zoning district boundary that follows a public right-of-way shall be deemed to follow the centerline of the public right-of-way.

**Section 21.** MCC 39.1183 is amended as follows:

**§ 39.1183 EXPIRATION AND EXTENSION OF TYPE I DECISIONS.**

\* \* \*

(E) Notwithstanding Subsections (A), (B), (C), or (D) of this section, for uses in Chapter 39 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.

**Section 22.** MCC 39.1185 is amended as follows:

**§ 39.1185 EXPIRATION OF TYPE II OR TYPE III DECISIONS.**

\* \* \*

§ 39.1185(C)

(C) A Type II or III decision approving residential development on land zoned for Exclusive Farm Use or Commercial Forest Use outside of an urban growth boundary is subject to the following provisions:

\* \* \*

(2) For the purposes of this section, the expiration provisions in (a) and (b) shall also apply to all other Type II or III decisions associated with approval of the residential development, such as SEC or GHP permits.

\* \* \*

(G) Notwithstanding Subsections (A), (B), (C), (D), (E), or (F) of this section, for uses in Chapter 39 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.

**Section 23.** MCC 39.1215 is amended as follows:

**§ 39.1215 NOTICE OF LEGISLATIVE HEARINGS.**

(A) Notice of the date, time, place and subject of a legislative hearing before the Planning Commission shall be published in a newspaper of general circulation within the County at least ~~20~~ 10 days prior to the hearing and as required by law. The Planning Director shall also notify the Oregon Department of Land Conservation and Development (DLCD) 35 days prior to the initial public hearing or as required by law.

\* \* \*

**Section 24.** MCC 39.1223 is added as follows:

**§ 39.1223 NOTICE TO OTHER PARTIES OF ADOPTED CHANGES.**

(A) On the same day notice of an adopted change to the Comprehensive Plan or land use regulation(s) is submitted to DLCD notice shall also mail or otherwise deliver notice of the decision to persons that:

(1) Participated in the County proceedings that led to the decision to adopt the change to the Comprehensive Plan or the land use regulation; and

(2) Requested in writing to be provided with notice of the change to the Comprehensive Plan or the land use regulation.

(B) The notice to persons who participated and requested notice as required by subsection (A) above must:

(1) Clearly describe the decision;

(2) State the date of the decision;

(3) Indicate how and where the materials described in OAR 660-018-0040(3) may be obtained;

(4) Include a statement by the individual delivering the notice that identifies the date on which the notice was delivered and the individual delivering the notice;

(5) List the locations and times at which the public may review the decision and findings; and

(6) Explain the requirements for appealing the land use decision under ORS 197.830 to 197.845.

**Section 25.** MCC 39.1250 is added as follows:

***PART 1.B – PROCEDURES***

\* \* \*

**§ 39.1250 CODE COMPLIANCE AND APPLICATIONS.**

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property; or

(4) It brings a non-conforming structure or non-conforming use into compliance with current regulations; or

(5) The Planning Director determines the development qualifies as a minor project. For purposes of this provision, a minor project is defined as small in scale, located outside a Flood Hazard zone or Geologic Hazard overlay, intended for the primary benefit of the residents, farm uses, or natural habitat on the subject property and will meet all other applicable zoning and building regulations. A minor project shall qualify under at least one of the following categories:

(a) Request for trade permits (such as electrical, mechanical and/or plumbing) that does not change the use of a structure or property; or

(b) Accessory structure(s) with an individual footprint(s) up to 200 square feet. This includes a structural addition(s) or modification(s); or

(c) Free standing renewable energy and heating systems up to 400 square feet ground coverage including, but not limited to solar (including solar panels), geothermal and wind generated systems; or

(d) Roof mounted solar renewable energy (including solar panels) and solar heating systems not exceeding the size of a structure's roof area, or roof height; or

(e) Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators, energy storage systems, water pumps, and similar equipment; or

(f) Heating oil, propane and similar tanks; or

(g) Development requests to protect or enhance natural resources, such as but not limited to water quality or wildlife habitat.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

**Section 26.** MCC 39.1515 is removed as follows:

### ***1.C – VIOLATIONS, ENFORCEMENT AND FINES***

\* \* \*

### **~~§ 39.1515 CODE COMPLIANCE AND APPLICATIONS.~~**

~~Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.~~

~~(A) A permit or other approval, including building permit applications, may be authorized if:~~

~~(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or~~

~~(2) It is necessary to protect public safety; or~~

~~(3) It is for work related to and within a valid easement over, on or under an affected property.~~

~~(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.~~

**Section 27.** MCC 39.1620 is amended as follows:

**§ 39.1620 OFFICERS AND STAFF.**

(A) ~~Each year~~ The the Commission shall, ~~at or before its first meeting in April each year,~~ elect and install from among its members a chair and vice-chair. The Commission may elect and install from among its members a second vice-chair. If there is a vacancy in any officer position, the Commission shall fill such vacancy by appointing an officer at the first regular meeting following the vacancy.

\* \* \*

**Section 28.** MCC 39.2000 is amended as follows:

**§ 39.2000 DEFINITIONS.**

**Archeological Resource** – A district, site, building, structure or artifact which possesses material evidence of life and culture of the ~~prehistoric~~ pre-contact and historic past.

\* \* \*

**Community** – Any State or area or political subdivision thereof, or any ~~Indian tribe~~ tribal government or authorized tribal organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

\* \* \*

**Educational Institution** – A college or university supported by public or private funds, tuitions, contributions or endowments, giving advanced academic instruction as approved by a recognized accrediting agency, including ~~fraternity and sorority houses~~ collegiate residences, excluding elementary and high schools, and trade and commercial schools.

\* \* \*

**Fill** – The deposit (noun or verb) of any earth materials by motorized means for any purpose, including, but not limited to, stockpiling, storage, dumping, raising elevation or topography, and tracking materials such as mud onto a road surface with vehicle tires. Work conducted by hand without the use of motorized equipment is not filling. For the purposes of this code, fill does not include materials included in a design by a registered professional engineer to physically support and/or protect a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code.

\* \* \*

**Large Fill** – The cumulative deposit of more than 5,000 cubic yards of fill to a site within the 20-year period preceding the date of an application for a Large Fill permit and including the fill proposed in the Large Fill permit application. Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code is not included in this 5,000 cubic yard calculation. For purposes of this definition, the term site shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area. For purposes of this definition, the phrase same ownership shall refer to greater than possessory interests held by the same person or persons, spouse, minor age child, same partnership, corporation, trust or other entity, separately, in tenancy in common or by other form of title. Ownership shall be deemed to exist when a person or entity owns or controls ten percent or more of a lot or parcel, whether directly or through ownership or control or an entity having such ownership or control. For the purposes of this definition, the seller of a property by sales contract shall be considered to not have possessory interest.

\* \* \*

**Person** means a natural person, firm, partnership, association, social ~~or fraternal~~ organization, corporation, trust, estate, receiver, syndicate, branch of government, or any group or combination acting as a unit.

\* \* \*

**Section 29.** MCC 39.3005 is amended as follows:

**§ 39.3005- LOT OF RECORD – GENERALLY.**

\* \* \*

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a~~1~~) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b~~2~~) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:



~~1.~~(a) By a subdivision plat under the applicable subdivision requirements in effect at the time; or

~~2.~~(b) By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

~~3.~~(c) By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or

~~4.~~(d) By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

~~5.~~(e) “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

(e3) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

~~1.~~(a) Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

~~2.~~(b) An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

**Section 30.** MCC 39.4095 is amended as follows:

**§ 39.4095 HERITAGE TRACT DWELLINGS STANDARDS.**

(A) A heritage tract dwelling may be sited, subject to the following:

(1) On a tract:

\* \* \*

(f) Notwithstanding the same ownership grouping requirements of the Lot of Record section, the tract was acquired and owned continuously by the present owner:

\* \* \*

3. For purposes of this subsection, “owner” includes ~~the spouses in a marriage, son, daughter~~ child, child-in-law, parent, ~~brother, brother in law, sister, sister in law~~ sibling, sibling-in-law, son-in-law, daughter-in-law, parent-in-law, ~~aunt, uncle~~ sibling of a parent, niece, nephew child of a sibling,

stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

\* \* \*

**Section 31.** MCC 39.4115 is amended as follows:

**§ 39.4115 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES.**

All dwellings and structures shall comply with the approval criteria in (B) through (~~D~~E) below except as provided in (A). All exterior lighting shall comply with MCC 39.6850:

(A) For the uses listed in this subsection, the applicable development standards are limited as follows:

(1) Expansion of existing dwelling shall meet the development standards of MCC 39.4115(E).

(a) Expansion of 400 square feet or less additional ground coverage to an existing dwelling: ~~Not subject to~~ shall meet the development standards of MCC 39.4115(E);

(b) Expansion of more than 400 square feet additional ground coverage to an existing dwelling: Shall meet the development standards of MCC 39.4115(C) and (E);

(2) Replacement or restoration of a dwelling shall meet the development standards of MCC 39.4115(E).

(a) Replacement or restoration of a dwelling that is within the same foot-print of the original dwelling and includes less than 400 square feet of additional ground coverage: ~~Not s~~Subject to the development standards of MCC 39.4115(E);

(b) Replacement or restoration of a dwelling that is within the same foot-print of the original dwelling with more than 400 square feet of additional ground coverage: Shall meet the development standards of MCC 39.4115(C) and (E);

(c) Replacement or restoration of a dwelling that is not located within the footprint of the original dwelling but it is located where at least a portion of the replacement dwelling is within 100 feet of the original dwelling: Shall meet the development standards of MCC 39.4115(C) and (E).

(3) Accessory buildings shall meet the development standards of MCC 39.4115(E).

(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 39.4115(C) and (E);

(b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B) ~~and~~, (C) and (E);

(4) Temporary dwellings shall meet the development standards of MCC 39.4115(E).

(a) A temporary health hardship mobile home located within 100 feet of the existing dwelling: ~~Not subject to~~ shall meet the development standards of MCC 39.4115(E);

(b) A temporary health hardship mobile home located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B)~~and~~, (C) and (E);

(c) A temporary mobile home used during construction or reconstruction of a dwelling located within 100 feet of the dwelling under construction: ~~Not subject to~~ shall meet the development standards of MCC 39.4115(E);

(d) A temporary mobile home used during construction or reconstruction of a dwelling located farther than 100 feet of the dwelling under construction: Shall meet the development standards of MCC 39.4115(B)~~and~~, (C) and (E);

\* \* \*

(E) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the Lot of Record.

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

**Section 32.** MCC 39.4155 is amended as follows:

**§ 39.4155 EXCEPTIONS TO SECONDARY FIRE SAFETY ZONES.**

\* \* \*

(B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:

\* \* \*

(5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of subsection (B) (2) above are utilized. ~~Exception:~~ Expansions of existing single family dwellings as allowed by MCC 39.4075(A) shall not be required to meet this standard, but shall satisfy the standard of MCC 39.4115(C)(3) and (E).

\* \* \*

**Section 33.** MCC 39.4265 is amended as follows:

**§ 39.4265 STANDARDS FOR SPECIFIED FARM DWELLINGS.**

**(A) Farm Help Dwelling:** A farm help dwelling for a relative on real property used for farm use as provided in MCC 39.4225(B) is not allowed unless the dwelling is:

\* \* \*

(2) Occupied by a relative of the farm operator or the farm operator's spouse, if the farm operator does or will require the assistance of the relative in the management of the farm use. Qualifying relatives include, the spouses ~~in a marriage~~, ~~son~~, ~~daughter~~ child, parent, ~~brother~~ sibling, ~~brother in law~~, ~~sister~~, ~~sister in law~~ sibling-in-law, ~~son in law~~, ~~daughter in law~~ child-in-law, parent-in-law, ~~aunt~~, ~~uncle~~ sibling of a parent, ~~niece~~, ~~nephew~~ child of a sibling, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

\* \* \*

**(D) Heritage Tract Dwelling:** Notwithstanding the same ownership grouping requirements of the Lot of Record section, a single family heritage tract dwelling may be allowed on land not identified as high value farmland when:

\* \* \*

(8) For purposes of this subsection, and of dwellings considered under MCC 39.4230 (L) and (M), the following definitions apply:

(a) Owner includes the ~~wife~~, ~~husband~~ spouse, ~~son~~, ~~daughter~~ child, ~~mother~~, ~~father~~ parent, ~~brother~~ sibling, ~~brother in law~~ sibling-in-law, ~~sister~~, ~~sister in law~~, ~~son in law~~, ~~daughter in law~~ child-in-law, ~~mother in law~~, ~~father in law~~ parent-in-law, ~~aunt~~, ~~uncle~~ sibling of a parent, ~~nephew~~ child of a sibling, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members.

\* \* \*

**Section 34.** MCC 39.4325 is amended as follows:

**§ 39.4325 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

\* \* \*

(H) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by:

\* \* \*

(2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that ~~states he~~ recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

\* \* \*

**Section 35.** MCC 39.4701 is amended as follows:

**§ 39.4701 AREA AFFECTED.**

MCC 39.4700 through MCC 39.4732 shall apply to those lands designated ~~MUF-38~~ and MUF-19 on the Multnomah County Zoning Map.

**Section 36.** MCC 39.4717 is amended as follows:

**§ 39.4717 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

(A) Except as provided in MCC 39.3150, 39.4720, 39.4722 and 39.5300 through 39.5350, the minimum lot size in the MUF-19 zone shall be ~~according to the base zone designation on the Zoning Map,~~ as follows: ~~MUF-38.....38 acres~~ MUF-19.....19 acres.

\* \* \*

**Section 37.** MCC 39.4764 is amended as follows:

**§ 39.4764 USES PERMITTED UNDER PRESCRIBED CONDITIONS.**

\* \* \*

(F) Uses and structures customarily accessory or incidental to a permitted or approved use, including living quarters for a caretaker or ~~watchman~~ watchperson and a railroad right-of-way, trackage and related equipment;

\* \* \*

**Section 38.** MCC 39.4820 is amended as follows:

**§ 39.4820 USES.**

Except as otherwise provided in this Chapter, no building, structure or land shall be used and no building or structure shall be hereafter ~~no building, structure or land shall be used and no building or structure shall occur or be hereafter~~ erected, altered or enlarged in this base zone except for the uses listed in MCC 39.4822 through 39.4826 provided such uses occur on a Lot of Record.

**Section 39.** MCC 39.4955 is amended as follows:

**§ 39.4955 AMBULANCE SERVICE SUBSTATION AS A USE UNDER PRESCRIBED CONDITIONS**

\* \* \*

(E) The use is subject to the Design Review requirements of MCC 39.8000 through 39.8050. The Preliminary Design Review Plan shall incorporate the following features:

\* \* \*

(6) ~~Exterior lighting shall not be cast or reflected onto adjoining properties developed with or designated for residential use~~ All exterior lighting shall comply with MCC 39.6850;

\* \* \*

**Section 40.** MCC 39.5085 is amended as follows:

**§ 39.5085 GEOLOGIC HAZARDS PERMIT APPLICATION INFORMATION REQUIRED.**

\* \* \*

(B) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20-year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). Such calculations are not required for fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code. For purposes of this subsection, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

\* \* \*

**Section 41.** MCC 39.5090 is amended as follows:

**§ 39.5090 GEOLOGIC HAZARDS PERMIT STANDARDS.**

A Geologic Hazards (GH) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(A) The total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, and including the fill proposed in the GH permit application, shall not exceed 5,000 cubic yards. Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code is not included in this 5,000 cubic yard calculation. For purposes of this provision, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

\* \* \*

**Section 42.** MCC 39.5110 is amended as follows:

**§ 39.5110 STANDARDS TO ESTABLISH AN HP OVERLAY.**

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

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

\* \* \*

**Section 43.** MCC 39.5415 is amended as follows:

**§ 39.5415 DEFINITIONS.**

\* \* \*

**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 ~~heirs~~ beneficiaries 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.

\* \* \*

**Section 44.** MCC 39.5505 is amended as follows:

**§ 39.5505 AREA AFFECTED.**

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

<b>Resource Area <u>Zoning Overlay Designation</u></b>
<u>SEC: Significant Environmental Concern Area</u>
SEC-sw: Scenic Waterway Resource Area
SEC-v: Scenic Views Resource Area
SEC-w: Wetlands Resource Area
SEC-s: Streams Resource Area
SEC-wr: Water Resource Area
SEC-h: Wildlife Habitat Resource Area

\* \* \*

**Section 45.** MCC 39.5510 is amended as follows:

**§ 39.5510 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; provided however, that the location and design of any use, or change or alteration of a use ~~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~~ pre-contact or

anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.

**Section 46.** MCC 39.5515 is amended as follows:

**§ 39.5515 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 to buildings and other development associated with farm practices and agricultural uses 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 lawfully established 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-sw, 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 or a driveway'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 or Type C Home Occupation ~~that requires~~ including the addition of less than 400 square feet of ground coverage to the structure used for the Home Occupation.



(11) Alteration, repair, or replacement of septic system tanks, lines and drainfields and related components due to system failure.

(12) ~~Single~~ Utility poles necessary to provide service to the local area.

(13) Right-of-way widening, ~~and new surfacing, and vegetation removal~~ for existing rights-of-way when the additional right-of-way, ~~or surfacing, or vegetation removal~~ is deemed necessary by the County Engineer to ensure continuous width meet the needs of the traveling public.

(14) 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.

(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, and submitted to the County.

(16) ~~In the SEC, all SEC designations,~~ 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.

(17) One free standing renewable energy and heating system up to 400 square feet of ground coverage including but not limited to solar (including solar panels), geothermal and wind generated systems, provided any conduit through SEC-s or SEC-w areas is provided by directional boring.

~~(17)~~ (18) Routine repair and maintenance of structures, roadways, driveways, utility facilities, and landscaped areas that were in existence prior to November 30, 2000.

~~(18)~~ (19) 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, provided a Post Emergency Response permit is obtained and any mitigation work completed.

(20) Signs listed in MCC 39.6720 (A) through (F), MCC 39.6805 (Directional Signs), and MCC 39.6810 (Temporary Signs).

(21) Flag poles no taller than 35 feet above existing or finished grade (whichever is lower) designed to display national, state, or local recognized jurisdiction flags pursuant to the United States Flag Code or laws regulating the proper display of jurisdiction flags.

(22) Heating oil, propane and similar tanks up to 1,000 gallon capacity placed within 100 feet of a lawfully existing structure provided any pipes crossing through SEC-s or SEC-w areas are provided by directional boring.

(23) Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators and energy storage systems, water pumps, and similar equipment placed within 100 feet of a lawfully existing structure, provided any pipes or conduit crossing through SEC-s or SEC-w areas are provided by directional boring.

(24) The placement of utility infrastructure such as pipes, conduits and wires within an existing right-of-way.

(25) In the West of Sandy River Planning Area the uses and structures excepted in MCC 39.5550 (B) (1), (2), and (3).

(26) Within the SEC-v:

(a) Any modification or alteration to an existing exterior wall of a lawfully established structure that will be 100% screened from all IVAs by the structure itself.

(b) Placement of antennas and satellite dishes on an existing lawfully established structure.

(c) Concrete slabs, parking areas, and similar low profile structures no taller than 36 inches above initial grade.

\* \* \*

**Section 47.** MCC 39.5520 is amended as follows:

**§ 39.5520 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.

(g) In the SEC-wr overlay, the location of natural drainageways, springs, seeps, and wetlands on the site.

(3) The Planning Director may also require the applicant to provide the following:

(a) The location of the SEC-wr boundary, topography, or the location of development as determined by a registered professional surveyor or engineer;

(b) A scaled drawing of the building design and elevations that show the relationship between the building and existing and finished grades and existing or proposed vegetation;

(B) SEC-Water Resource: In addition to the information requirements listed in MCC 39.5520(A) above, the following information shall be submitted for applications within the SEC-wr overlay.

(1) A topographic map of the development area and adjacent areas of the site at contour intervals of five feet or less showing a delineation of the Water Area or Habitat Area as determined by a documented field survey, the location of all existing and proposed watercourses, drainageways, stormwater facilities, and utility installations;

(2) The location of wetlands;

(3) Information for the site from the adopted West of Sandy River Wildlife Habitat and Stream Corridor ESEE Report, the County Goal 5 Inventory;

(4) Preparation of plans and surveys - Inventories, assessment of existing conditions, and mitigation or restoration plans shall be prepared by a qualified professional such as a fish or wildlife biologist at the discretion of the Planning Director. Wetlands shall be identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual. Required reports include;

(a) An assessment of the existing condition of the Water Resource Area in accordance with MCC 39.5580 Table 2, Riparian/Vegetated Corridor Standards;

(b) An inventory of vegetation, including percentage ground and canopy coverage, and location of nuisance plants listed in MCC 39.5580 Table 1;

(c) A detailed Mitigation Plan as described in 39.5800 (F), if required;

(5) The applicant shall provide evidence that when federal or state requirements apply, that the agency has been contacted, and shall provide an assessment of whether the project can meet the requirements based on the agency response;

(6) The location of all existing trees of a caliper greater than six (6) inches in diameter at breast height (DBH);

(7) 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.

**Section 48.** MCC 39.5525 is amended as follows:

**§ 39.5525 APPLICABLE APPROVAL CRITERIA.**

(A) The approval criteria that apply to uses in areas designated SEC, 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:

<b>Zoning Overlay Designation</b>	<b>Approval Criteria (MCC#)</b>
<u>SEC</u>	<u>39.5540</u>
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 Type II Permit – 39.5560 and 39.5860

\* \* \*

**Section 49.** MCC 39.5540 is amended as follows:

**§ 39.5540 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 mMaps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

\* \* \*

**Section 50.** MCC 39.5545 is amended as follows:

**§ 39.5545 DEFINITIONS.**

**Development:** Any human-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. Any other activity that results in the removal of more than 10 percent of the existing vegetation in the Water Resource Area or Habitat Area on a lot or parcel.

\* \* \*

**Section 51.** MCC 39.5650 is amended as follows:

**§ 39.5650 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 mMaps.

\* \* \*

(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 Exterior lighting that is directed downward and sited, hooded and shielded so~~ that it is not highly visible from identified viewing areas and meets the Dark Sky Lighting Standards of MCC 39.6850. Shielding and hooding materials should be composed of nonreflective, opaque materials.

\* \* \*

**Section 52.** MCC 39.5800 is amended as follows:

**§ 39.5800- 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 (B) or (C) or (D) below are satisfied. An application shall not be approved unless it contains the site analysis information required in MCC 39.5520(A) and ~~(E)~~, and meets the general requirements in MCC 39.5560.

\* \* \*

(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 (~~EB~~) has been submitted.

\* \* \*

**Section 53.** MCC 39.6210 is amended as follows:

**§ 39.6210 PERMITS REQUIRED.**

(A) Unless exempt under this Code, whether under MCC 39.6215, 39.5080, 38.5510 or otherwise, no ground disturbing activity shall occur except pursuant to one of the following permits: a Minimal Impact Project (MIP) permit, an Erosion and Sediment Control permit (ESC), an Agricultural Fill permit (AF), a Geologic Hazards permit (GH), or a Large Fill permit (LF).

\* \* \*

(F) Implementation.

\* \* \*

(2) Inspection and enforcement. The director may take steps to ensure compliance with the requirements of ~~Part 6, Geologic Hazards permit requirements, and Large Fill permit requirements~~ any permit listed in subsection (A) and 39.6235, including but not limited to, inspections, peer review of engineering analysis (at the applicant's expense), post construction certification of the work, and the posting of a notice providing County contact information in the event that questions arise concerning work occurring on-site. The requirements of this subpart of MCC Chapter 39 shall be enforced by the planning director. If inspection by county staff reveals erosive conditions which exceed those prescribed by the permit, work may be stopped until appropriate correction measures are completed.

\* \* \*

**Section 54.** MCC 39.6225 is amended as follows:

**§ 39.6225 EROSION AND SEDIMENT CONTROL PERMIT.**

(A) An application for an Erosion and Sediment Control permit shall include two copies of each of the following:

\* \* \*

(2) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20-year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). Such calculations are not required for fill physically supporting and/or protecting a

structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code. For purposes of this subsection, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area;

(3) A written description of the ground disturbing activity and any associated development, including:

\* \* \*

(24) Surcharges to sanitary drainfields have been reviewed by the City of Portland Sanitarian or other agencies authorized to review waste disposal systems; and

(35) Any new discharges into public right-of-ways have complied with the governing agencies discharge review process;

(46) Written findings, together with any supplemental plans, maps, reports, or other information necessary to demonstrate compliance of the proposal with all applicable provisions of the Multnomah County code including Erosion and Sediment Control permit standards in subsection (B). Necessary reports, certifications, or plans may pertain to: engineering, soil characteristics, stormwater drainage control, stream protection, erosion and sediment control, and replanting.

(57) Approval of any new stormwater surcharges to sanitary drainfields by the City of Portland Sanitarian and any other agency having authority over the matter; and

(68) Approval of any new stormwater discharges into public right-of-ways by each governing agency having authority over the matter.

(B) An Erosion and Sediment Control (ESC) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(1) The total cumulative deposit of fill, excluding agricultural fill pursuant to an Agricultural Fill permit, on the site for the 20-year period preceding the date of the ESC permit application, and including the fill proposed in the ESC permit application, shall not exceed 5,000 cubic yards. Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code is not included in this 5,000 cubic yard calculation. For purposes of this section, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

\* \* \*

**Section 55.** MCC 39.6590 is amended as follows:

**§ 39.6590 MINIMUM REQUIRED OFFSTREET PARKING SPACES.**

(A) The following Residential Uses shall have at least the number of off-street parking spaces indicated:

\* \* \*

(4) Rooming ~~house or Boarding House~~, boarding house, or ~~Fraternity collegiate residence~~ - Two spaces plus one space for each three guest rooms.

\* \* \*

**Section 56.** MCC 39.6725 is amended as follows:

**§ 39.6725 PROHIBITED SIGNS.**

The following signs are prohibited and shall be removed:

- (A) Strobe lights and signs containing strobe lights which are visible beyond the property lines;
- (B) Signs placed on or painted on a motor vehicle or trailer and parked with the primary purpose of providing a sign not otherwise allowed for by this Subpart;
- (C) Abandoned signs;
- (D) Balloon signs; ~~and~~
- (E) Signs in the right-of-way in whole or in part, except signs legally erected for informational purposes by or on behalf of a government agency.
- (F) Electronic message centers;
- (G) Flashing signs;
- (H) Rotating signs;
- (I) Signs with moving parts;

**Section 57.** MCC 39.6745 is amended as follows:

**§ 39.6745 SIGNS GENERALLY.**

\* \* \*

- (C) Sign Features. Permanent signs may ~~have the following features:~~
- ~~(1) Signs may be indirectly illuminated downward onto the sign face.~~
  - ~~(2) Electronic message centers are not allowed.~~
  - ~~(3) Flashing signs are not allowed.~~
  - ~~(4) Rotating signs are not allowed.~~



~~(5) Moving parts are not allowed.~~

\* \* \*

**Section 58.** MCC 39.6805 is amended as follows:

**§ 39.6805 DIRECTIONAL SIGNS.**

Directional signs shall comply with the following provisions:

Maximum Sign Face Area:	Six Square Feet
Types of Signs Allowed:	Free Standing, Fascia, Projecting, Painted Wall
Maximum Height:	Free Standing 42 Inches Fascia and Projecting 8 Feet
Extensions into R/W:	Not Allowed
Lighting:	Indirectly illuminated downward onto the sign face
<del>Maximum Sign Face Area:</del>	<del>Six Square Feet</del>
Flashing Lights:	Not Allowed
Electronic Message Centers:	Not Allowed
Moving or Rotating Parts:	Not Allowed

**Section 59.** MCC 39.6850 is amended as follows:

**§ 39.6850 DARK SKY LIGHTING STANDARDS.**

\* \* \*

(B) The following exterior lighting is exempt from the requirements of paragraph (C) of this section:

\* \* \*

(7) Lighting in support of work necessary to protect, repair, maintain, or replace existing structures, utility facilities, service connections, roadways, driveways, accessory uses and exterior improvements in

response to emergencies pursuant to the provisions of MCC ~~35.0535~~ 39.6900, provided that after the emergency has passed, all lighting to remain is subject to the requirements of this section.

\* \* \*

**Section 60.** MCC 39.7015 is amended as follows:

**§ 39.7015 CONDITIONAL USE APPROVAL CRITERIA.**

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

\* \* \*

(8) ~~The~~ For uses in the West of Sandy River Planning Area, the use is limited in type and scale to primarily serve the needs of the rural area.

\* \* \*

**Section 61.** MCC 39.7207 is amended as follows:

**§ 39.7207 EXEMPTIONS.**

Ground disturbing activity occurring in association with the following uses is exempt from the Large Fill permit requirements:

(A) Fill associated with a State or County owned and maintained road or bridge that is designated as a Rural Collector or a Rural Arterial on the Multnomah County Functional Classification of Trafficways map. The Trafficways map is part of the County Transportation System Plan.

(B) Agricultural fill authorized under an Agricultural Fill permit. Agricultural fill proposed in the Geological Hazards overlay is not eligible for this exemption.

(C) Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code.

**Section 62.** MCC 39.7405 is amended as follows:

**§ 39.7405 CRITERIA FOR APPROVAL.**

\* \* \*

(E) The business operator shall be the person who applies for a Type C Home Occupation or a Home Based Business and who will hold a majority ownership interest in the business. The business operator

shall live full-time in the registered dwelling unit on the property and is the person responsible for strategic decisions and day-to-day operations of the business.

**Section 63.** MCC 39.7520 is amended as follows:

**§ 39.7520 USES.**

(A) Except as otherwise limited in the EFU, all CFU and OR base zones, the following Community Service Uses and those of a similar nature, may be permitted in any base zone when approved at a public hearing by the approval authority.

\* \* \*

(7) Private club, ~~fraternal~~social organization, lodge.

\* \* \*

**Section 64.** MCC 39.7525 is amended as follows:

**§ 39.7525 RESTRICTIONS.**

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

(A) Minimum yards in EFU, CFU (Note – not applicable to CFU-1 through CFU-5), MUA-20, RR, BRC, OCI, OR and PH-RC, UF-20, LR10, UF-20, MUF, SRC, and RC ~~Base~~ base zones:

\* \* \*

(F) In the MUA-20, RR, and BRC, SRC and RC base zones, the length of stay by a person or vehicle in a camp, campground, campsite or recreational vehicle park shall not exceed a total of 90 days during any consecutive 12 month period by an individual, group or family unless otherwise provided in State law. This provision is not applicable in the West of Sandy River Planning Area or Urban Planning Area.

(G) Other minimum yards, restrictions or limitations of use or development not required under this subsection shall be as provided in the base zone.

**Section 65.** MCC 39.7565 is amended as follows:

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

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

\* \* \*

(I) Site size and tower setbacks:

\* \* \*

(3) Placement of more than one tower on a lot shall be permitted, provided all setback, design and landscape requirements are met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of the towers on the site described in ~~MCC 36.6110 (C) (4)~~ 39.7560 (C) (4) will not lead to multiple failures in the event that one fails.

\* \* \*

**Section 66.** MCC 39.7705 is amended as follows:

**§ 39.7705 APPLICABILITY.**

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

(B) The requirements of ~~36.6175~~ 39.7700 through ~~36.6188~~ 39.7765 shall apply to all new wireless communications facilities (WCFs).

**Section 67.** MCC 39.7740 is amended as follows:

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

(A) General and Operating Requirements

\* \* \*

(4) Environmental Resource Protection.

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

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

\* \* \*

**Section 68.** MCC 39.8020 is amended as follows:

**§ 39.8020 APPLICATION OF REGULATIONS.**

(A) Except those exempted by MCC 39.8015, the provisions of MCC 39.8000 through 39.8050 shall apply to all conditional and community service uses, and to specified uses, in any base zone.

(B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 39.6590 shall only be subject to the following Design Review approval criteria: ~~MCC 36.8040~~ 39.8040 (A)(1)(a) and (1)(c), and (4) and (7), except when located in the RC, BRC, OR, OCI, PH-RC or SRC zone base zones.

(C) All other uses are subject to all of the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.

(D) Alteration or modification of the physical development previously reviewed through the Design Review process shall be subject to the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.

(E) In the urban bases zones the provisions of MCC 39.8000 through 39.8050 shall apply to the following:

~~(E) A multiplex, garden apartment or apartment dwelling or structure.~~

~~(F) A boarding, lodging or rooming house.~~

(G~~1~~) A hotel or motel.

(H~~2~~) A business or professional office or clinic.

(I~~3~~) A use listed in any commercial base zone.

(J~~4~~) A use listed in any manufacturing base zone.

**Section 69.** MCC 39.8040 is amended as follows:

**§ 39.8040 DESIGN REVIEW CRITERIA.**

(A) Approval of a final design review plan shall be based on the following criteria:

(1) Relation of Design Review Plan Elements to Environment.

(a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.

(b) The elements of the design review plan should promote energy conservation and provide protection from adverse ~~climate~~ weather conditions, noise, and air pollution.

\* \* \*

**Section 70.** MCC 39.8210 is amended as follows:

**§ 39.8210 ADJUSTMENT APPROVAL CRITERIA.**

\* \* \*

(E) If in the Rural Residential (RR), Rural Center (RC), Burlington Rural Center (BRC), Orient Residential (OR), Orient Commercial Industrial (OCI), Pleasant-Hill-Home Rural Center (PHRC), or Springdale Rural Center (SRC) base zones, the proposal will not significantly detract from the livability or appearance of the residential area.

\* \* \*

**Section 71.** MCC 39.8300 is amended as follows:

**§ 39.8300- NONCONFORMING USES.**

\* \* \*

(I) A use continued under this section is not considered interrupted or abandoned for any period while a federal, state or local emergency order temporarily limits or prohibits the use or the restoration or replacement of the use.

**Section 72.** MCC 39.8800 is amended as follows:

**§ 39.8800- TYPE A HOME OCCUPATION.**

\* \* \*

(D) The business operator shall be the person who registers for a Type A Home Occupation or a Home Based Business and who will hold a majority ownership interest in the business. The business operator shall live full-time in the registered dwelling unit on the property and is the person responsible for strategic decisions and day-to-day operations of the business.

**Section 73.** MCC 39.8850 is amended as follows:

**§ 39.8850- TYPE B HOME OCCUPATION.**

\* \* \*

(E) The business operator shall be the person who applies for a Type B Home Occupation or a Home Based Business and who will hold a majority ownership interest in the business. The business operator shall live full-time in the registered dwelling unit on the property and is the person responsible for strategic decisions and day-to-day operations of the business.

**Section 74.** MCC 39.8860 is amended as follows:

**§ 39.8860- CONDITION OF APPROVAL -- ACCESSORY STRUCTURES BUILDINGS.**

\* \* \*

**Section 75.** MCC 39.9410 is amended as follows:

**§ 39.9410 CATEGORY 1 AND CATEGORY 2 TENTATIVE PLAN MAP SPECIFICATIONS.**

(A) The tentative plan map shall be drawn on a sheet 18 x 24 inches or 11 x 17 inches in size or a size and format (including electronic) approved by the Planning Director. The scale of the map shall be 10, 20, 30, 40, 50, 60, 100 or 200 feet to the inch or multiples of ten of any of these scales. The map shall

include one copy of a scaled drawing of the proposed subdivision, on a sheet 8.5 x 11 inches or in a format specified by the Planning Director, suitable for reproduction, mailing and posting with the required notices.

(B) A future street plan may be combined with the tentative plan map or may be drawn on a sheet 8.5 x 11 inches or larger in size at a scale of one inch to one hundred feet or in a format specified by the Planning Director.

**Section 76.** MCC 39.9510 is amended as follows:

**§ 39.9510 LOTS AND PARCELS.**

\* \* \*

(D) A land division may include creation of a flag lot with a pole that does not satisfy the minimum frontage requirement of the applicable base zone, subject to the following:

(1) When a flag lot does not adjoin another flag lot, as shown in MCC 39.9510 Figure 1, the pole portion of the flag lot shall be at least 16 feet wide.

Figure 1.

\* \* \*

**Section 77.** MCC 39.9510 is amended as follows:

**§ 39.9550 STREETS, SIDEWALKS, PEDESTRIAN PATHS AND BIKEWAYS.**

\* \* \*

(G) Any street, pedestrian path or bikeway shall be improved as follows:

\* \* \*

(2) In a private street, in accordance with ~~the~~ this Chapter and the Multnomah County Road Rules and Design and Construction Manual;

\* \* \*

**Section 78.** MCC 39.9600 is amended as follows:

**§ 39.9600 IMPROVEMENT AGREEMENT.**

\* \* \*

(B) Provision that the applicant file with the County Engineer a maintenance bond, on forms

provided by the Engineer, guaranteeing the materials and ~~workmanship~~ quality in the improvements required by this Ordinance against defects for a period of 12 months following the issuance of a certificate of acceptance by the County Engineer; and

\* \* \*

**Section 79.** MCC 39.9700 is amended as follows:

**§ 39.9700 LEGALIZATION OF LOTS AND PARCELS THAT WERE PREVIOUSLY UNLAWFULLY DIVIDED.**

\* \* \*

(D) Within ~~90~~365 days of a final decision being approved under Subsection (A), (B) or (C) of this Section, the property owner(s) shall record a partition plat or subdivision plat, as appropriate, in accordance with the requirements of ORS Chapter 92.

\* \* \*

**Section 80.** This ordinance being necessary for the health, safety, and general welfare of the people of Multnomah County, an emergency is declared and adoption of these amendments described in Sections 1 through 79 of this Ordinance will take effect upon this Ordinance being signed by the Chair of the Board of County Commissioners, as provided by Charter Section 5.50.

FIRST READING AND ADOPTION:

August 18, 2022



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury, Chair

REVIEWED:

JENNY M. MADKOUR, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
David N. Blankfeld, Senior Assistant County Attorney

SUBMITTED BY: Jamie Waltz, Director, Department of Community Services



# Board Exhibit 1

BEFORE THE PLANNING COMMISSION  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. PC 2020-13166**

Recommend to the Board of County Commissioners the adoption of one or more ordinances amending MCC Chapters 29, 38 and 39 to make technical corrections and other housekeeping code amendments.

**The Planning Commission Finds:**

- a. The Planning Commission is authorized by Multnomah County Code Chapters 39.1645, 38.0340 and by ORS 215.110 to recommend to the Board of County Commissioners the adoption of Ordinances to amend the County Comprehensive Plan and land use regulations.
- b. Periodically, there is a need to make technical corrections and similar “housekeeping” amendments to the Zoning Code to ensure, among other things, clarity and consistency in the Code.
- c. The changes in this recommended ordinance include elimination of unnecessarily gendered terms, technical amendments involving code citation and numbering corrections, spelling corrections, and clarifying text.
- d. Amendments include corrections to code errors and omissions resulting from the 2018 code consolidation project.
- e. Amendments to the Code Compliance rules and Significant Environmental Concern rules to make it easier to make minor property improvements such as solar installations and heat pumps.
- f. Amendments include updates to reflect changes in the Oregon Revised Statutes, such as specifying that for the purposes of non-conforming uses, a use is not considered interrupted or abandoned for any period while a federal, state or local emergency order temporarily limits or prohibits the use or the restoration or replacement of the use.
- g. No property is being “rezoned,” as that term is defined in ORS 215.503, and therefore no mailed notice to individual property owners is required (“Ballot Measure 56” notice). Notice was published in the Oregonian newspaper and on the Land Use Planning Program website. The Planning Commission held a public hearing on July 25, 2022 where all interested persons were given an opportunity to appear and be heard.

**The Planning Commission resolves:**

The adoption by the Board of County Commissioners of one or more ordinances amending MCC Chapters 29, 38 and 39, in a form substantially similar to that approved by the Planning Commission, is hereby recommended.

**The Multnomah County Planning Commission Recommends as Follows:**

MCC 29.105 is amended as follows:

**§ 29.105 PLANS AND SPECIFICATIONS.**

\* \* \*

(D) Exception: The building official may waive the submission of plans, calculations or other data ~~if he finds~~ upon finding that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this code.

MCC 29.573 is amended as follows:

**§ 29.573 RULES FOR DRAINAGE FACILITIES.**

\* \* \*

(E) Construction details and inspection, including:

- (1) Materials;
- (2) ~~Manholes~~ Maintenance-holes;

\* \* \*

MCC 38.0030 is amended as follows:

**§ 38.0030 EXISTING USES AND DISCONTINUED USES.**

\* \* \*

(D) Changes to Existing Uses and Structures: Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to this Management Plan.

~~(1) Expansion of Existing Commercial and Multifamily Residential Uses: In the Special Management Area, existing commercial and multi-family residential uses may expand as necessary for successful operation on the Dedicated Site, subject to MCC 38.0045. Expansion beyond the Dedicated Site is prohibited.~~

~~(2)~~ Conversion of Existing Industrial Uses in the General Management Area: In the General Management Area, existing industrial uses may convert to less intensive uses, subject to MCC 38.0045. A less intensive use is a commercial, recreation or residential use with fewer adverse effects upon scenic, cultural, natural and recreation resources.

~~(3)~~ Uses involving the exploration, development or production of sand, gravel or crushed rock in the Special Management Areas may continue when:

\* \* \*

MCC 38.0045 is amended as follows:

**§ 38.0045 REVIEW AND CONDITIONAL USE APPLICATIONS – SUBMITTAL REQUIREMENTS.**

\* \* \*

(C) The Planning Director may require some or all required application materials in (1) through (4) above to be submitted electronically.

MCC 38.0320 is amended as follows:

**§ 38.0320 OFFICERS AND STAFF.**

(A) Each year ~~The the~~ Commission shall, ~~at or before its first meeting in April each year,~~ elect and install from among its members a chair and vice-chair. The Commission may elect and install from among its members a second vice-chair. If there is a vacancy in any officer position, the Commission shall fill such vacancy by appointing an officer at the first regular meeting following the vacancy.

\* \* \*

MCC 38.0560 is amended as follows:

**§ 38.0560 CODE COMPLIANCE AND APPLICATIONS.**

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all applicable provisions of the Multnomah County ~~Land Use Code~~ and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property.

(4) It brings a non-conforming structure or non-conforming use into compliance with current regulations; or

(5) The Planning Director determines the development qualifies as a minor project. For purposes of this provision, a minor project is defined as small in scale, located outside a Flood Hazard zone or Geologic Hazard overlay, intended for the primary benefit of the residents, farm uses, or natural habitat on the subject property and will meet all other applicable zoning and building regulations. A minor project shall qualify under at least one of the following categories:

(a) Request for trade permits (such as electrical, mechanical and/or plumbing) that does not change the use of a structure or property; or

(b) Free standing renewable energy and heating systems including, but not limited to solar (including solar panels), geothermal and wind generated systems; or

(c) Roof mounted solar renewable energy (including solar panels) and solar heating systems not exceeding the size of a structure's roof area, or roof height; or

(d) Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators, energy storage systems, water pumps, and similar equipment; or

(e) Heating oil, propane and similar tanks; or

(f) Development requests to protect or enhance natural resources, such as but not limited to water quality or wildlife habitat.

\* \* \*

MCC 38.0685 is amended as follows:

**§ 38.0685 EXPIRATION AND EXTENSION OF A TYPE I DECISION.**

\* \* \*

(F) Notwithstanding Subsections (A), (B), (C), (D) or (E) of this section, for uses in Chapter 38 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.

MCC 38.0690 is amended as follows:

**§ 38.0690 EXPIRATION OF A TYPE II OR TYPE III DECISION.**

\* \* \*

(H) Notwithstanding Subsections (A), (B), (C), (D), (E), (F) or (G) of this section, for uses in Chapter 38 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.

MCC 38.0780 is amended as follows:

**§ 38.0780 EX PARTE CONTACT, CONFLICT OF INTEREST AND BIAS.**

\* \* \*

(B) Conflict of Interest.

(1) Planning Commission. A member of the Planning Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest: the member or the spouse, ~~brother, sister~~ sibling, child, parent, ~~father-in-law, mother~~ parent-in-law of the member; any business in which the member is then serving or has served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the Planning Commission where the action is being taken.

\* \* \*

MCC 38.2025 is amended as follows:

**§ 38.2025 REVIEW USES.**

(A) The following uses may be allowed on lands designated GGF, pursuant to MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

(1) On lands designated GGF– 20 and GGF– 40, one single-family dwelling on a legally created and existing parcel upon enrollment in the state’s forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with MCC 38.7305 and MCC 38.7315. A declaration shall be signed by the landowner and recorded into county deed records specifying that the owners, successors, ~~heirs~~ beneficiaries and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated GGF– 20, GGF–40, GGF– 80, GGA– 20 and GGA– 40.

\* \* \*

(B) The following uses may be allowed on lands designated GSF pursuant to MCC 38.0530 (B) when the use or development will be sited to minimize the loss of land suitable for the production of forest products and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

\* \* \*

(6) One single family dwelling on a parcel of 40 contiguous acres or larger if an approved Forest Management Plan demonstrates that such dwelling shall be necessary for and accessory to forest uses. The Forest Management Plan shall demonstrate the following:

\* \* \*

(f) A declaration is signed by the landowner and recorded into county deed records specifying that the owners, successors, ~~heirs~~ beneficiaries, and assigns of the subject property are aware that adjacent and nearby operations are entitled to carry on accepted agricultural or forest practices.

\* \* \*

MCC 38.2225 is amended as follows:

**§ 38.2225 REVIEW USES.**

(A) The following uses may be allowed on lands designated GGA pursuant to the provisions of MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

\* \* \*

(9) On lands designated GGA– 40, a second single-family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling which is included in, or is eligible for inclusion in, the National Register of Historic Places based on the criteria for use in evaluating the eligibility of cultural resources contained in the National Register Criteria for Evaluation (36 CFR Part 60.4), and it meets one or more of the following:

\* \* \*

(c) The dwelling embodies the distinctive characteristics of a type, period, or method of construction, or represent the work of a ~~master~~ skilled craftsman, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or

\* \* \*

(11) On lands designated GGA– 40, a single family dwelling for an agricultural operator’s relative provided that:

(a) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator’s spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, ~~brother or sister~~ or sibling;

\* \* \*

(c) The operation is a commercial enterprise as determined by MCC 38.2225 (A) ~~(5)~~ (8) (c).

\* \* \*

MCC 38.2230 is amended as follows:

**§ 38.2230 CONDITIONAL USES.**

(A) The following conditional uses may be allowed on lands designated GGA, pursuant to the provisions of MCC 38.0045 and 38.7300.

\* \* \*

(15) On lands designated GGA– 40, on a parcel which was legally created and existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural use upon a demonstration that:

\* \* \*

MCC 38.7035 is amended as follows:

**§ 38.7035 GMA SCENIC REVIEW CRITERIA**

\* \* \*

(B) All Review Uses and Conditional Uses topographically visible from Key Viewing Areas:

\* \* \*

(14) The following standards shall apply to new landscaping used to screen development from key viewing areas:

\* \* \*

(d) Landscaping shall be installed as soon as practicable, and prior to project completion. ~~Applicant~~–The property owner(s), and their successor(s) in interest are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

\* \* \*

MCC 38.7045 is amended as follows:

**§ 38.7045 GMA CULTURAL RESOURCE REVIEW CRITERIA.**

\* \* \*

(G) If the Evaluation of Significance demonstrates that the affected cultural resources are not significant, the Planning Director shall submit a copy of all cultural resource survey reports to the Gorge Commission, SHPO, the tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC



38.7045 (E) (1). In such circumstances, SHPO and the tribal governments are provided this copy for concurrence.

\* \* \*

(2) The Planning Director shall find the cultural resources significant and require an Assessment of Effect if the Evaluation of Significance or comments received indicate either of the following:

(a) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for use in evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4). Cultural resources are eligible for the National Register of Historic Places if they possess integrity of location, design, setting, materials, ~~workmanship~~ artisanship, feeling, and association. In addition, they must meet one or more of the following criteria:

\* \* \*

3. Embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a ~~master-skilled craftsman~~, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or

\* \* \*

(H) An Assessment of Effect shall meet the following standards:

(1) The Assessment of Effect shall be based on the criteria published in Protection of Historic Properties (36 CFR Part 800.5) and shall incorporate the results of the Reconnaissance or Historic Survey and the Evaluation of Significance. All documentation shall follow the requirements listed in 36 CFR Part 800.11.

\* \* \*

(b) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, ~~workmanship~~ artisanship, feeling, or association [36 CFR Part 800.5]. Adverse effects on cultural resources include, but are not limited to:

\* \* \*

**Section 15.** MCC 38.7320 is amended as follows:

**§ 38.7320 TEMPORARY HEALTH HARDSHIP DWELLING.**

\* \* \*

(B) The Planning Director may grant a Temporary Health Hardship Permit to allow occupancy of a temporary dwelling on a parcel in conjunction with a single-family dwelling allowed in the base zone based on the following findings:

(1) The person with the health hardship is either one of the property owners or is a relative of one of the property owners occupying the principal dwelling. For the purposes of this section a relative is defined as a grandparent, grandchild, parent, child, ~~brother or sister sibling, wife, husband spouse, brother-in-law, sister-sibling-in-law, son-in-law, daughter~~ child-in-law, mother-in-law, father-parent-in-law, aunt, uncle sibling of a parent, niece, nephew child of a sibling, first cousin, step-parent, step-child, step-grandparent, or step-grandchild ~~either by blood or legal relationship.~~

**Section 16.** MCC 38.7380 is amended as follows:

**§ 38.7380 SPECIAL USES IN HISTORIC BUILDINGS.**

\* \* \*

(F) The following criteria apply to all proposed Special Uses in Historic Buildings in addition to the Site Review Criteria of MCC 38.7000-38.7085.

\* \* \*

(4) Agricultural and Forest Lands.

\* \* \*

(c) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, ~~heirs~~ beneficiaries and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on nearby lands.

\* \* \*

**Section 17.** MCC 38.7705 is amended as follows:

**§ 38.7705 DEFINITIONS.**

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

\* \* \*

*Person* means a natural person, firm, partnership, association, social or fraternal organization, corporation, trust, estate, receiver, syndicate, branch of government, or any group or combination acting as a unit.

\* \* \*

**Section 18.** MCC 38.8010 is amended as follows:

**§ 38.8010 IMPROVEMENT AGREEMENT.**

\* \* \*

(B) Provision that the applicant file with the County Engineer a maintenance bond, on forms provided by the Engineer, guaranteeing the materials and ~~workmanship~~ quality in the improvements required by this Chapter against defects for a period of 12 months following the issuance of a certificate of acceptance by the County Engineer; and

\* \* \*

**Section 19.** MCC 39 is amended as follows:

**CHAPTER 39 – MULTNOMAH COUNTY ZONING CODE**

**§§:**

**PART 1 – ADMINISTRATION, PROCEDURES, ENFORCEMENT, PERMITS AND FEES**

***PART 1.A - GENERAL PROVISIONS***

39.1000- Title  
39.1005 Policy Purpose  
39.1010 Severability  
39.1015 Zoning Map

\* \* \*

***PART 1.B – PROCEDURES***

\* \* \*

39.1223 Notice to Other Parties of Adopted Changes

\* \* \*

39.1250 Code Compliance and Applications

\* \* \*

***PART 1.C – VIOLATIONS, ENFORCEMENT AND FINES***

\* \* \*

39.1515 ——— Code Compliance and Applications

\* \* \*

39.4645        Access

**PART 4.C.6 – ~~ORIENT COMMERCIAL RESIDENTIAL~~ COMMERCIAL INDUSTRIAL  
(OCI)**

39.4650-       Purpose

\* \* \*

***PART 8.E – ~~ACCESSORY STRUCTURES BUILDINGS~~ – CONDITION OF APPROVAL***

39.8860-       Condition of Approval – Accessory Buildings

\* \* \*

**Section 20.**    MCC 39.1015 is added as follows:

**39.1015 ZONING MAP.**

(A) The designations, locations and boundaries of the respective districts and certain combinations thereof described in this Chapter are established as shown by appropriate color designations, symbol or short title identification upon the Multnomah County Zoning Map. The Zoning Map consists of a series of bound and indexed Sectional Zoning Maps numbered sheets until such time as the districts and subdistricts depicted on each respective Sectional Zoning Map are replaced by maps generated as electronic layers within a Geographic Information System (GIS). All GIS generated Zoning Maps replacing the Sectional Zoning Maps shall be legislatively adopted. The GIS-generated Zoning Maps depicting districts and subdistricts shall be periodically readopted to reflect more accurate mapping information as it becomes available. The Zoning Map and all pertinent information shown thereon is incorporated herein and is to be deemed as much a part of this Chapter as if fully set forth; however, if a conflict appears between the Zoning Map and the written portion of this Chapter, the written portion shall control.

(B) A paper version of the Zoning Map and each amendment thereto shall be and remain on file in the office of the Planning Director.

(1) The set of paper Zoning Maps with the cover page dated the 15th of November, 1962 and signed by the Board shall be deemed to be the accurate depiction of:

(a) The Zoning Maps first adopted for successive geographic areas from April 19, 1955 through December 11, 1958; and

(b) The Zoning Maps in effect from the date of first adoption through November 15, 1962.

(2) Unless clearly shown otherwise, a zoning district boundary that follows a public right-of-way shall be deemed to follow the centerline of the public right-of-way.

**Section 21.** MCC 39.1183 is amended as follows:

**§ 39.1183 EXPIRATION AND EXTENSION OF TYPE I DECISIONS.**

\* \* \*

(E) Notwithstanding Subsections (A), (B), (C), or (D) of this section, for uses in Chapter 39 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.

**Section 22.** MCC 39.1185 is amended as follows:

**§ 39.1185 EXPIRATION OF TYPE II OR TYPE III DECISIONS.**

\* \* \*

§ 39.1185(C)

(C) A Type II or III decision approving residential development on land zoned for Exclusive Farm Use or Commercial Forest Use outside of an urban growth boundary is subject to the following provisions:

\* \* \*

(2) For the purposes of this section, the expiration provisions in (a) and (b) shall also apply to all other Type II or III decisions associated with approval of the residential development, such as SEC or GHP permits.

\* \* \*

(G) Notwithstanding Subsections (A), (B), (C), (D), (E), or (F) of this section, for uses in Chapter 39 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.

**Section 23.** MCC 39.1215 is amended as follows:

**§ 39.1215 NOTICE OF LEGISLATIVE HEARINGS.**

(A) Notice of the date, time, place and subject of a legislative hearing before the Planning Commission shall be published in a newspaper of general circulation within the County at least 20 10 days prior to the hearing and as required by law. The Planning Director shall also notify the Oregon Department of Land Conservation and Development (DLCD) 35 days prior to the initial public hearing or as required by law.

\* \* \*

**Section 24.** MCC 39.1223 is added as follows:

**§ 39.1223 NOTICE TO OTHER PARTIES OF ADOPTED CHANGES.**

(A) On the same day notice of an adopted change to the Comprehensive Plan or land use regulation(s) is submitted to DLCD notice shall also mail or otherwise deliver notice of the decision to persons that:

(1) Participated in the County proceedings that led to the decision to adopt the change to the Comprehensive Plan or the land use regulation; and

(2) Requested in writing to be provided with notice of the change to the Comprehensive Plan or the land use regulation.

(B) The notice to persons who participated and requested notice as required by subsection (A) above must:

(1) Clearly describe the decision;

(2) State the date of the decision;

(3) Indicate how and where the materials described in OAR 660-018-0040(3) may be obtained;

(4) Include a statement by the individual delivering the notice that identifies the date on which the notice was delivered and the individual delivering the notice;

(5) List the locations and times at which the public may review the decision and findings; and

(6) Explain the requirements for appealing the land use decision under ORS 197.830 to 197.845.

**Section 25.** MCC 39.1250 is added as follows:

***PART 1.B – PROCEDURES***

\* \* \*

**§ 39.1250 CODE COMPLIANCE AND APPLICATIONS.**

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property; or

(4) It brings a non-conforming structure or non-conforming use into compliance with current regulations; or

(5) The Planning Director determines the development qualifies as a minor project. For purposes of this provision, a minor project is defined as small in scale, located outside a Flood Hazard zone or Geologic Hazard overlay, intended for the primary benefit of the residents, farm uses, or natural habitat on the subject property and will meet all other applicable zoning and building regulations. A minor project shall qualify under at least one of the following categories:

(a) Request for trade permits (such as electrical, mechanical and/or plumbing) that does not change the use of a structure or property; or

(b) Accessory structure(s) with an individual footprint(s) up to 200 square feet. This includes a structural addition(s) or modification(s); or

(c) Free standing renewable energy and heating systems up to 400 square feet ground coverage including, but not limited to solar (including solar panels), geothermal and wind generated systems; or

(d) Roof mounted solar renewable energy (including solar panels) and solar heating systems not exceeding the size of a structure's roof area, or roof height; or

(e) Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators, energy storage systems, water pumps, and similar equipment; or

(f) Heating oil, propane and similar tanks; or

(g) Development requests to protect or enhance natural resources, such as but not limited to water quality or wildlife habitat.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

**Section 26.** MCC 39.1515 is removed as follows:

***1.C – VIOLATIONS, ENFORCEMENT AND FINES***

\* \* \*

**~~§ 39.1515 CODE COMPLIANCE AND APPLICATIONS.~~**

~~Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.~~

~~(A) A permit or other approval, including building permit applications, may be authorized if:~~

~~(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or~~

~~(2) It is necessary to protect public safety; or~~

~~(3) It is for work related to and within a valid easement over, on or under an affected property.~~

~~(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.~~

**Section 27.** MCC 39.1620 is amended as follows:

**§ 39.1620 OFFICERS AND STAFF.**

(A) ~~Each year~~ The ~~the~~ Commission shall, ~~at or before its first meeting in April each year,~~ elect and install from among its members a chair and vice-chair. The Commission may elect and install from among its members a second vice-chair. If there is a vacancy in any officer position, the Commission shall fill such vacancy by appointing an officer at the first regular meeting following the vacancy.



\* \* \*

**Section 28.** MCC 39.2000 is amended as follows:

**§ 39.2000 DEFINITIONS.**

**Archeological Resource** – A district, site, building, structure or artifact which possesses material evidence of life and culture of the ~~prehistoric~~ pre-contact and historic past.

\* \* \*

**Community** – Any State or area or political subdivision thereof, or any ~~Indian-tribe~~ tribal government or authorized tribal organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

\* \* \*

**Educational Institution** – A college or university supported by public or private funds, tuitions, contributions or endowments, giving advanced academic instruction as approved by a recognized accrediting agency, including ~~fraternity and sorority houses~~ collegiate residences, excluding elementary and high schools, and trade and commercial schools.

\* \* \*

**Fill** – The deposit (noun or verb) of any earth materials by motorized means for any purpose, including, but not limited to, stockpiling, storage, dumping, raising elevation or topography, and tracking materials such as mud onto a road surface with vehicle tires. Work conducted by hand without the use of motorized equipment is not filling. For the purposes of this code, fill does not include materials included in a design by a registered professional engineer to physically support and/or protect a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code.

\* \* \*

**Large Fill** – The cumulative deposit of more than 5,000 cubic yards of fill to a site within the 20-year period preceding the date of an application for a Large Fill permit and including the fill proposed in the Large Fill permit application. Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code is not included in this 5,000 cubic yard calculation. For purposes of this definition, the term site shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area. For purposes of this definition, the phrase same ownership shall refer to greater than possessory interests held by the same person or persons, spouse, minor age child, same partnership, corporation, trust or other entity, separately, in tenancy in common or by other form of title. Ownership shall be deemed to exist when a person or entity owns or controls ten percent

or more of a lot or parcel, whether directly or through ownership or control or an entity having such ownership or control. For the purposes of this definition, the seller of a property by sales contract shall be considered to not have possessory interest.

\* \* \*

**Person** means a natural person, firm, partnership, association, social or fraternal organization, corporation, trust, estate, receiver, syndicate, branch of government, or any group or combination acting as a unit.

\* \* \*

**Section 29.** MCC 39.3005 is amended as follows:

**§ 39.3005- LOT OF RECORD – GENERALLY.**

\* \* \*

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

1. (a) By a subdivision plat under the applicable subdivision requirements in effect at the time; or

2. (b) By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

3. (c) By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or

4. (d) By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

5. (e) “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the

effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

(e~~3~~) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

1-(a) Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

2-(b) An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

**Section 30.** MCC 39.4095 is amended as follows:

**§ 39.4095 HERITAGE TRACT DWELLINGS STANDARDS.**

(A) A heritage tract dwelling may be sited, subject to the following:

(1) On a tract:

\* \* \*

(f) Notwithstanding the same ownership grouping requirements of the Lot of Record section, the tract was acquired and owned continuously by the present owner:

\* \* \*

3. For purposes of this subsection, “owner” includes ~~the spouses in a marriage, son, daughter child, child-in-law,~~ parent, ~~brother, brother-in-law, sister, sister-in-law~~ sibling, sibling-in-law, ~~son-in-law, daughter-in-law,~~ parent-in-law, ~~aunt, uncle~~ sibling of a parent, niece, nephew child of a sibling, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

\* \* \*

**Section 31.** MCC 39.4115 is amended as follows:

**§ 39.4115 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES.**

All dwellings and structures shall comply with the approval criteria in (B) through (D~~E~~) below except as provided in (A). All exterior lighting shall comply with MCC 39.6850:

(A) For the uses listed in this subsection, the applicable development standards are limited as follows:

(1) Expansion of existing dwelling shall meet the development standards of MCC 39.4115(E).

(a) Expansion of 400 square feet or less additional ground coverage to an existing dwelling: ~~Not subject to~~ shall meet the development standards of MCC 39.4115(E);

(b) Expansion of more than 400 square feet additional ground coverage to an existing dwelling: Shall meet the development standards of MCC 39.4115(C) and (E);

(2) Replacement or restoration of a dwelling shall meet the development standards of MCC 39.4115(E).

(a) Replacement or restoration of a dwelling that is within the same foot-print of the original dwelling and includes less than 400 square feet of additional ground coverage: ~~Not s~~Subject to the development standards of MCC 39.4115(E);

(b) Replacement or restoration of a dwelling that is within the same foot-print of the original dwelling with more than 400 square feet of additional ground coverage: Shall meet the development standards of MCC 39.4115(C) and (E);

(c) Replacement or restoration of a dwelling that is not located within the footprint of the original dwelling but it is located where at least a portion of the replacement dwelling is within 100 feet of the original dwelling: Shall meet the development standards of MCC 39.4115(C) and (E).

(3) Accessory buildings shall meet the development standards of MCC 39.4115(E).

(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 39.4115(C) and (E);

(b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B) ~~and,~~ (C) and (E);

(4) Temporary dwellings shall meet the development standards of MCC 39.4115(E).

(a) A temporary health hardship mobile home located within 100 feet of the existing dwelling: ~~Not subject to~~ shall meet the development standards of MCC 39.4115(E);

(b) A temporary health hardship mobile home located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B) ~~and,~~ (C) and (E);

(c) A temporary mobile home used during construction or reconstruction of a dwelling located within 100 feet of the dwelling under construction: ~~Not subject to~~ shall meet the development standards of MCC 39.4115(E);

(d) A temporary mobile home used during construction or reconstruction of a dwelling located farther than 100 feet of the dwelling under construction: Shall meet the development standards of MCC 39.4115(B) ~~and,~~ (C) and (E);

\* \* \*

(E) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the Lot of Record.

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

**Section 32.** MCC 39.4155 is amended as follows:

**§ 39.4155 EXCEPTIONS TO SECONDARY FIRE SAFETY ZONES.**

\* \* \*

(B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:

\* \* \*

(5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of subsection (B) (2) above are utilized. ~~Exception-~~Expansions of existing single family dwellings as allowed by MCC 39.4075(A) shall not be required to meet this standard, but shall satisfy the standard of MCC 39.4115(C)(3) and (E).

\* \* \*

**Section 33.** MCC 39.4265 is amended as follows:

**§ 39.4265 STANDARDS FOR SPECIFIED FARM DWELLINGS.**

**(A) Farm Help Dwelling:** A farm help dwelling for a relative on real property used for farm use as provided in MCC 39.4225(B) is not allowed unless the dwelling is:

\* \* \*

(2) Occupied by a relative of the farm operator or the farm operator's spouse, if the farm operator does or will require the assistance of the relative in the management of the farm use. Qualifying relatives include, the spouses ~~in a marriage~~, son, daughter child, parent, ~~brother~~ sibling, ~~brother-in-law~~, sister, sister-in-law sibling-in-law, son-in-law, daughter-in-law child-in-law, parent-in-law, ~~aunt, uncle~~ sibling of a parent, ~~niece, nephew~~ child of a sibling, stepparent, stepchild,

grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

\* \* \*

**(D) Heritage Tract Dwelling:** Notwithstanding the same ownership grouping requirements of the Lot of Record section, a single family heritage tract dwelling may be allowed on land not identified as high value farmland when:

\* \* \*

(8) For purposes of this subsection, and of dwellings considered under MCC 39.4230 (L) and (M), the following definitions apply:

(a) Owner includes the ~~wife, husband~~ spouse, ~~son, daughter~~ child, ~~mother, father~~ parent, ~~brother sibling, brother-in-law~~ sibling-in-law, ~~sister, sister-in-law~~, ~~son-in-law, daughter-in-law~~ child-in-law, ~~mother-in-law, father-in-law~~ parent-in-law, ~~aunt, uncle~~ sibling of a parent, ~~nephew~~ child of a sibling, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members.

\* \* \*

**Section 34.** MCC 39.4325 is amended as follows:

**§ 39.4325 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

\* \* \*

(H) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by:

\* \* \*

(2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that ~~states he~~ recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

\* \* \*

**Section 35.** MCC 39.4701 is amended as follows:

**§ 39.4701 AREA AFFECTED.**

MCC 39.4700 through MCC 39.4732 shall apply to those lands designated ~~MUF 38 and MUF-19~~ on the Multnomah County Zoning Map.

**Section 36.** MCC 39.4717 is amended as follows:

**§ 39.4717 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

(A) Except as provided in MCC 39.3150, 39.4720, 39.4722 and 39.5300 through 39.5350, the minimum lot size in the MUF-19 zone shall be according to the base zone designation on the Zoning Map, as follows: MUF 38.....38 acres MUF 19.....19 acres.

\* \* \*

**Section 37.** MCC 39.4764 is amended as follows:

**§ 39.4764 USES PERMITTED UNDER PRESCRIBED CONDITIONS.**

\* \* \*

(F) Uses and structures customarily accessory or incidental to a permitted or approved use, including living quarters for a caretaker or ~~watchman~~ watchperson and a railroad right-of-way, trackage and related equipment;

\* \* \*

**Section 38.** MCC 39.4820 is amended as follows:

**§ 39.4820 USES.**

Except as otherwise provided in this Chapter, no building, structure or land shall be used and no building or structure shall be hereafter ~~no building, structure or land shall be used and no building or structure shall occur or be hereafter~~ erected, altered or enlarged in this base zone except for the uses listed in MCC 39.4822 through 39.4826 provided such uses occur on a Lot of Record.

**Section 39.** MCC 39.4955 is amended as follows:

**§ 39.4955 AMBULANCE SERVICE SUBSTATION AS A USE UNDER PRESCRIBED CONDITIONS**

\* \* \*

(E) The use is subject to the Design Review requirements of MCC 39.8000 through 39.8050. The Preliminary Design Review Plan shall incorporate the following features:

\* \* \*

(6) ~~Exterior lighting shall not be cast or reflected onto adjoining properties developed with or designated for residential use~~ All exterior lighting shall comply with MCC 39.6850;

\* \* \*

**Section 40.** MCC 39.5085 is amended as follows:

**§ 39.5085 GEOLOGIC HAZARDS PERMIT APPLICATION INFORMATION REQUIRED.**

\* \* \*

(B) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20-year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). Such calculations are not required for fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code. For purposes of this subsection, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

\* \* \*

**Section 41.** MCC 39.5090 is amended as follows:

**§ 39.5090 GEOLOGIC HAZARDS PERMIT STANDARDS.**

A Geologic Hazards (GH) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(A) The total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, and including the fill proposed in the GH permit application, shall not exceed 5,000 cubic yards. Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code is not included in this 5,000 cubic yard calculation. For purposes of this provision, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

\* \* \*

**Section 42.** MCC 39.5110 is amended as follows:

**§ 39.5110 STANDARDS TO ESTABLISH AN HP OVERLAY.**

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



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

\* \* \*

**Section 43.** MCC 39.5415 is amended as follows:

**§ 39.5415 DEFINITIONS.**

\* \* \*

**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 beneficiaries 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.

\* \* \*

**Section 44.** MCC 39.5505 is amended as follows:

**§ 39.5505 AREA AFFECTED.**

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

<b>Resource Area <u>Zoning Overlay</u> Designation</b>
<u>SEC: Significant Environmental Concern Area</u>
SEC-sw: Scenic Waterway Resource Area
SEC-v: Scenic Views Resource Area
SEC-w: Wetlands Resource Area
SEC-s: Streams Resource Area
SEC-wr: Water Resource Area
SEC-h: Wildlife Habitat Resource Area

\* \* \*

**Section 45.** MCC 39.5510 is amended as follows:

**§ 39.5510 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; provided however, that the location and design of any use, or change or alteration of a use—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~~ pre-contact or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.

**Section 46.** MCC 39.5515 is amended as follows:

**§ 39.5515 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 to buildings and other development associated with farm practices and agricultural uses 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 lawfully established 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-sw, 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 or a driveway'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

~~(e) 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 or Type C Home Occupation ~~that requires~~ including the addition of less than 400 square feet of ground coverage to the structure used for the Home Occupation.

(11) Alteration, repair, or replacement of septic system tanks, lines and drainfields and related components due to system failure.

(12) ~~Single u~~Utility poles necessary to provide service to the local area.

(13) Right-of-way widening, ~~and~~ new surfacing, and vegetation removal for existing rights-of-way when the additional right-of-way, or surfacing, or vegetation removal is deemed necessary by the County Engineer ~~to ensure continuous width~~ meet the needs of the traveling public.

(14) 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.

(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, and submitted to the County.

(16) ~~In the SEC~~, all SEC designations, 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.

(17) One free standing renewable energy and heating system up to 400 square feet of ground coverage including but not limited to solar (including solar panels), geothermal and wind generated systems, provided any conduit through SEC-s or SEC-w areas is provided by directional boring.

~~(17)~~ Routine repair and maintenance of structures, roadways, driveways, utility facilities, and landscaped areas that were in existence prior to 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, provided a Post Emergency Response permit is obtained and any mitigation work completed.

(20) Signs listed in MCC 39.6720 (A) through (F), MCC 39.6805 (Directional Signs), and MCC 39.6810 (Temporary Signs).

(21) Flag poles no taller than 35 feet above existing or finished grade (whichever is lower) designed to display national, state, or local recognized jurisdiction flags pursuant to the United States Flag Code or laws regulating the proper display of jurisdiction flags.

(22) Heating oil, propane and similar tanks up to 1,000 gallon capacity placed within 100 feet of a lawfully existing structure provided any pipes crossing through SEC-s or SEC-w areas are provided by directional boring.

(23) Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators and energy storage systems, water pumps, and similar equipment placed within 100 feet of a lawfully existing structure, provided any pipes or conduit crossing through SEC-s or SEC-w areas are provided by directional boring.

(24) The placement of utility infrastructure such as pipes, conduits and wires within an existing right-of-way.

(25) In the West of Sandy River Planning Area the uses and structures excepted in MCC 39.5550 (B) (1), (2), and (3).

(26) Within the SEC-v:

(a) Any modification or alteration to an existing exterior wall of a lawfully established structure that will be 100% screened from all IVAs by the structure itself.

(b) Placement of antennas and satellite dishes on an existing lawfully established structure.

(c) Concrete slabs, parking areas, and similar low profile structures no taller than 36 inches above initial grade.

\* \* \*

**Section 47.** MCC 39.5520 is amended as follows:

**§ 39.5520 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.

(g) In the SEC-wr overlay, the location of natural drainageways, springs, seeps, and wetlands on the site.

(3) The Planning Director may also require the applicant to provide the following:

(a) The location of the SEC-wr boundary, topography, or the location of development as determined by a registered professional surveyor or engineer;

(b) A scaled drawing of the building design and elevations that show the relationship between the building and existing and finished grades and existing or proposed vegetation;

(B) SEC-Water Resource: In addition to the information requirements listed in MCC 39.5520(A) above, the following information shall be submitted for applications within the SEC-wr overlay.

(1) A topographic map of the development area and adjacent areas of the site at contour intervals of five feet or less showing a delineation of the Water Area or Habitat Area as determined by a documented field survey, the location of all existing and proposed watercourses, drainageways, stormwater facilities, and utility installations;

(2) The location of wetlands;

(3) Information for the site from the adopted West of Sandy River Wildlife Habitat and Stream Corridor ESEE Report, the County Goal 5 Inventory;

(4) Preparation of plans and surveys - Inventories, assessment of existing conditions, and mitigation or restoration plans shall be prepared by a qualified professional such as a fish or wildlife biologist at the discretion of the Planning Director. Wetlands shall be identified and

delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual. Required reports include;

(a) An assessment of the existing condition of the Water Resource Area in accordance with MCC 39.5580 Table 2, Riparian/Vegetated Corridor Standards;

(b) An inventory of vegetation, including percentage ground and canopy coverage, and location of nuisance plants listed in MCC 39.5580 Table 1;

(c) A detailed Mitigation Plan as described in 39.5800 (F), if required;

(5) The applicant shall provide evidence that when federal or state requirements apply, that the agency has been contacted, and shall provide an assessment of whether the project can meet the requirements based on the agency response;

(6) The location of all existing trees of a caliper greater than six (6) inches in diameter at breast height (DBH);

(7) 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.

**Section 48.** MCC 39.5525 is amended as follows:

**§ 39.5525 APPLICABLE APPROVAL CRITERIA.**

(A) The approval criteria that apply to uses in areas designated SEC, 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:

<b><u>Zoning Overlay Designation</u></b>	<b><u>Approval Criteria (MCC#)</u></b>
<u>SEC</u>	<u>39.5540</u>
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 Type II Permit – 39.5560 and 39.5860

\* \* \*

**Section 49.** MCC 39.5540 is amended as follows:

**§ 39.5540 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 z~~Zoning ~~m~~Maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

\* \* \*

**Section 50.** MCC 39.5545 is amended as follows:

**§ 39.5545 DEFINITIONS.**

**Development:** Any human-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. Any other activity that results in the removal of more than 10 percent of the existing vegetation in the Water Resource Area or Habitat Area on a lot or parcel.

\* \* \*

**Section 51.** MCC 39.5650 is amended as follows:

**§ 39.5650 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 z~~Zoning ~~m~~Maps.

\* \* \*

(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 Exterior lighting that is directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas~~ and meets the Dark Sky Lighting Standards of MCC 39.6850. Shielding and hooding materials should be composed of nonreflective, opaque materials.

\* \* \*

**Section 52.** MCC 39.5800 is amended as follows:

**§ 39.5800- 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 (B) or (C) or (D) below are satisfied. An application shall not be approved unless it contains the site analysis information required in MCC 39.5520(A) and (~~C~~B), and meets the general requirements in MCC 39.5560.

\* \* \*

(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~~B) has been submitted.

\* \* \*

**Section 53.** MCC 39.6210 is amended as follows:

**§ 39.6210 PERMITS REQUIRED.**

(A) Unless exempt under this Code, whether under MCC 39.6215, 39.5080, 38.5510 or otherwise, no ground disturbing activity shall occur except pursuant to one of the following permits: a Minimal Impact Project (MIP) permit, an Erosion and Sediment Control permit (ESC), an Agricultural Fill permit (AF), a Geologic Hazards permit (GH), or a Large Fill permit (LF).

\* \* \*

(F) Implementation.

\* \* \*

(2) Inspection and enforcement. The director may take steps to ensure compliance with the requirements of ~~Part 6, Geologic Hazards permit requirements, and Large Fill permit requirements~~ any permit listed in subsection (A) and 39.6235, including but not limited to,



inspections, peer review of engineering analysis (at the applicant's expense), post construction certification of the work, and the posting of a notice providing County contact information in the event that questions arise concerning work occurring on-site. The requirements of this subpart of MCC Chapter 39 shall be enforced by the planning director. If inspection by county staff reveals erosive conditions which exceed those prescribed by the permit, work may be stopped until appropriate correction measures are completed.

\* \* \*

**Section 54.** MCC 39.6225 is amended as follows:

**§ 39.6225 EROSION AND SEDIMENT CONTROL PERMIT.**

(A) An application for an Erosion and Sediment Control permit shall include two copies of each of the following:

\* \* \*

(2) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20-year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). Such calculations are not required for fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code. For purposes of this subsection, the term "site" shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area;

(3) A written description of the ground disturbing activity and any associated development, including:

\* \* \*

~~(24)~~ Surcharges to sanitary drainfields have been reviewed by the City of Portland Sanitarian or other agencies authorized to review waste disposal systems; and

~~(35)~~ Any new discharges into public right-of-ways have complied with the governing agencies discharge review process;

~~(46)~~ Written findings, together with any supplemental plans, maps, reports, or other information necessary to demonstrate compliance of the proposal with all applicable provisions of the Multnomah County code including Erosion and Sediment Control permit standards in subsection (B). Necessary reports, certifications, or plans may pertain to: engineering, soil characteristics, stormwater drainage control, stream protection, erosion and sediment control, and replanting.

(57) Approval of any new stormwater surcharges to sanitary drainfields by the City of Portland Sanitarian and any other agency having authority over the matter; and

(68) Approval of any new stormwater discharges into public right-of-ways by each governing agency having authority over the matter.

(B) An Erosion and Sediment Control (ESC) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(1) The total cumulative deposit of fill, excluding agricultural fill pursuant to an Agricultural Fill permit, on the site for the 20-year period preceding the date of the ESC permit application, and including the fill proposed in the ESC permit application, shall not exceed 5,000 cubic yards. Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code is not included in this 5,000 cubic yard calculation. For purposes of this section, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

\* \* \*

**Section 55.** MCC 39.6590 is amended as follows:

**§ 39.6590 MINIMUM REQUIRED OFFSTREET PARKING SPACES.**

(A) The following Residential Uses shall have at least the number of off-street parking spaces indicated:

\* \* \*

(4) Rooming ~~house or Boarding House~~, boarding house, or ~~Fraternity~~ collegiate residence - Two spaces plus one space for each three guest rooms.

\* \* \*

**Section 56.** MCC 39.6725 is amended as follows:

**§ 39.6725 PROHIBITED SIGNS.**

The following signs are prohibited and shall be removed:

(A) Strobe lights and signs containing strobe lights which are visible beyond the property lines;

(B) Signs placed on or painted on a motor vehicle or trailer and parked with the primary purpose of providing a sign not otherwise allowed for by this Subpart;

(C) Abandoned signs;

(D) Balloon signs; ~~and~~

(E) Signs in the right-of-way in whole or in part, except signs legally erected for informational purposes by or on behalf of a government agency.

(F) Electronic message centers;

(G) Flashing signs;

(H) Rotating signs;

(I) Signs with moving parts;

**Section 57.** MCC 39.6745 is amended as follows:

**§ 39.6745 SIGNS GENERALLY.**

\* \* \*

(C) Sign Features. Permanent signs may ~~have the following features:~~

~~(1) Signs may be indirectly illuminated downward onto the sign face.~~

~~(2) Electronic message centers are not allowed.~~

~~(3) Flashing signs are not allowed.~~

~~(4) Rotating signs are not allowed.~~

~~(5) Moving parts are not allowed.~~

\* \* \*

**Section 58.** MCC 39.6805 is amended as follows:

**§ 39.6805 DIRECTIONAL SIGNS.**

Directional signs shall comply with the following provisions:

Maximum Sign Face Area:	Six Square Feet
-------------------------	-----------------

Types of Signs Allowed:	Free Standing, Fascia, Projecting, Painted Wall
Maximum Height:	Free Standing 42 Inches Fascia and Projecting 8 Feet
Extensions into R/W:	Not Allowed
Lighting:	Indirectly illuminated downward onto the sign face
Maximum Sign Face Area:	Six Square Feet
Flashing Lights:	Not Allowed
Electronic Message Centers:	Not Allowed
Moving or Rotating Parts:	Not Allowed

**Section 59.** MCC 39.6850 is amended as follows:

**§ 39.6850 DARK SKY LIGHTING STANDARDS.**

\* \* \*

(B) The following exterior lighting is exempt from the requirements of paragraph (C) of this section:

\* \* \*

(7) Lighting in support of work necessary to protect, repair, maintain, or replace existing structures, utility facilities, service connections, roadways, driveways, accessory uses and exterior improvements in response to emergencies pursuant to the provisions of ~~MCC 35.0535~~ 39.6900, provided that after the emergency has passed, all lighting to remain is subject to the requirements of this section.

\* \* \*

**Section 60.** MCC 39.7015 is amended as follows:

**§ 39.7015 CONDITIONAL USE APPROVAL CRITERIA.**

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

\* \* \*

(8) ~~The~~ For uses in the West of Sandy River Planning Area, the use is limited in type and scale to primarily serve the needs of the rural area.

\* \* \*

**Section 61.** MCC 39.7207 is amended as follows:

**§ 39.7207 EXEMPTIONS.**

Ground disturbing activity occurring in association with the following uses is exempt from the Large Fill permit requirements:

(A) Fill associated with a State or County owned and maintained road or bridge that is designated as a Rural Collector or a Rural Arterial on the Multnomah County Functional Classification of Trafficways map. The Trafficways map is part of the County Transportation System Plan.

(B) Agricultural fill authorized under an Agricultural Fill permit. Agricultural fill proposed in the Geological Hazards overlay is not eligible for this exemption.

(C) Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code.

**Section 62.** MCC 39.7405 is amended as follows:

**§ 39.7405 CRITERIA FOR APPROVAL.**

\* \* \*

(E) The business operator shall be the person who applies for a Type C Home Occupation or a Home Based Business and who will hold a majority ownership interest in the business. The business operator shall live full-time in the registered dwelling unit on the property and is the person responsible for strategic decisions and day-to-day operations of the business.

**Section 63.** MCC 39.7520 is amended as follows:

**§ 39.7520 USES.**

(A) Except as otherwise limited in the EFU, all CFU and OR base zones, the following Community Service Uses and those of a similar nature, may be permitted in any base zone when approved at a public hearing by the approval authority.

\* \* \*

(7) Private club, ~~fraternal~~social organization, lodge.

\* \* \*

**Section 64.** MCC 39.7525 is amended as follows:

**§ 39.7525 RESTRICTIONS.**

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

(A) Minimum yards in EFU, CFU (Note – not applicable to CFU-1 through CFU-5), MUA-20, RR, BRC, OCI, OR and PH-RC, UF-20, LR10, UF-20, MUF, SRC, and RC Base base zones:

\* \* \*

(F) In the MUA-20, RR, and BRC, SRC and RC base zones, the length of stay by a person or vehicle in a camp, campground, campsite or recreational vehicle park shall not exceed a total of 90 days during any consecutive 12 month period by an individual, group or family unless otherwise provided in State law. This provision is not applicable in the West of Sandy River Planning Area or Urban Planning Area.

(G) Other minimum yards, restrictions or limitations of use or development not required under this subsection shall be as provided in the base zone.

**Section 65.** MCC 39.7565 is amended as follows:

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

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

\* \* \*

(I) Site size and tower setbacks:

\* \* \*

(3) Placement of more than one tower on a lot shall be permitted, provided all setback, design and landscape requirements are met as to each tower. Structures may be located as close to each

other as technically feasible, provided tower failure characteristics of the towers on the site described in ~~MCC 36.6110 (C) (4)~~ 39.7560 (C) (4) will not lead to multiple failures in the event that one fails.

\* \* \*

**Section 66.** MCC 39.7705 is amended as follows:

**§ 39.7705 APPLICABILITY.**

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

(B) The requirements of ~~36.6175~~ 39.7700 through ~~36.6188~~ 39.7765 shall apply to all new wireless communications facilities (WCFs).

**Section 67.** MCC 39.7740 is amended as follows:

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

(A) General and Operating Requirements

\* \* \*

(4) Environmental Resource Protection.

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

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

\* \* \*

**Section 68.** MCC 39.8020 is amended as follows:

**§ 39.8020 APPLICATION OF REGULATIONS.**

(A) Except those exempted by MCC 39.8015, the provisions of MCC 39.8000 through 39.8050 shall apply to all conditional and community service uses, and to specified uses, in any base zone.

(B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 39.6590 shall only be subject to the following Design Review approval criteria: MCC ~~36.8040~~ 39.8040 (A)(1)(a) and (1)(c), and (4) and (7), except when located in the RC, BRC, OR, OCI, PH-RC or SRC zone base zones.

(C) All other uses are subject to all of the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.

(D) Alteration or modification of the physical development previously reviewed through the Design Review process shall be subject to the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.

(E) In the urban bases zones the provisions of MCC 39.8000 through 39.8050 shall apply to the following:

~~(E) A multiplex, garden apartment or apartment dwelling or structure.~~

~~(F) A boarding, lodging or rooming house.~~

(G1) A hotel or motel.

(H2) A business or professional office or clinic.

(I3) A use listed in any commercial base zone.

(J4) A use listed in any manufacturing base zone.

**Section 69.** MCC 39.8040 is amended as follows:

**§ 39.8040 DESIGN REVIEW CRITERIA.**

(A) Approval of a final design review plan shall be based on the following criteria:

(1) Relation of Design Review Plan Elements to Environment.

(a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.

(b) The elements of the design review plan should promote energy conservation and provide protection from adverse ~~climate~~ weather conditions, noise, and air pollution.

\* \* \*

**Section 70.** MCC 39.8210 is amended as follows:

**§ 39.8210 ADJUSTMENT APPROVAL CRITERIA.**

\* \* \*

(E) If in the Rural Residential (RR), Rural Center (RC), Burlington Rural Center (BRC),



Orient Residential (OR), Orient Commercial Industrial (OCI), Pleasant-Hill-Home Rural Center (PHRC), or Springdale Rural Center (SRC) base zones, the proposal will not significantly detract from the livability or appearance of the residential area.

\* \* \*

**Section 71.** MCC 39.8300 is amended as follows:

**§ 39.8300- NONCONFORMING USES.**

\* \* \*

(I) A use continued under this section is not considered interrupted or abandoned for any period while a federal, state or local emergency order temporarily limits or prohibits the use or the restoration or replacement of the use.

**Section 72.** MCC 39.8800 is amended as follows:

**§ 39.8800- TYPE A HOME OCCUPATION.**

\* \* \*

(D) The business operator shall be the person who registers for a Type A Home Occupation or a Home Based Business and who will hold a majority ownership interest in the business. The business operator shall live full-time in the registered dwelling unit on the property and is the person responsible for strategic decisions and day-to-day operations of the business.

**Section 73.** MCC 39.8850 is amended as follows:

**§ 39.8850- TYPE B HOME OCCUPATION.**

\* \* \*

(E) The business operator shall be the person who applies for a Type B Home Occupation or a Home Based Business and who will hold a majority ownership interest in the business. The business operator shall live full-time in the registered dwelling unit on the property and is the person responsible for strategic decisions and day-to-day operations of the business.

**Section 74.** MCC 39.8860 is amended as follows:

**§ 39.8860- CONDITION OF APPROVAL -- ACCESSORY STRUCTURES BUILDINGS.**

\* \* \*

**Section 75.** MCC 39.9410 is amended as follows:

**§ 39.9410 CATEGORY 1 AND CATEGORY 2 TENTATIVE PLAN MAP SPECIFICATIONS.**

(A) The tentative plan map shall be drawn on a sheet 18 x 24 inches or 11 x 17 inches in size or a size and format (including electronic) approved by the Planning Director. The scale of the map shall be 10, 20, 30, 40, 50, 60, 100 or 200 feet to the inch or multiples of ten of any of these scales. The map shall include one copy of a scaled drawing of the proposed subdivision, on a sheet 8.5 x 11 inches or in a format specified by the Planning Director, suitable for reproduction, mailing and posting with the required notices.

(B) A future street plan may be combined with the tentative plan map or may be drawn on a sheet 8.5 x 11 inches or larger in size at a scale of one inch to one hundred feet or in a format specified by the Planning Director.

**Section 76.** MCC 39.9510 is amended as follows:

**§ 39.9510 LOTS AND PARCELS.**

\* \* \*

(D) A land division may include creation of a flag lot with a pole that does not satisfy the minimum frontage requirement of the applicable base zone, subject to the following:

(1) When a flag lot does not adjoin another flag lot, as shown in MCC 39.9510 Figure 1, the pole portion of the flag lot shall be at least 16 feet wide.

Figure 1.

\* \* \*

**Section 77.** MCC 39.9510 is amended as follows:

**§ 39.9550 STREETS, SIDEWALKS, PEDESTRIAN PATHS AND BIKEWAYS.**

\* \* \*

(G) Any street, pedestrian path or bikeway shall be improved as follows:

\* \* \*

(2) In a private street, in accordance with ~~the~~ this Chapter and the Multnomah County Road Rules and Design and Construction Manual;

\* \* \*

**Section 78.** MCC 39.9600 is amended as follows:

**§ 39.9600 IMPROVEMENT AGREEMENT.**

\* \* \*

(B) Provision that the applicant file with the County Engineer a maintenance bond, on forms provided by the Engineer, guaranteeing the materials and ~~workmanship~~ quality in the improvements required by this Ordinance against defects for a period of 12 months following the issuance of a certificate of acceptance by the County Engineer; and

\* \* \*

**Section 79.** MCC 39.9700 is amended as follows:

**§ 39.9700 LEGALIZATION OF LOTS AND PARCELS THAT WERE PREVIOUSLY UNLAWFULLY DIVIDED.**

\* \* \*

(D) Within ~~90~~365 days of a final decision being approved under Subsection (A), (B) or (C) of this Section, the property owner(s) shall record a partition plat or subdivision plat, as appropriate, in accordance with the requirements of ORS Chapter 92.

\* \* \*

ADOPTED this 25<sup>th</sup> day of July, 2022

PLANNING COMMISSION  
FOR MULTNOMAH COUNTY, OREGON



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John Ingle, Chair

# Board Exhibit 2

**MEMORANDUM:**

**July 26, 2022**

**To:** Case File PC-2020-13166

**From:** Kevin Cook, Senior Planner

**Re:** Amendment to Staff Report – Approved by the Planning Commission on 7/25/2022

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At the July 25, 2022 Planning Commission hearing on proposed amendments to MCC Chapter 39, Commissioner Nystrom offered the following amendment, which was subsequently approved by the Planning Commission (addition indicated in Green):

**§ 39.6590 MINIMUM REQUIRED OFFSTREET PARKING SPACES.**

(A) The following Residential Uses shall have at least the number of off-street parking spaces indicated:

\*\*\*

(4) Rooming house or ~~Boarding House~~, boarding house, or ~~Fraternity~~ collegiate residence - Two spaces plus one space for each three guest rooms.

# Board Exhibit 3

## MEMORANDUM:

**July 21, 2022**

**To:** Multnomah County Planning Commission

**From:** Kevin Cook, Senior Planner

**Re:** Supplemental changes to the Minor Amendments staff report PC-2020-13166

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Staff has identified the need to include a few edits to the hearing staff report. An amended staff report is attached.

Staff report sections with edits are noted with orange hue. Example 4.7  
New explanatory text is in **blue text**.

We have included edits to the staff report in the following Sections:

**3.3:** Adding alternative energy systems, including solar panels, to the list of exemptions from full compliance review in the National Scenic area. Note that alternative energy systems are still subject to Scenic Area site review.

**4.7:** Identified a conflict with applying discretionary Design Review criteria to residential development.

**4.15:** Added clarification to the definition of ‘fill’. Changed the word ‘and’ to ‘or’ to mean that either earthquake building code or a tsunami building code is a necessary condition, not necessarily both types of codes.

**4.28:** Explicitly adding the words ‘solar panels’ as part of the alternative energy exemption from full compliance review.

**4.34:** Explaining the reason for the strikethrough text referencing 1994 and 2010. These dates were included when new Significant Environmental Concern rules were enacted. Today, existing uses and structures are all either lawfully established, and/or nonconforming uses, or they are not lawfully established. The reference to specific dates is no longer needed or particularly helpful.

Staff is adding a reference to the expansion of a driveway, which is being deleted in the subsection below it.

Staff has added the words ‘including solar panels’ in the reference to the exemption to SEC review for alternative energy systems.

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

**STAFF REPORT FOR THE PLANNING COMMISSION  
HEARING  
July 25, 2022**

**Revised July 21, 2022**

**CODE AMENDMENTS OMNIBUS  
(PC-2020-13166)**

Staff Contact:  
Kevin Cook, Senior Planner  
kevin.c.cook@multco.us (503) 988-0188

**1.0 INTRODUCTION**

This proposal, PC-2020-13166, relates to a range of amendments to the building and zoning codes located in Multnomah County Code (MCC) Chapters 29 (Building Regulations), 38 (Columbia River Gorge National Scenic Area), and 39 (Multnomah County Zoning Code), which have been combined for efficiency into one ordinance proposal. These amendments generally make corrections to the zoning and building codes, add text for clarity, or otherwise provide needed code fixes. Examples range from grammatical errors, incorrect cross references, outdated Oregon Revised Statute (ORS) citations, code updates to provide clarity and fixes to errors that resulted in the 2018 code consolidation project. Specific explanations of the proposed changes are included in the staff notes preceding each proposed code amendment. This project addresses tasks A.4 and A.5 on the 2022 work program.

The following text is used within the proposed amendments:

**Double Underline** = Proposed new language



Strikethrough = Language proposed for removal

\* \* \* Indicates a minor gap in code for brevity, typically within the same section

<b>2.0</b>	<b>SECTION 2 PROPOSED CODE AMENDMENTS – CHAPTER 29 – BUILDING REGULATIONS</b>
<b>2.1</b>	<p><b>Staff:</b> Updates to unnecessarily gendered terminology.</p> <p><b>Proposed Amendments:</b></p> <p><b>§ 29.105 PLANS AND SPECIFICATIONS.</b></p> <p>***</p> <p>(D) Exception: The building official may waive the submission of plans, calculations or other data <del>if he finds</del> <u>upon finding</u> that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this code</p> <hr/> <p><b>§ 29.573 RULES FOR DRAINAGE FACILITIES.</b></p> <p>***</p> <p>(E) Construction details and inspection, including:</p> <ul style="list-style-type: none"><li>(1) Materials;</li><li>(2) <del>Manholes</del> <u>Maintenance-holes</u>;</li></ul>
<b>3.0</b>	<b>SECTION 3 PROPOSED CODE AMENDMENTS – CHAPTER 38 - COLUMBIA RIVER GORGE NATIONAL SCENIC AREA</b>
<b>3.1</b>	<p><b>Staff:</b> Removing a provision from County code that was removed from the Management Plan following a court decision in 2008 (see page 17 of the attached court decision – Exhibit A).</p> <p><b>Proposed Amendment:</b></p>

	<p><b>§ 38.0030 EXISTING USES AND DISCONTINUED USES.</b></p> <p>***</p> <p>(D) Changes to Existing Uses and Structures: Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to this Management Plan.</p> <p><del>(1) Expansion of Existing Commercial and Multifamily Residential Uses: In the Special Management Area, existing commercial and multi-family residential uses may expand as necessary for successful operation on the Dedicated Site, subject to MCC 38.0045. Expansion beyond the Dedicated Site is prohibited.</del></p> <p><del>(2)</del> Conversion of Existing Industrial Uses in the General Management Area: In the General Management Area, existing industrial uses may convert to less intensive uses, subject to MCC 38.0045. A less intensive use is a commercial, recreation or residential use with fewer adverse effects upon scenic, cultural, natural and recreation resources.</p> <p><del>(3)</del> Uses involving the exploration, development or production of sand, gravel or crushed rock in the Special Management Areas may continue when:</p> <p>***</p>
<p><b>3.2</b></p>	<p>Proposing to add a bit more flexibility on the timing for the election of officers by eliminating the need to accomplish this annual task by April.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 38.0320 OFFICERS AND STAFF.</b></p> <p>(A) <del>Each year</del> <del>The the</del> Commission shall, <del>at or before its first meeting in April each year,</del> elect and install from among its members a chair and vice-chair. The Commission may elect and install from among its members a second vice-chair. If there is a vacancy in any officer position, the Commission shall fill such vacancy by appointing an officer at the first regular meeting following the vacancy.</p>
<p><b>3.3</b></p>	<p><b>Staff:</b></p> <p>Task A.5 on the 2022 PC Work Program contemplates minor improvements, such as an exemption for solar installations from the full compliance standard in the land use code.</p> <p>The compliance standard requires that the County not issue a development approval unless there is verification of full compliance with</p>

all applicable provisions of the Multnomah County Zoning Code and/or any permit approval previously issued by the County.

The list of exemptions is shorter than what we have proposed for Chapter 39 (see Section 4.28), because the Scenic Act does not appear to allow structures greater than 200 sq. ft. without review.

**7.21.22 Update:** Staff proposes adding alternative energy systems, including solar panels, to the list below (under (5)(b) and (c)) below. Although alternative energy systems require a National Scenic Area site review, they would not also be burdened by a 'full compliance' finding if included in the list of exemptions below.

**Proposed Amendment:**

**§ 38.0560 CODE COMPLIANCE AND APPLICATIONS.**

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all applicable provisions of the Multnomah County ~~Land Use Code~~ and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property.

(4) It brings a non-conforming structure or non-conforming use into compliance with current regulations; or

(5) The Planning Director determines the development qualifies as a minor project. For purposes of this provision, a minor project is defined as small in scale, located outside a Flood Hazard zone or Geologic Hazard overlay, intended for the primary benefit of the residents, farm uses, or natural habitat on the subject property and will meet all other

	<p><u>applicable zoning and building regulations. A minor project shall qualify under at least one of the following categories:</u></p> <p><u>(a) Request for trade permits (such as electrical, mechanical and/or plumbing) that does not change the use of a structure or property; or</u></p> <p><u>(b) Free standing renewable energy and heating systems including, but not limited to solar (including solar panels), geothermal and wind generated systems; or</u></p> <p><u>(c) Roof mounted solar renewable energy (including solar panels) and solar heating systems not exceeding the size of a structure’s roof area, or roof height; or</u></p> <p><u>(d) Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators, energy storage systems, water pumps, and similar equipment; or</u></p> <p><u>(e) Heating oil, propane and similar tanks; or</u></p> <p><u>(f) Development requests to protect or enhance natural resources, such as but not limited to water quality or wildlife habitat.</u></p> <p>(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.</p>
<p><b>3.4</b></p>	<p><b>Staff:</b> Updates to unnecessarily gendered terminology.</p> <p><b>Proposed Amendments:</b></p> <p><b>§ 38.0780 EX PARTE CONTACT, CONFLICT OF INTEREST AND BIAS.</b></p> <p>***</p> <p>(B) Conflict of Interest.</p> <p>(1) Planning Commission. A member of the Planning Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest: the member or the spouse, <del>brother, sister</del> <u>sibling</u>, child, parent, <del>father in law, mother</del> <u>parent</u>-in-law of the member; any business in which the member is then serving or has served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective</p>

partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the Planning Commission where the action is being taken.

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**§ 38.2025 REVIEW USES.**

(A) The following uses may be allowed on lands designated GGF, pursuant to MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

(1) On lands designated GGF– 20 and GGF– 40, one single-family dwelling on a legally created and existing parcel upon enrollment in the state’s forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with MCC 38.7305 and MCC 38.7315. A declaration shall be signed by the landowner and recorded into county deed records specifying that the owners, successors, ~~heirs~~ beneficiaries and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated GGF– 20, GGF–40, GGF– 80, GGA– 20 and GGA– 40.

\*\*\*

38.2025(B)(6)

(f) A declaration is signed by the landowner and recorded into county deed records specifying that the owners, successors, ~~heirs~~ beneficiaries, and assigns of the subject property are aware that adjacent and nearby operations are entitled to carry on accepted agricultural or forest practices.

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**§ 38.2225 REVIEW USES.**

(A) The following uses may be allowed on lands designated GGA pursuant to the provisions of MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

\*\*\*

38.2225(A)(9)

(c) The dwelling embodies the distinctive characteristics of a type, period, or method of construction, or represent the work of a ~~master~~ skilled craftsman, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or

\*\*\*

38.2225(A)(11)

(a) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator's spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, ~~brother or sister~~ or sibling;

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**§ 38.2230 CONDITIONAL USES.**

38.2230(A)(15)

(d) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, ~~heirs~~ beneficiaries and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated GGA or GGF; and

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**§ 38.7045 GMA CULTURAL RESOURCE REVIEW CRITERIA.**

38.7045(G)(2)

(a) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for use in evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4). Cultural resources are eligible for the National Register of Historic Places if they possess integrity of location, design, setting, materials, ~~workmanship~~ artisanship, feeling, and association. In addition, they must meet one or more of the following criteria:

1. Association with events that have made a significant contribution to the broad patterns of the history of this region;
2. Association with the lives of persons significant in the past;
3. Embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a ~~master~~ skilled craftsperson, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or

\*\*\*

38.7045(H)(1)

(b) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, ~~workmanship~~ artisanship, feeling, or association [36 CFR Part 800.5]. Adverse effects on cultural resources include, but are not limited to:

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**§ 38.7320 TEMPORARY HEALTH HARDSHIP DWELLING.**

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(B) The Planning Director may grant a Temporary Health Hardship Permit to allow occupancy of a temporary dwelling on a parcel in conjunction with a single-family dwelling allowed in the base zone based on the following findings:

(1) The person with the health hardship is either one of the property owners or is a relative of one of the property owners occupying the principal dwelling. For the purposes of this section a relative is defined as a grandparent, grandchild, parent, child, ~~brother or sister~~ sibling, ~~wife, husband~~ spouse, ~~brother-in-law, sister~~ sibling-in-law, ~~son-in-law, daughter~~ child-in-law, ~~mother-in-law, father~~ parent-in-law, ~~aunt, uncle~~ sibling of a parent, ~~niece, nephew~~ child of a sibling, first cousin, step-parent, step-child, step-grandparent, or step-grandchild ~~either by blood or legal relationship~~.

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**§ 38.7380 SPECIAL USES IN HISTORIC BUILDINGS.**

38.7380(F)(4)

(c) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, ~~heirs~~ beneficiaries and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on nearby lands.

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**§ 38.7705 DEFINITIONS.**

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

\*\*\*

*Person* means a natural person, firm, partnership, association, social ~~or fraternal~~ organization, corporation, trust, estate, receiver, syndicate, branch of government, or any group or combination acting as a unit.

	<p><b>§ 38.8010 IMPROVEMENT AGREEMENT.</b></p> <p>***</p> <p>(B) Provision that the applicant file with the County Engineer a maintenance bond, on forms provided by the Engineer, guaranteeing the materials and <del>workmanship</del> <u>quality</u> in the improvements required by this Chapter against defects for a period of 12 months following the issuance of a certificate of acceptance by the County Engineer; and</p>
<p><b>3.5</b></p>	<p>Update application submission requirements.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 38.0045 REVIEW AND CONDITIONAL USE APPLICATIONS – SUBMITTAL REQUIREMENTS.</b></p> <p>(A) The following additional information shall be submitted for all review and conditional uses:</p> <p>***</p> <p><u>(C) The Planning Director may require some or all required application materials in (1) through (4) above to be submitted electronically.</u></p>
<p><b>3.6</b></p>	<p>Certain uses have different timelines than what is specified in Section 38.0690. We propose adding clarifying text that where a different timeframe is specified, that timeframe shall be used.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 38.0685 EXPIRATION AND EXTENSION OF A TYPE I DECISION.</b></p> <p>***</p> <p><u>(F) Notwithstanding Subsections (A), (B), (C), (D) or (E) of this section, for uses in Chapter 38 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.</u></p> <p><b>§ 38.0690 EXPIRATION OF A TYPE II OR TYPE III DECISION.</b></p> <p>***</p>



	<p><u>(H) Notwithstanding Subsections (A), (B), (C), (D), (E), (F) or (G) of this section, for uses in Chapter 38 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.</u></p>
3.7	<p><b>Staff:</b> Incorrect code citation.</p> <p><b>Proposed Amendment:</b></p> <p>§ 38.2225 REVIEW USES.</p> <p>***</p> <p>§ 38.2225(A)(11)</p> <p>***</p> <p>(c) The operation is a commercial enterprise as determined by MCC 38.2225 (A) <del>(5)</del><u>(8)</u> (c).</p>
3.8	<p><b>Staff:</b> The single word sentence (applicant) from the standard in MCC 38.7035(B)(14)(d) appears to be an error.</p> <p><b>Proposed Amendment:</b></p> <p>§ 38.7035</p> <p>***</p> <p>§ 38.7035(B)(14)(d)</p> <p>Landscaping shall be installed as soon as practicable, and prior to project completion. <del>Applicant.</del> The property owner(s), and their successor(s) in interest are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.</p>
<p><b>4.0 SECTION 4 PROPOSED CODE AMENDMENTS – CHAPTER 39 – ZONING CODE</b></p>	
4.1	<p><b>Staff:</b> Updates to unnecessarily gendered terminology.</p> <p><b>Proposed Amendments:</b></p>

**§ 39.4325 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

39.4325(H)

(2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that ~~states he~~ recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

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**§ 39.4764 USES PERMITTED UNDER PRESCRIBED CONDITIONS.**

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(F) Uses and structures customarily accessory or incidental to a permitted or approved use, including living quarters for a caretaker or ~~watchman~~ watchperson and a railroad right-of-way, trackage and related equipment;

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**§ 39.9600 IMPROVEMENT AGREEMENT.**

\*\*\*

(B) Provision that the applicant file with the County Engineer a maintenance bond, on forms provided by the Engineer, guaranteeing the materials and ~~workmanship~~ quality in the improvements required by this Ordinance against defects for a period of 12 months following the issuance of a certificate of acceptance by the County Engineer; and

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**§ 39.2000 DEFINITIONS.**

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**Educational Institution** – A college or university supported by public or private funds, tuitions, contributions or endowments, giving advanced academic instruction as approved by a recognized accrediting agency, including ~~fraternity and sorority houses~~ collegiate residences, excluding elementary and high schools, and trade and commercial schools.

\*\*\*

**Person** means a natural person, firm, partnership, association, social ~~or fraternal~~ organization, corporation, trust, estate, receiver, syndicate, branch of government, or any group or combination acting as a unit.

**§ 39.6590 MINIMUM REQUIRED OFFSTREET PARKING SPACES.**

(A) The following Residential Uses shall have at least the number of off-street parking spaces indicated:

\*\*\*

(4) Rooming or Boarding House, boarding house, or Fraternity collegiate residence - Two spaces plus one space for each three guest rooms.

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**§ 39.7520 USES.**

(A) Except as otherwise limited in the EFU, all CFU and OR base zones, the following Community Service Uses and those of a similar nature, may be permitted in any base zone when approved at a public hearing by the approval authority.

\*\*\*

(7) Private club, fraternal social organization, lodge.

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**§ 39.5415 DEFINITIONS.**

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**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 beneficiaries 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.

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**§ 39.4095 HERITAGE TRACT DWELLINGS STANDARDS.**

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§ 39.4095(A)(1)(f)

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	<p>3. For purposes of this subsection, “owner” includes <del>the spouses in a marriage, son, daughter</del> <u>child, child-in-law</u>, parent, <del>brother, brother in law, sister, sister in law</del> <u>sibling, sibling-in-law</u>, <del>son in law, daughter in law, parent-in-law, aunt, uncle</del> <u>sibling of a parent</u>, <del>niece, nephew</del> <u>child of a sibling</u>, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.</p> <hr/> <p><b>§ 39.4265 STANDARDS FOR SPECIFIED FARM DWELLINGS.</b></p> <p>***</p> <p>§ 39.4265(A)</p> <p>(2) Occupied by a relative of the farm operator or the farm operator's spouse, if the farm operator does or will require the assistance of the relative in the management of the farm use. Qualifying relatives include, <del>the spouses in a marriage, son, daughter</del> <u>child</u>, parent, <del>brother</del> <u>sibling</u>, <del>brother in law, sister, sister in law</del> <u>sibling-in-law</u>, <del>son in law, daughter in law</del> <u>child-in-law</u>, parent-in-law, <del>aunt, uncle</del> <u>sibling of a parent</u>, <del>niece, nephew</del> <u>child of a sibling</u>, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.</p> <p>***</p> <p>§ 39.4265(D)(8)</p> <p>(a) Owner includes the <del>wife, husband</del> <u>spouse</u>, <del>son, daughter</del> <u>child</u>, <del>mother, father</del> <u>parent</u>, <del>brother</del> <u>sibling</u>, <del>brother in law</del> <u>sibling-in-law</u>, <del>sister, sister in law, son in law, daughter in law</del> <u>child-in-law</u>, <del>mother in law, father in law</del> <u>parent-in-law</u>, <del>aunt, uncle</del> <u>sibling of a parent</u>, <del>nephew</del> <u>child of a sibling</u>, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members.</p>
<p><b>4.2</b></p>	<p><b>Staff:</b> Deleting extra repetitive text in MCC 39.4820.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.4820 USES.</b></p> <p>Except as otherwise provided in this Chapter, no building, structure or land shall be used and no building or structure shall be hereafter <del>no building, structure or land shall be used and no building or structure shall occur or be hereafter</del> erected, altered or enlarged in this base zone except for the uses listed in MCC 39.4822 through 39.4826 provided such uses occur on a Lot of Record.</p>

<p><b>4.3</b></p>	<p><b>Staff:</b> MIP, ESC and AF permits were inadvertently not included in the section below when erosion and sediment control standards were added.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.6210 PERMITS REQUIRED.</b></p> <p>(A) Unless exempt under this Code, whether under MCC 39.6215, 39.5080, 38.5510 or otherwise, no ground disturbing activity shall occur except pursuant to one of the following permits: a Minimal Impact Project (MIP) permit, an Erosion and Sediment Control permit (ESC), an Agricultural Fill permit (AF), a Geologic Hazards permit (GH), or a Large Fill permit (LF).</p> <p>***</p> <p>(F) Implementation.</p> <p>***</p> <p>(2) Inspection and enforcement. The director may take steps to ensure compliance with the requirements of <del>Part 6, Geologic Hazards permit requirements, and Large Fill permit requirements</del> <u>any permit listed in subsection (A) and 39.6235</u>, including but not limited to, inspections, peer review of engineering analysis (at the applicant’s expense), post construction certification of the work, and the posting of a notice providing County contact information in the event that questions arise concerning work occurring on-site. The requirements of this subpart of MCC Chapter 39 shall be enforced by the planning director. If inspection by county staff reveals erosive conditions which exceed those prescribed by the permit, work may be stopped until appropriate correction measures are completed.</p>
<p><b>4.4</b></p>	<p><b>Staff:</b> Changing reference from GHP permit to GH (Geologic Hazard) permit.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.1185 EXPIRATION OF TYPE II OR TYPE III DECISIONS.</b></p> <p>***</p> <p>§ 39.1185(C)</p> <p>(2) For the purposes of this section, the expiration provisions in (a) and (b) shall also apply to all other Type II or III decisions associated with approval of the residential development, such as SEC or GHP permits.</p>
<p><b>4.5</b></p>	<p><b>Staff:</b> Fix incorrect Code Citation.</p>

	<p><b>Proposed Amendment:</b></p> <p><b>§ 39.7565 APPROVAL CRITERIA FOR NEW TRANSMISSION TOWERS.</b></p> <p>New transmission towers base zone permitted under MCC 39.7520 (A) (8) (a) or (b) may be allowed, based on findings by the approval authority that the following criteria are met.</p> <p>***</p> <p>(I) Site size and tower setbacks:</p> <p>***</p> <p>(3) Placement of more than one tower on a lot shall be permitted, provided all setback, design and landscape requirements are met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of the towers on the site described in <del>MCC 36.6110 (C) (4)</del> <u>39.7560 (C) (4)</u> will not lead to multiple failures in the event that one fails.</p>
<p><b>4.6</b></p>	<p><b>Staff:</b> Fix incorrect Code Citation.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.7705 APPLICABILITY.</b></p> <p>(A) Siting for a personal wireless communications facility is a use of land, and subject to the County's zoning ordinance and all other applicable ordinances and regulations.</p> <p>(B) The requirements of <del>36.6175</del> <u>39.7700</u> through <del>36.6188</del> <u>39.7765</u> shall apply to all new wireless communications facilities (WCFs).</p>
<p><b>4.7</b></p>	<p><b>Staff:</b> Fix incorrect Code citation. Add reference to certain uses that require Design Review in the urban zones – the reference should have been added in the code consolidation process.</p> <p><b>7.21.22 Update:</b> ORS 197.307(4) prohibits the application of discretionary Design Review standards to residential development; therefore staff is striking the references to multiplex, garden apartment, apartment dwelling or structure and boarding, lodging or rooming house under new section (E).</p> <p><b>Proposed Amendment:</b></p>

	<p><b>§ 39.8020 APPLICATION OF REGULATIONS.</b></p> <p>(A) Except those exempted by MCC 39.8015, the provisions of MCC 39.8000 through 39.8050 shall apply to all conditional and community service uses, and to specified uses, in any base zone.</p> <p>(B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 39.6590 shall only be subject to the following Design Review approval criteria: MCC <del>36.8040</del> <u>39.8040</u> (A)(1)(a) and (1)(c), <u>and</u> (4) and (7), except when located in the RC, BRC, OR, OCI, PH-RC or SRC zone base zones.</p> <p>(C) All other uses are subject to all of the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.</p> <p>(D) Alteration or modification of the physical development previously reviewed through the Design Review process shall be subject to the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.</p> <p><u>(E) In the urban bases zones the provisions of MCC 39.8000 through 39.8050 shall apply to the following:</u></p> <p><del>(E) A multiplex, garden apartment or apartment dwelling or structure.</del></p> <p><del>(F) A boarding, lodging or rooming house.</del></p> <p>(G<del>1</del>) A hotel or motel.</p> <p>(H<del>2</del>) A business or professional office or clinic.</p> <p>(I<del>3</del>) A use listed in any commercial base zone.</p> <p>(J<del>4</del>) A use listed in any manufacturing base zone.</p>
<p><b>4.8</b></p>	<p><b>Staff:</b> Fix incorrect Code Citation.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.6850 DARK SKY LIGHTING STANDARDS.</b></p> <p>***</p> <p>(B) The following exterior lighting is exempt from the requirements of paragraph (C) of this section:</p>

	<p>***</p> <p>(7) Lighting in support of work necessary to protect, repair, maintain, or replace existing structures, utility facilities, service connections, roadways, driveways, accessory uses and exterior improvements in response to emergencies pursuant to the provisions of MCC 35.0535 <u>39.6900</u>, provided that after the emergency has passed, all lighting to remain is subject to the requirements of this section.</p>
<p><b>4.9</b></p>	<p><b>Staff:</b> Standard refers to Accessory Buildings so changing the heading to match.</p> <p><b>Proposed Amendment:</b></p> <p><b><u>§ 39.8860- CONDITION OF APPROVAL -- ACCESSORY STRUCTURES BUILDINGS.</u></b></p> <p>Prior to issuance of any development permit involving an Accessory Building, the property owner shall record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use.</p>
<p><b>4.10</b></p>	<p><b>Staff:</b> Clarifying the intent of the standard to address adverse weather conditions as opposed to climatic conditions – the difference being weather refers to short-term atmospheric conditions whereas climate refers to the typical weather in a given locale over long time periods.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.8040 DESIGN REVIEW CRITERIA.</b></p> <p>(A) Approval of a final design review plan shall be based on the following criteria:  (1) Relation of Design Review Plan Elements to Environment.  (a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.  (b) The elements of the design review plan should promote energy conservation and provide protection from adverse <del>climatic</del> <u>weather</u> conditions, noise, and air pollution.</p>
<p><b>4.11</b></p>	<p><b>Staff:</b> The text below was previously included in the zoning code prior to the code consolidation. It is useful to provide a description of the zoning map.</p> <p><b>Proposed Amendment:</b></p>



	<p><b><u>39.1015 ZONING MAP.</u></b></p> <p><u>(A) The designations, locations and boundaries of the respective districts and certain combinations thereof described in this Chapter are established as shown by appropriate color designations, symbol or short title identification upon the Multnomah County Zoning Map. The Zoning Map consists of a series of bound and indexed Sectional Zoning Maps numbered sheets until such time as the districts and subdistricts depicted on each respective Sectional Zoning Map are replaced by maps generated as electronic layers within a Geographic Information System (GIS). All GIS generated Zoning Maps replacing the Sectional Zoning Maps shall be legislatively adopted. The GIS-generated Zoning Maps depicting districts and subdistricts shall be periodically readopted to reflect more accurate mapping information as it becomes available. The Zoning Map and all pertinent information shown thereon is incorporated herein and is to be deemed as much a part of this Chapter as if fully set forth; however, if a conflict appears between the Zoning Map and the written portion of this Chapter, the written portion shall control.</u></p> <p><u>(B) A paper version of the Zoning Map and each amendment thereto shall be and remain on file in the office of the Planning Director.</u></p> <p><u>(1) The set of paper Zoning Maps with the cover page dated the 15th of November, 1962 and signed by the Board shall be deemed to be the accurate depiction of:</u></p> <p><u>(a) The Zoning Maps first adopted for successive geographic areas from April 19, 1955 through December 11, 1958; and</u></p> <p><u>(b) The Zoning Maps in effect from the date of first adoption through November 15, 1962.</u></p> <p><u>(2) Unless clearly shown otherwise, a zoning district boundary that follows a public right-of-way shall be deemed to follow the centerline of the public right-of-way.</u></p>
<p><b>4.12</b></p>	<p><b>Staff:</b> Fix numbering consistent with the code.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.3005- LOT OF RECORD – GENERALLY.</b></p> <p>***</p> <p>§ 39.3005(B)</p> <p>(<del>a</del>1) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.</p> <p>(<del>b</del>2) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:</p>

	<p><del>1.</del>(a) By a subdivision plat under the applicable subdivision requirements in effect at the time; or</p> <p><del>2.</del>(b) By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or</p> <p><del>3.</del>(c) By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or</p> <p>4.(d) By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and</p> <p>5.(e) “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)</p> <p>(e3) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.</p> <p><del>1.</del>(a) Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.</p> <p><del>2.</del>(b) An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.</p>
<p><b>4.13</b></p>	<p><b>Staff:</b> The reference to MCC 39.7515 in MCC 39.4080(A)(11) should specify that MCC 39.7515(l) is meant to only apply in the West of Sandy River Planning Area. The error is a result of the 2018 Code Consolidation Ordinance.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.4080 CONDITIONAL USES.</b></p> <p>The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:</p> <p>(A) The following Community Service Uses pursuant to all applicable approval criteria, including but not limited to the provisions of MCC 39.4100, MCC 39.4105, MCC 39.4110,</p>

	<p>MCC 39.4115, and MCC 39.7500 through MCC 39.7525. For purposes of this Section, the applicable criteria of MCC 39.7515 shall be limited to Subsections (A) through (H) of that Section.</p> <p>***</p> <p>(11) Radio and television transmission towers subject to the definitions, restrictions and standards in MCC 39.7515 <u>(A) through (H) and (I) if applicable</u>, 39.7520 (A) (8) and 39.7550 through 39.7575 and wireless communications facilities when found to satisfy the requirements of MCC 39.7700 through 39.7765.</p>
<p><b>4.14</b></p>	<p><b>Staff:</b> The following code section inadvertently does not include certain zone districts that are only found in the East of the Sandy River Planning Area and the Urban Planning area. Also specifying that this provision only applies in the CFU zone, but not the other CFU zones (CFU-1, CFU-2, CFU-3, CFU-4, CFU-5).</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.7525 RESTRICTIONS.</b></p> <p>A building or use approved under MCC 39.7520 through 39.7650 shall meet the following requirements:</p> <p>(A) Minimum yards in EFU, CFU <u>(Note – not applicable to CFU-1 through CFU-5)</u>, MUA-20, RR, BRC, OCI, OR and PH-RC, UF-20, LR10, <u>UF-20, MUF, SRC, and RC</u> <del>Base</del> <u>base</u> zones:</p> <p>***</p> <p>(F) In the MUA-20, RR, and BRC, SRC and RC base zones, the length of stay by a person or vehicle in a camp, campground, campsite or recreational vehicle park shall not exceed a total of 90 days during any consecutive 12 month period by an individual, group or family <u>unless otherwise provided in State law. This provision is not applicable in the West of Sandy River Planning Area or Urban Planning Area.</u></p> <p>(G) Other <u>minimum yards</u>, restrictions or limitations of use or development not required under this subsection shall be <u>as</u> provided in the base zone.</p>
<p><b>4.15</b></p>	<p><b>Staff:</b> Exempting certain types of development from requirements related to providing fill volume calculations and standards related to fill volume limits in the ESC, GH and LF Permits.</p>

**7.21.22 Update:** Adding clarification to the definition of 'fill'. And changing the word 'and' to 'or' to mean that either earthquake building code or a tsunami building code is a necessary condition, not necessarily both types of codes.

**Proposed Amendment:**

**§ 39.2000 DEFINITIONS.**

As used in this Chapter, unless the context requires otherwise, the following terms and their derivations shall have the meanings provided below:

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**Fill** – The deposit (noun or verb) of any earth materials by motorized means for any purpose, including, but not limited to, stockpiling, storage, dumping, raising elevation or topography, and tracking materials such as mud onto a road surface with vehicle tires. Work conducted by hand without the use of motorized equipment is not filling. For the purposes of this code, fill does not include materials included in a design by a registered professional engineer to physically support and/or protect a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code.

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**Large Fill** – The cumulative deposit of more than 5,000 cubic yards of fill to a site within the 20-year period preceding the date of an application for a Large Fill permit and including the fill proposed in the Large Fill permit application. Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code is not included in this 5,000 cubic yard calculation. For purposes of this definition, the term site shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area. For purposes of this definition, the phrase same ownership shall refer to greater than possessory interests held by the same person or persons, spouse, minor age child, same partnership, corporation, trust or other entity, separately, in tenancy in common or by other form of title. Ownership shall be deemed to exist when a person or entity owns or controls ten percent or more of a lot or parcel, whether directly or through ownership or control or an entity having such ownership or control. For the purposes of this definition, the seller of a property by sales contract shall be considered to not have possessory interest.

**§ 39.5085 GEOLOGIC HAZARDS PERMIT APPLICATION INFORMATION REQUIRED.**

An application for a Geologic Hazards Permit shall include two copies of each of the following:

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(B) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20-year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). Such calculations are not required for fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code. For purposes of this subsection, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

**§ 39.5090 GEOLOGIC HAZARDS PERMIT STANDARDS.**

A Geologic Hazards (GH) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(A) The total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, and including the fill proposed in the GH permit application, shall not exceed 5,000 cubic yards. Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code is not included in this 5,000 cubic yard calculation. For purposes of this provision, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

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**§ 39.6225 EROSION AND SEDIMENT CONTROL PERMIT.**

(A) An application for an Erosion and Sediment Control permit shall include two copies of each of the following:

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(2) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20-year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). Such calculations are not required

for fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code. For purposes of this subsection, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area;

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(B) An Erosion and Sediment Control (ESC) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(1) The total cumulative deposit of fill, excluding agricultural fill pursuant to an Agricultural Fill permit, on the site for the 20-year period preceding the date of the ESC permit application, and including the fill proposed in the ESC permit application, shall not exceed 5,000 cubic yards. Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code is not included in this 5,000 cubic yard calculation. For purposes of this section, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

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**§ 39.7207 EXEMPTIONS.**

Ground disturbing activity occurring in association with the following uses is exempt from the Large Fill permit requirements:

(A) Fill associated with a State or County owned and maintained road or bridge that is designated as a Rural Collector or a Rural Arterial on the Multnomah County Functional Classification of Trafficways map. The Trafficways map is part of the County Transportation System Plan.

(B) Agricultural fill authorized under an Agricultural Fill permit. Agricultural fill proposed in the Geological Hazards overlay is not eligible for this exemption.

(C) Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code.

**4.16** **Staff:** Minor text cleanup of MCC 39.8210(E).

**Proposed Amendment:**

	<p><b>§ 39.8210 ADJUSTMENT APPROVAL CRITERIA.</b></p> <p>***</p> <p>(E) If in the Rural Residential (RR), Rural Center (RC), Burlington Rural Center (BRC), Orient Residential (OR), Orient Commercial Industrial (<u>OCI</u>), Pleasant-Hill-Home Rural Center (<u>PHRC</u>), or Springdale Rural Center (<u>SRC</u>) base zones, the proposal will not significantly detract from the livability or appearance of the residential area.</p>																				
<p><b>4.17</b></p>	<p><b>Staff:</b> Deleting unnecessary duplication.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.6805 DIRECTIONAL SIGNS.</b></p> <p>Directional signs shall comply with the following provisions:</p> <table border="1" data-bbox="326 825 1455 1753"> <tr> <td>Maximum Sign Face Area:</td> <td>Six Square Feet</td> </tr> <tr> <td>Types of Signs Allowed:</td> <td>Free Standing, Fascia, Projecting, Painted Wall</td> </tr> <tr> <td>Maximum Height:</td> <td>Free Standing 42 Inches Fascia and Projecting 8 Feet</td> </tr> <tr> <td>Extensions into R/W:</td> <td>Not Allowed</td> </tr> <tr> <td>Lighting:</td> <td>Indirectly illuminated downward onto the sign face</td> </tr> <tr> <td>Maximum Sign Face Area:</td> <td>Six Square Feet</td> </tr> <tr> <td>Flashing Lights:</td> <td>Not Allowed</td> </tr> <tr> <td>Electronic Message Centers:</td> <td>Not Allowed</td> </tr> <tr> <td>Moving or Rotating Parts:</td> <td>Not Allowed</td> </tr> <tr> <td></td> <td></td> </tr> </table>	Maximum Sign Face Area:	Six Square Feet	Types of Signs Allowed:	Free Standing, Fascia, Projecting, Painted Wall	Maximum Height:	Free Standing 42 Inches Fascia and Projecting 8 Feet	Extensions into R/W:	Not Allowed	Lighting:	Indirectly illuminated downward onto the sign face	Maximum Sign Face Area:	Six Square Feet	Flashing Lights:	Not Allowed	Electronic Message Centers:	Not Allowed	Moving or Rotating Parts:	Not Allowed		
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Electronic Message Centers:	Not Allowed																				
Moving or Rotating Parts:	Not Allowed																				
<p><b>4.18</b></p>	<p><b>Staff:</b> MCC 39.6225 contains duplicate subsection numbers.</p>																				

	<p><b>Proposed Amendment:</b></p> <p><b>§ 39.6225 EROSION AND SEDIMENT CONTROL PERMIT.</b></p> <p>(A) An application for an Erosion and Sediment Control permit shall include two copies of each of the following:</p> <p>***</p> <p>(3) A written description of the ground disturbing activity and any associated development, including:</p> <p>***</p> <p>(24) Surcharges to sanitary drainfields have been reviewed by the City of Portland Sanitarian or other agencies authorized to review waste disposal systems; and</p> <p>(35) Any new discharges into public right-of-ways have complied with the governing agencies discharge review process;</p> <p>(46) Written findings, together with any supplemental plans, maps, reports, or other information necessary to demonstrate compliance of the proposal with all applicable provisions of the Multnomah County code including Erosion and Sediment Control permit standards in subsection (B). Necessary reports, certifications, or plans may pertain to: engineering, soil characteristics, stormwater drainage control, stream protection, erosion and sediment control, and replanting.</p> <p>(57) Approval of any new stormwater surcharges to sanitary drainfields by the City of Portland Sanitarian and any other agency having authority over the matter; and</p> <p>(68) Approval of any new stormwater discharges into public right-of-ways by each governing agency having authority over the matter.</p>
<p><b>4.19</b></p>	<p><b>Staff:</b> The consolidated zoning code lacks a definition for business owner that was found in the previous area plan codes. For reference, the definition from former MCC 33.0005 was as follows:</p> <p>“Business Operator – The person who registers for a Type A Home Occupation or obtains approval to conduct a Type B or Type C Home Occupation or a Home Based Business and holds a majority ownership interest in the business, lives full-time in the registered dwelling unit on the lot, and is responsible for strategic decisions and day-to-day operations of the business.”</p> <p>Adding under approval criteria instead of general definitions in order to avoid creating a definition for ‘business’ operator that would apply to all</p>



	<p>businesses instead of limiting it to home occupations as intended.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.7405 CRITERIA FOR APPROVAL.</b></p> <p>***</p> <p><u>(E) The business operator shall be the person who applies for a Type C Home Occupation or a Home Based Business and who will hold a majority ownership interest in the business. The business operator shall live full-time in the registered dwelling unit on the property and is the person responsible for strategic decisions and day-to-day operations of the business.</u></p> <hr/> <p><b>39.8800- TYPE A HOME OCCUPATION.</b></p> <p>***</p> <p><u>(D) The business operator shall be the person who registers for a Type A Home Occupation or a Home Based Business and who will hold a majority ownership interest in the business. The business operator shall live full-time in the registered dwelling unit on the property and is the person responsible for strategic decisions and day-to-day operations of the business.</u></p> <hr/> <p><b>§ 39.8850- TYPE B HOME OCCUPATION.</b></p> <p>***</p> <p><u>(E) The business operator shall be the person who applies for a Type B Home Occupation or a Home Based Business and who will hold a majority ownership interest in the business. The business operator shall live full-time in the registered dwelling unit on the property and is the person responsible for strategic decisions and day-to-day operations of the business.</u></p>
<p><b>4.20</b></p>	<p><b>Staff:</b> Updating to sections of code that should reference the dark sky lighting standards for constancy in implementation.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.4940 BUSINESS OR PROFESSIONAL OFFICE OR CLINIC DEVELOPMENT STANDARDS.</b></p> <p>A business or professional office or clinic located as a transitional use or as a conditional use under the provisions of this Chapter shall comply with the other applicable requirements of this Chapter and the following:</p>

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(E) The use is subject to the Design Review requirements of MCC 39.8000 through 39.8050.

The Preliminary Design Review Plan shall incorporate the following features:

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(6) ~~Exterior lighting shall not be cast or reflected onto adjoining properties developed with or designated for residential use~~ All exterior lighting shall comply with MCC 39.6850;

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**§ 39.4955 AMBULANCE SERVICE SUBSTATION AS A USE UNDER PRESCRIBED CONDITIONS.**

An ambulance service substation may be approved by the Planning Director as a Use Under Prescribed Conditions when authorized by the base zone and found to comply with the following approval criteria:

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(E) The use is subject to the Design Review requirements of MCC 39.8000 through 39.8050.

The Preliminary Design Review Plan shall incorporate the following features:

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(6) ~~Exterior lighting shall not be cast or reflected onto adjoining properties developed with or designated for residential use~~ All exterior lighting shall comply with MCC 39.6850;

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**§ 39.5650 CRITERIA FOR APPROVAL OF SEC-V PERMIT -SIGNIFICANT SCENIC VIEWS.**

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(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:

	<p>(1) Siting on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas.</p> <p>(2) Use of nonreflective or low reflective building materials and dark natural or earthtone colors.</p> <p>(3) <del>No exterior lighting, or</del> <b>Exterior lighting</b> <del>that is directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas</del> <b>and meets the Dark Sky Lighting Standards of MCC 39.6850.</b> Shielding and hooding materials should be composed of nonreflective, opaque materials.</p>
<p><b>4.21</b></p>	<p><b>Staff:</b> Decreasing the amount of time required for newspaper notice to 10 days in line with ORS 215.223.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.1215 NOTICE OF LEGISLATIVE HEARINGS.</b></p> <p>(A) Notice of the date, time, place and subject of a legislative hearing before the Planning Commission shall be published in a newspaper of general circulation within the County at least <del>20</del> <b>10</b> days prior to the hearing and as required by law. The Planning Director shall also notify the Oregon Department of Land Conservation and Development (DLCD) 35 days prior to the initial public hearing or as required by law.</p>
<p><b>4.22</b></p>	<p><b>Staff:</b> Deleting two references to MUF-38 Zone, since that zone no longer exists.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.4701 AREA AFFECTED.</b></p> <p>MCC 39.4700 through MCC 39.4732 shall apply to those lands designated <del>MUF-38 and</del> MUF-19 on the Multnomah County Zoning Map.</p> <hr/> <p><b>§ 39.4717 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.</b></p> <p>(A) Except as provided in MCC 39.3150, 39.4720, 39.4722 and 39.5300 through 39.5350, the minimum lot size <b>in the MUF-19 zone</b> shall be <del>according to the base zone designation on the Zoning Map, as follows:</del> MUF 38.....38 acres MUF 19.....19 acres.</p>

<p><b>4.23</b></p>	<p><b>Staff:</b> The zoning code uses ‘Sectional Zoning Map’ in some places and just ‘zoning map’ in others. Because the Comprehensive Plan just uses zoning map, staff recommends doing the same in the zoning code for consistency.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.5110 STANDARDS TO ESTABLISH AN HP OVERLAY.</b></p> <p>(A) An amendment establishing an HP overlay shall include the following:</p> <p>(1) The designation of the overlay as HP-1, HP-2, HP-3, etc., in the text and on the appropriate <del>Sectional</del> Zoning Map;</p> <hr/> <p><b>§ 39.5540 CRITERIA FOR APPROVAL OF SEC PERMIT.</b></p> <p>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 <del>sectional</del> <u>z</u>Zoning <del>m</del><u>M</u>aps. Any proposed activity or use requiring an SEC permit shall be subject to the following:</p> <hr/> <p><b>§ 39.5650 CRITERIA FOR APPROVAL OF SEC-V PERMIT - SIGNIFICANT SCENIC VIEWS.</b></p> <p>(A) For purposes of this Section, the following terms and their derivations shall have the meanings provided below:</p> <p>(1) Significant Scenic Resources – Those areas designated SEC-v on Multnomah County <del>sectional</del> <u>z</u>Zoning <del>m</del><u>M</u>aps.</p>
<p><b>4.24</b></p>	<p><b>Staff:</b> During the Code consolidation process the standard at 39.7015(A)(8) was inadvertently applied countywide, and was supposed to have remained applicable in the West of Sandy River Planning Area.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.7015 CONDITIONAL USE APPROVAL CRITERIA.</b></p> <p>(A) A Conditional Use shall be governed by the approval criteria listed in the base zone under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:</p>

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(8) ~~The~~ For uses in the West of Sandy River Planning Area, the use is limited in type and scale to primarily serve the needs of the rural area.

**4.25 Staff:** Add SEC 'general' overlay to list of SEC overlays in the table at MCC 39.5505 and 39.5525.

**Proposed Amendment:**

**§ 39.5505 AREA AFFECTED.**

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

Resource Area <u>Zoning Overlay</u> Designation
<u>SEC: Significant Environmental Concern Area</u>
SEC-sw: Scenic Waterway Resource Area
SEC-v: Scenic Views Resource Area
SEC-w: Wetlands Resource Area
SEC-s: Streams Resource Area
SEC-wr: Water Resource Area
SEC-h: Wildlife Habitat Resource Area

**§ 39.5525 APPLICABLE APPROVAL CRITERIA.**

(A) The approval criteria that apply to uses in areas designated SEC, 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:

<u>Zoning Overlay</u> Designation	Approval Criteria (MCC#)
<u>SEC</u>	<u>39.5540</u>
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 Type II Permit – 39.5560 and 39.5860	
4.26	<p><b>Staff:</b> Adding missing standards from the SEC-wr code that were unintentionally left out of the Consolidated code.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.5520 APPLICATION FOR SEC PERMIT.</b></p> <p>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.</p> <p>(A) An application for an SEC permit shall include the following:</p> <p>(1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 39.5540 through 39.5860.</p> <p>(2) A map of the property showing:</p> <p>(a) Boundaries, dimensions, and size of the subject parcel;</p> <p>(b) Location and size of existing and proposed structures;</p> <p>(c) Contour lines and topographic features such as ravines or ridges;</p> <p>(d) Proposed fill, grading, site contouring or other landform changes;</p> <p>(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;</p> <p>(f) Location and width of existing and proposed roads, driveways, and service corridors.</p> <p><u>(g) In the SEC-wr overlay, the location of natural drainageways, springs, seeps, and wetlands on the site.</u></p> <p><u>(3) The Planning Director may also require the applicant to provide the following:</u></p> <p><u>(a) The location of the SEC-wr boundary, topography, or the location of development as determined by a registered professional surveyor or engineer;</u></p>			

	<p><u>(b) A scaled drawing of the building design and elevations that show the relationship between the building and existing and finished grades and existing or proposed vegetation;</u></p> <p><u>(B) SEC-Water Resource: In addition to the information requirements listed in MCC 39.5520(A) above, the following information shall be submitted for applications within the SEC-wr overlay.</u></p> <p><u>(1) A topographic map of the development area and adjacent areas of the site at contour intervals of five feet or less showing a delineation of the Water Area or Habitat Area as determined by a documented field survey, the location of all existing and proposed watercourses, drainage ways, stormwater facilities, and utility installations;</u></p> <p><u>(2) The location of wetlands;</u></p> <p><u>(3) Information for the site from the adopted West of Sandy River Wildlife Habitat and Stream Corridor ESEE Report, the County Goal 5 Inventory;</u></p> <p><u>(4) Preparation of plans and surveys - Inventories, assessment of existing conditions, and mitigation or restoration plans shall be prepared by a qualified professional such as a fish or wildlife biologist at the discretion of the Planning Director. Wetlands shall be identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual. Required reports include;</u></p> <p><u>(a) An assessment of the existing condition of the Water Resource Area in accordance with MCC 39.5580 Table 2, Riparian/Vegetated Corridor Standards;</u></p> <p><u>(b) An inventory of vegetation, including percentage ground and canopy coverage, and location of nuisance plants listed in MCC 39.5580 Table 1;</u></p> <p><u>(c) A detailed Mitigation Plan as described in 39.5800 (F), if required;</u></p> <p><u>(5) The applicant shall provide evidence that when federal or state requirements apply, that the agency has been contacted, and shall provide an assessment of whether the project can meet the requirements based on the agency response;</u></p> <p><u>(6) The location of all existing trees of a caliper greater than six (6) inches in diameter at breast height (DBH);</u></p> <p><u>(7) 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.</u></p>
<p><b>4.27</b></p>	<p><b>Staff:</b> Fixing the citation to the missing standards in MCC 39.5520 above.</p>

	<p><b>Proposed Amendment:</b></p> <p><b>§ 39.5800- CRITERIA FOR APPROVAL OF SEC-WR PERMIT –WATER RESOURCE</b></p> <p>(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 (B) or (C) or (D) below are satisfied. An application shall not be approved unless it contains the site analysis information required in MCC 39.5520(A) and (€B), and meets the general requirements in MCC 39.5560.</p> <p>***</p> <p>(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.</p> <p>(1) Site assessment information pursuant to MCC 39.5520(A) and (€B) has been submitted.</p>
<p><b>4.28</b></p>	<p><b>Staff:</b> Relocating the code section relating to 'Code Compliance and Applications'. During the code consolidation the provisions for code compliance and applications was relocated to be grouped with other code provisions involving compliance. However the relocation has caused confusion because it's location is under Part 1.C – <i>VIOLATIONS, ENFORCEMENT AND FINES</i>. To avoid further confusion, the provision should be moved to Part 1.B – <i>PROCEDURES</i>, similar to its previous position prior to the code consolidation.</p> <p>Additionally, Task A.5 on the 2022 PC Work Program contemplates minor improvements, such as solar installations for an exemption from the full compliance standard in the land use code.</p> <p>The compliance standard (currently located in MCC 39.1515) requires that the County to not issue a development approval unless there is verification of compliance with applicable provisions of the Multnomah County Zoning Code and/or any permit approval previously issued by the County.</p> <p>In addition to proposed new location for this standard, staff has proposed new exemptions from the standard highlighted in yellow below.</p>



**7.21.22 Update:** Staff has added the words 'including solar panels' in (5)(c) and (d) below. We believe it helps to be specific in this case.

**Proposed Amendment:**

***PART 1.B – PROCEDURES***

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**§ 39.1250 CODE COMPLIANCE AND APPLICATIONS.**

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property; or

(4) It brings a non-conforming structure or non-conforming use into compliance with current regulations; or

(5) The Planning Director determines the development qualifies as a minor project. For purposes of this provision, a minor project is defined as small in scale, located outside a Flood Hazard zone or Geologic Hazard overlay, intended for the primary benefit of the residents, farm uses, or natural habitat on the subject property and will meet all other applicable zoning and building regulations. A minor project shall qualify under at least one of the following categories:

(a) Request for trade permits (such as electrical, mechanical and/or plumbing) that does not change the use of a structure or property; or

(b) Accessory structure(s) with an individual footprint(s) up to 200 square feet. This includes a structural addition(s) or modification(s); or

(c) Free standing renewable energy and heating systems up to 400 square feet ground coverage including, but not limited to solar (including solar panels), geothermal and wind generated systems; or

(d) Roof mounted solar renewable energy (including solar panels) and solar heating systems not exceeding the size of a structure's roof area, or roof height; or

(e) Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators, energy storage systems, water pumps, and similar equipment; or

(f) Heating oil, propane and similar tanks; or

(g) Development requests to protect or enhance natural resources, such as but not limited to water quality or wildlife habitat.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

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### ***1.C – VIOLATIONS, ENFORCEMENT AND FINES***

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### **~~§ 39.1515 CODE COMPLIANCE AND APPLICATIONS.~~**

~~Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.~~

~~(A) A permit or other approval, including building permit applications, may be authorized if:~~

~~(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or~~

~~(2) It is necessary to protect public safety; or~~

	<p><del>(3) It is for work related to and within a valid easement over, on or under an affected property.</del></p> <p><del>(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.</del></p>
<p><b>4.29</b></p>	<p><b>Staff:</b> Update to MCC 39.9700(D) consistent with change to ORS 92.176(5) [HB 2884 (2021)] that changed the maximum timeframe for recordation of a final plat from 90-days to 365-days:</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.9700 LEGALIZATION OF LOTS AND PARCELS THAT WERE PREVIOUSLY UNLAWFULLY DIVIDED.</b></p> <p>***</p> <p>(D) Within <del>90</del><u>365</u> days of a final decision being approved under Subsection (A), (B) or (C) of this Section, the property owner(s) shall record a partition plat or subdivision plat, as appropriate, in accordance with the requirements of ORS Chapter 92.</p>
<p><b>4.30</b></p>	<p><b>Staff:</b> Senate Bill 405 (2021) made changes to ORS 215.130 – the changes specify that for the purposes of non-conforming uses, a use is not considered interrupted or abandoned for any period while a federal, state or local emergency order temporarily limits or prohibits the use or the restoration or replacement of the use.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.8300- NONCONFORMING USES.</b></p> <p>***</p> <p><u>(I) A use continued under this section is not considered interrupted or abandoned for any period while a federal, state or local emergency order temporarily limits or prohibits the use or the restoration or replacement of the use.</u></p>

<p><b>4.31</b></p>	<p><b>Staff:</b> Adding the requirements of OAR 660-018-0050 to the Administrative Procedures of the zoning code for notice to parties requesting notice of final legislative decisions.</p> <p><b>Proposed Amendment:</b></p> <p><b><u>§ 39.1223 NOTICE TO OTHER PARTIES OF ADOPTED CHANGES.</u></b></p> <p><u>(A) On the same day notice of an adopted change to the Comprehensive Plan or land use regulation(s) is submitted to DLCD notice shall also mail or otherwise deliver notice of the decision to persons that:</u></p> <p><u>(1) Participated in the County proceedings that led to the decision to adopt the change to the Comprehensive Plan or the land use regulation; and</u></p> <p><u>(2) Requested in writing to be provided with notice of the change to the Comprehensive Plan or the land use regulation.</u></p> <p><u>(B) The notice to persons who participated and requested notice as required by subsection (A) above must:</u></p> <p><u>(1) Clearly describe the decision;</u></p> <p><u>(2) State the date of the decision;</u></p> <p><u>(3) Indicate how and where the materials described in OAR 660-018-0040(3) may be obtained;</u></p> <p><u>(4) Include a statement by the individual delivering the notice that identifies the date on which the notice was delivered and the individual delivering the notice;</u></p> <p><u>(5) List the locations and times at which the public may review the decision and findings; and</u></p> <p><u>(6) Explain the requirements for appealing the land use decision under ORS 197.830 to 197.845.</u></p>
<p><b>4.32</b></p>	<p><b>Staff:</b> Aligning existing SEC-v criteria for exterior lights with the dark sky lighting requirements of MCC 39.6850 for simplified implementation.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.5650 CRITERIA FOR APPROVAL OF SEC-V PERMIT -SIGNIFICANT SCENIC VIEWS.</b></p>

	<p>***</p> <p>(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:</p> <ul style="list-style-type: none"> <li>(1) Siting on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas.</li> <li>(2) Use of nonreflective or low reflective building materials and dark natural or earthtone colors.</li> <li>(3) <del>No exterior lighting, or</del> <u>Exterior lighting</u> <del>that is directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas</del> <u>and meets the Dark Sky Lighting Standards of MCC 39.6850</u>. Shielding and hooding materials should be composed of nonreflective, opaque materials.</li> </ul>
<p><b>4.33</b></p>	<p><b>Staff:</b> Adding text that was omitted during the 2018 code consolidation process. The text is needed because it specifies that change of use and alteration of use are subject to the SEC permit.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.5510 USES; SEC PERMIT REQUIRED.</b></p> <p>(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; <u>provided however, that the location and design of any use, or change or alteration of a use</u> <del>and</del>, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.</p>
<p><b>4.34</b></p>	<p><b>Staff:</b> Deleting an extra space between 1994 and the comma. Adding an s to SEC-w, because the sentence is supposed to reference the SEC – scenic waterway overlay (SEC-sw) not the SEC – wetland overlay (SEC-w). Deleting (8)(e) below because the standard is already provided in (8)(d). Additions in sections (10) through (16) are minor clarifications. The addition of (17) aligns with the concept that renewal energy systems that would be exempt from the compliance review should also be exempt from the requirement for a Significant Environmental Concern permit – this concept aligns with Work Program item A.5 (Exhibit B).</p> <p><b>7.21.22 Update:</b> The strikethrough text under (8) below simplifies the intent of the standard. The references to 1994 and 2010 were included when new Significant Environmental Concern rules were enacted.</p>

Existing uses and structures are all either lawfully established, and/or nonconforming uses, or they are not lawfully established. The reference to specific dates is no longer needed or particularly helpful.

Staff added the reference to expansion of a driveway under (b), which was the intent when proposing to strike (c).

Staff has added the words 'including solar panels' in (17) below consistent with the proposed exemptions with full compliance.

**Proposed Amendments:**

**§ 39.5515 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 to buildings and other development associated with farm practices and agricultural uses 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 lawfully established 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-sw, 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 or a driveway'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 or Type C Home Occupation ~~that requires~~ including the addition of less than 400 square feet of ground coverage to the structure used for the Home Occupation.

(11) Alteration, repair, or replacement of septic system tanks, lines and drainfields and related components due to system failure.

(12) ~~Single~~ Utility poles necessary to provide service to the local area.

(13) Right-of-way widening, ~~and~~ new surfacing, and vegetation removal for existing rights-of-way when the additional right-of-way, or surfacing, or vegetation removal is deemed necessary by the County Engineer to ~~ensure continuous width~~ meet the needs of the traveling public.

(14) 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.

(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, and submitted to the County.

(16) ~~In the SEC-~~ all SEC designations, 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.

(17) One free standing renewable energy and heating system up to 400 square feet of ground coverage including but not limited to solar (including solar panels), geothermal and wind generated systems, provided any conduit through SEC-s or SEC-w areas is provided by directional boring.

(1718) Routine repair and maintenance of structures, roadways, driveways, utility facilities, and landscaped areas that were in existence prior to November 30, 2000.

(1819) 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, provided a Post Emergency Response permit is obtained and any mitigation work completed.

(20) Signs listed in MCC 39.6720 (A) through (F), MCC 39.6805 (Directional Signs), and MCC 39.6810 (Temporary Signs).

(21) Flag poles no taller than 35 feet above existing or finished grade (whichever is lower) designed to display national, state, or local recognized jurisdiction flags pursuant to the United States Flag Code or laws regulating the proper display of jurisdiction flags.

(22) Heating oil, propane and similar tanks up to 1,000 gallon capacity placed within 100 feet of a lawfully existing structure provided any pipes crossing through SEC-s or SEC-w areas are provided by directional boring.

(23) Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators and energy storage systems, water pumps, and similar equipment placed within 100 feet of a lawfully existing structure, provided any pipes or conduit crossing through SEC-s or SEC-w areas are provided by directional boring.

(24) The placement of utility infrastructure such as pipes, conduits and wires within an existing right-of-way.

(25) In the West of Sandy River Planning Area the uses and structures excepted in MCC 39.5550 (B) (1), (2), and (3).

(26) Within the SEC-v:

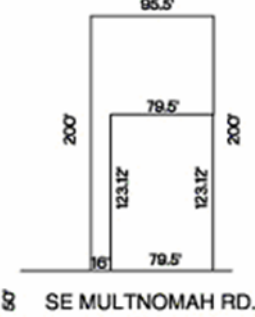
(a) Any modification or alteration to an existing exterior wall of a lawfully established structure that will be 100% screened from all IVAs by the structure itself.

(b) Placement of antennas and satellite dishes on an existing lawfully established structure.

(c) Concrete slabs, parking areas, and similar low profile structures no taller than 36 inches above initial grade.



<p><b>4.35</b></p>	<p><b>Staff:</b> Adding the definition of development that was previously included in Chapter 36 (West of the Sandy River Plan Area) prior to the Code Consolidation of 2018. The definition clarifies that more than 10% vegetation removal in the SEC water resources overlay (SEC-wr) qualifies as development subject to an SEC permit. While the consolidated code section 39.2000 contains a definition of development applicable to the entire code, this definition, which is specifically applicable to the SEC overlay zones was inadvertently deleted.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.5545 DEFINITIONS.</b></p> <p><u><b>Development:</b> Any human-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. Any other activity that results in the removal of more than 10 percent of the existing vegetation in the Water Resource Area or Habitat Area on a lot or parcel.</u></p>
<p><b>4.36</b></p>	<p><b>Staff:</b> Label 'Figure 1' in MCC 39.9510(D)(1).</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.9510 LOTS AND PARCELS.</b></p> <p>The design of lots and parcels shall comply with the following:</p> <p>* * *</p> <p>(D) A land division may include creation of a flag lot with a pole that does not satisfy the minimum frontage requirement of the applicable base zone, subject to the following:</p> <p>(1) When a flag lot does not adjoin another flag lot, as shown in MCC 39.9510 Figure 1, the pole portion of the flag lot shall be at least 16 feet wide.</p> <p><u><b>Figure 1.</b></u></p>

	 <p>SE MULTNOMAH RD.</p>
<p><b>4.37</b></p>	<p><b>Staff:</b> Delete unneeded extra word in MCC 39.9550 (G) (2).</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.9550 STREETS, SIDEWALKS, PEDESTRIAN PATHS AND BIKEWAYS.</b></p> <p>***</p> <p>(G) Any street, pedestrian path or bikeway shall be improved as follows:</p> <p>***</p> <p>(2) In a private street, in accordance with <del>the</del> this Chapter and the Multnomah County Road Rules and Design and Construction Manual;</p>
<p><b>4.38</b></p>	<p><b>Staff:</b> Adding on-site sewage and stormwater management to Forest Development Standards consistent with other zones. This addition makes it easier to clarify that these standards are applicable in the CFU zone for development. Also updating references to the new subsection (E) as appropriate.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.4115 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES.</b></p> <p>All dwellings and structures shall comply with the approval criteria in (B) through (<del>D</del><u>E</u>) below except as provided in (A). All exterior lighting shall comply with MCC 39.6850:</p> <p>(A) For the uses listed in this subsection, the applicable development standards are limited as follows:</p> <p>(1) Expansion of existing dwelling <u>shall meet the development standards of MCC 39.4115(E).</u></p>

- (a) Expansion of 400 square feet or less additional ground coverage to an existing dwelling: ~~Not subject to~~ shall meet the development standards of MCC 39.4115(E);
- (b) Expansion of more than 400 square feet additional ground coverage to an existing dwelling: Shall meet the development standards of MCC 39.4115(C) and (E);
- (2) Replacement or restoration of a dwelling shall meet the development standards of MCC 39.4115(E).
- (a) Replacement or restoration of a dwelling that is within the same foot-print of the original dwelling and includes less than 400 square feet of additional ground coverage: ~~Not s~~Subject to the development standards of MCC 39.4115(E);
- (b) Replacement or restoration of a dwelling that is within the same foot-print of the original dwelling with more than 400 square feet of additional ground coverage: Shall meet the development standards of MCC 39.4115(C) and (E);
- (c) Replacement or restoration of a dwelling that is not located within the footprint of the original dwelling but it is located where at least a portion of the replacement dwelling is within 100 feet of the original dwelling: Shall meet the development standards of MCC 39.4115(C) and (E).
- (3) Accessory buildings shall meet the development standards of MCC 39.4115(E).
- (a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 39.4115(C) and (E);
- (b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B) ~~and~~, (C) and (E);
- (4) Temporary dwellings shall meet the development standards of MCC 39.4115(E).
- (a) A temporary health hardship mobile home located within 100 feet of the existing dwelling: ~~Not subject to~~ shall meet the development standards of MCC 39.4115(E);
- (b) A temporary health hardship mobile home located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B) ~~and~~, (C) and (E);
- (c) A temporary mobile home used during construction or reconstruction of a dwelling located within 100 feet of the dwelling under construction: ~~Not subject to~~ shall meet the development standards of MCC 39.4115(E);
- (d) A temporary mobile home used during construction or reconstruction of a dwelling located farther than 100 feet of the dwelling under construction: Shall meet the development standards of MCC 39.4115(B) ~~and~~, (C) and (E);

	<p>***</p> <p><u>(E) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the Lot of Record.</u></p> <p><u>(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.</u></p> <p><u>(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.</u></p>
<p><b>4.39</b></p>	<p><b>Staff:</b> Adding reference to the new subsection (E) as appropriate consistent with the amendment above.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.4155 EXCEPTIONS TO SECONDARY FIRE SAFETY ZONES.</b></p> <p>***</p> <p>§ 39.4155(B)</p> <p>***</p> <p>(5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of subsection (B) (2) above are utilized. <del>Exception:</del> Expansions of existing single family dwellings as allowed by MCC 39.4075(A) shall not be required to meet this standard, but shall satisfy the standard of MCC 39.4115(C)(3) <u>and (E)</u>.</p>
<p><b>4.40</b></p>	<p><b>Staff:</b> Update application submission requirements.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.9410 CATEGORY 1 AND CATEGORY 2 TENTATIVE PLAN MAP SPECIFICATIONS.</b></p> <p>(A) The tentative plan map shall be drawn on a sheet 18 x 24 inches or 11 x 17 inches in size or a size <u>and format (including electronic)</u> approved by the Planning Director. The scale of the map shall be 10, 20, 30, 40, 50, 60, 100 or 200 feet to the inch or multiples of ten of any of these scales. The map shall include one copy of a scaled drawing of the</p>

	<p>proposed subdivision, on a sheet 8.5 x 11 inches <u>or in a format specified by the Planning Director</u>, suitable for reproduction, mailing and posting with the required notices.</p> <p>(B) A future street plan may be combined with the tentative plan map or may be drawn on a sheet 8.5 x 11 inches or larger in size at a scale of one inch to one hundred feet <u>or in a format specified by the Planning Director</u>.</p>
<p><b>4.41</b></p>	<p><b>Staff:</b> Moving the prohibited signs listed in MCC 39.6745 (SIGNS GENERALLY) to MCC 39.6725 (PROHIBITED SIGNS).</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.6725 PROHIBITED SIGNS.</b></p> <p>The following signs are prohibited and shall be removed:</p> <p>(A) Strobe lights and signs containing strobe lights which are visible beyond the property lines;</p> <p>(B) Signs placed on or painted on a motor vehicle or trailer and parked with the primary purpose of providing a sign not otherwise allowed for by this Subpart;</p> <p>(C) Abandoned signs;</p> <p>(D) Balloon signs; <del>and</del></p> <p>(E) Signs in the right-of-way in whole or in part, except signs legally erected for informational purposes by or on behalf of a government agency.</p> <p><u>(F) Electronic message centers;</u></p> <p><u>(G) Flashing signs;</u></p> <p><u>(H) Rotating signs;</u></p> <p><u>(I) Signs with moving parts;</u></p> <hr/> <p><b>§ 39.6745 SIGNS GENERALLY.</b></p> <p>***</p> <p>(C) Sign Features. Permanent signs may <del>have the following features:</del></p>

	<p>(1) Signs may be indirectly illuminated downward onto the sign face.</p> <p>(2) Electronic message centers are not allowed.</p> <p>(3) Flashing signs are not allowed.</p> <p>(4) Rotating signs are not allowed.</p> <p>(5) Moving parts are not allowed.</p>
<p><b>4.42</b></p>	<p>Certain uses have different timelines than what is specified in Section 39.1185. We propose adding clarifying text that where a different timeframe is specified, that timeframe shall be used.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.1183 EXPIRATION AND EXTENSION OF TYPE I DECISIONS.</b></p> <p>***</p> <p><u>(E) Notwithstanding Subsections (A), (B), (C), or (D) of this section, for uses in Chapter 39 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.</u></p> <p><b>§ 39.1185 EXPIRATION OF TYPE II OR TYPE III DECISIONS.</b></p> <p>***</p> <p><u>(G) Notwithstanding Subsections (A), (B), (C), (D), (E), or (F) of this section, for uses in Chapter 39 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.</u></p>
<p><b>4.43</b></p>	<p>Proposing adding a bit more flexibility on the timing for the election of officers by eliminating the need to accomplish this annual task by April.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.1620 OFFICERS AND STAFF.</b></p> <p>(A) <u>Each year</u> <del>The the</del> Commission shall, <del>at or before its first meeting in April each year,</del> elect and install from among its members a chair and vice-chair. The Commission may elect and install from among its members a second vice-chair. If there is a vacancy in any officer position, the Commission shall fill such vacancy by appointing an officer at the first regular meeting following the vacancy.</p>

<p><b>4.44</b></p>	<p>Updating term 'Indian' to 'tribe' or 'tribal' consistent with Scenic Area Code. Updating term prehistoric to 'pre-contact' consistent with Scenic Area Code.</p> <p><b>Proposed Amendment:</b></p> <p><b>§ 39.2000 DEFINITIONS.</b></p> <p>As used in this Chapter, unless the context requires otherwise, the following terms and their derivations shall have the meanings provided below:</p> <p>***</p> <p><b>Archeological Resource</b> – A district, site, building, structure or artifact which possesses material evidence of life and culture of the <del>prehistoric</del> <u>pre-contact</u> and historic past.</p> <p>***</p> <p><b>Community</b> – Any State or area or political subdivision thereof, or any <del>Indian-tribe</del> <u>tribal government</u> or authorized tribal organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.</p> <hr/> <p><b>§ 39.5510 USES; SEC PERMIT REQUIRED.</b></p> <p>***</p> <p>(B) Any excavation or any removal of materials of archaeological, historical, <del>prehistoric</del> <u>pre-contact</u> or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.</p> <hr/> <p><b>§ 39.7740 APPROVAL CRITERIA FOR LANDS NOT ZONED EXCLUSIVE FARM USE.</b></p> <p>***</p> <p>§ 39.7740(A)(4)</p> <p>(a) The facility shall comply with Significant Environmental Concern regulations when applicable, including the conditions of an SEC permit for any excavation or removal of materials of archaeological, historical, <del>prehistoric</del> <u>pre-contact</u> or anthropological nature;</p>
	<p>Updates to Chapter 39 Table of contents based on above changes.</p>

**Proposed Amendment:**

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***PART 1.A - GENERAL PROVISIONS***

39.1000- Title  
39.1005 Policy Purpose  
39.1010 Severability  
39.1015 Zoning Map

\*\*\*

***PART 1.B – PROCEDURES***

\*\*\*

39.1223 Notice to Other Parties of Adopted Changes

\*\*\*

39.1250 Code Compliance and Applications

\*\*\*

***PART 1.C – VIOLATIONS, ENFORCEMENT AND FINES***

\*\*\*

~~39.1515 Code Compliance and Applications~~

\*\*\*

39.4645 Access

PART 4.C.6 – ORIENT ~~COMMERCIAL RESIDENTIAL~~ COMMERCIAL INDUSTRIAL  
(OCI)

39.4650- Purpose

\*\*\*

***PART 8.E – ACCESSORY ~~STRUCTURES~~ BUILDINGS – CONDITION OF APPROVAL***



	39.8860- Condition of Approval – <u>Accessory Buildings</u>
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**Exhibits**

- A.** Friends of the Columbia Gorge v. Schafer (2008)
- B.** 2022 Planning Commission Work Program



**FRIENDS OF THE COLUMBIA GORGE, INC. et al., Plaintiffs, v. EDWARD T. SCHAFFER, Secretary of the U.S. Department of Agriculture et al., Defendants.**

**No. CV 04-1423-MO**

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON**

*624 F. Supp. 2d 1253; 2008 U.S. Dist. LEXIS 95799*

**November 24, 2008, Decided**

**PRIOR HISTORY:** *Friends of the Columbia Gorge, Inc. v. Columbia River Gorge Comm'n*, 215 Ore. App. 557, 171 P.3d 942, 2007 Ore. App. LEXIS 1536 (2007)

**COUNSEL:** [\*\*1] For Friends of the Columbia Gorge, Inc., Columbia Riverkeeper, 1000 Friends Of Oregon, Columbia Gorge Hotel Co., Claudia Curran, Eric Lichtenthaler, Jack Mills, Kate Mills, Phil Pizanelli, Dixie Stevens, Brian Winter, Cynthia Winter, Plaintiffs: Gary K. Kahn, Peggy Hennessy, LEAD ATTORNEYS, Reeves Kahn & Hennessy, Portland, OR.

For Secretary of The U.S. Department Of Agriculture, Ed Schafer, Regional Forester, U.S. Forest Service, Linda Goodman, Defendants: Stephen J. Odell, LEAD ATTORNEY, United States Attorney's Office, Portland, OR.

**JUDGES:** MICHAEL W. MOSMAN, United States District Judge.

**OPINION BY:** MICHAEL W. MOSMAN

**OPINION**

[\*1260] OPINION AND ORDER

**MOSMAN, J.,**

For at least the last 18,000 years, since its scouring by the Lake Missoula Flood, the Columbia River Gorge has been one of the most unusual and beautiful places on earth. Its centerpiece, of course, is the mighty Columbia River, a 2000 kilometer jewel that divides much of Oregon and Washington. But trimming that river on either side are dozens of waterfalls, river canyons, basalt cliffs, and volcanoes that make up this remarkable area. In addition to its natural beauty, it is also a major shipping route connecting the Pacific Northwest with its markets in all [\*\*2] directions. In many places in the Gorge it is possible to stand in the spray of a moss covered waterfall, visually removed from the modern world, and be just a few hundred feet from an interstate freeway, a major rail line, and river and air traffic. It is also home to many vibrant communities and major tourist attractions, including world famous windsurfing. Finally, the river itself is crossed by as series of dams, making it the largest producer of hydroelectric power of any river in North

America.

Against this backdrop of competing interests and features, Congress designated a portion of the Gorge as a National Scenic Area. This case concerns the Columbia River Gorge National Scenic Area ("Scenic Area") and its management. The Friends of the Columbia Gorge, Inc. and other organizational and individual plaintiffs (collectively "Friends of the Gorge") challenge the decision by Regional Forester Linda Goodman, acting on behalf of Edward Schafer, Secretary of Agriculture (collectively "Secretary"), to concur with the Columbia River Gorge Commission ("Commission") that the Revised Management Plan ("RMP") for the Scenic Area is consistent with the standards and purposes of the Columbia [\*\*3] River Gorge National Scenic Area Act ("Scenic Area Act"), *16 U.S.C. §§ 544-544p*. Friends of the Gorge alleges that the Secretary's decision was arbitrary and capricious or in violation of the law because provisions of the RMP violate the Scenic Area Act.

The matters now before the court are Friends of the Gorge's Motion for Summary Judgment (# 76), the Secretary's Cross-Motion for Summary Judgment (# 91), and the Secretary's Motion for a Stay (# 97). The majority of Friends of the Gorge's claims are not ripe for judicial review; in particular claims 1.1, 1.2, 2.1, 2.2, 4, 5, and 6. Claims 2.3, 2.4, 7, and 8 require the court to determine whether the Secretary's action was arbitrary and capricious [\*1261] or not in accordance with the law. The court holds that the Secretary's concurrence was not in accordance with the law as to the Rowena Dell portion of claim seven and as to claim eight. Friends of the Gorge's motion for summary judgment is therefore DENIED as to claims one through six, GRANTED IN PART and DENIED IN PART as to claim seven, and GRANTED as to claim eight. Accordingly, the Secretary's cross-motion is GRANTED as to claims one through six, GRANTED IN PART and DENIED IN PART as to [\*\*4] claim seven, and DENIED as to claim eight. The Secretary's motion for a stay pending a decision by the Oregon Supreme Court is DENIED.

## BACKGROUND

### I. The Columbia River Gorge National Scenic Area Act

In 1986, President Reagan signed the Scenic Area Act into law, creating the Scenic Area. The Scenic Area falls within two states, Oregon and Washington, and six counties, Hood River, Multnomah, and Wasco counties in Oregon, and Clark, Klickitat, and Skamania counties in Washington. It also includes federal land, primarily the Mt. Hood and Gifford Pinchot National Forests.

The Act creates rules and procedures for managing the Scenic Area to further the goals of:

- (1) establish[ing] a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and
- (2) protect[ing] and support[ing] the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1).

*16 U.S.C. § 544a*. It also divides the land in the Scenic Area into three categories: (1) special management areas, (2) urban areas, and [\*\*5] (3) general management areas.<sup>1</sup> The special management areas are specifically identified in the Act and are largely considered the most vulnerable areas. *Id. § 544b(b)*. They are generally subject to the most stringent regulations. The urban areas are also specifically identified in the Act. *Id. § 544b(d)*. The general management areas are all the remaining lands within the Scenic Area not designated as special management or urban areas.

<sup>1</sup> The term "general management area" does not appear in the Scenic Area Act; however, the term is used throughout the management plan to identify lands not within either the special management or urban areas.

A unique aspect of the Scenic Area Act is the division of management authority it creates between the Secretary, the Commission, and various local governments.

### **A. The Commission**

The Commission is a bi-state agency created by Oregon and Washington through an interstate compact. *Or. Rev. Stat. § 196.150; Wash. Rev. Code § 43.97.015*. Congress ratified the states' agreement and provided specifications for the Commission in the Act. Congress specified that the Commission is to be composed of one member from each of the counties, appointed by the governing [\*\*6] body of the counties; three members from each state, at least one of whom lives within the Scenic Area, appointed by the respective state governor; and one nonvoting member from the Forest Service appointed by the Secretary of Agriculture, for a total of thirteen members. *16 U.S.C. § 544c(a)(1)(C)*. Congress also specified that the Commission was to adopt regulations to govern its affairs so that there would be [\*1262] a uniform system of laws governing the Commission's actions, in addition to the Scenic Area Act itself. *Id. § 544c(b)*. The Commission has management authority over the non-federal land within the Scenic Area. *Id. §§ 544e(a); 544d(b)*.

### **B. The Secretary**

The Secretary has primary authority over the federal lands within the Scenic Area. *Id. §§ 544d(c)(4); 544f(a)(1)*. He also has increased authority over non-federal lands in the special management areas. *Id. § 544f(f)(1)* ("[T]he Secretary shall, in consultation with the Commission, develop guidelines to assure that non-Federal lands within the special management areas are managed consistent with [the management plan] and the purposes of [the Act].").

### **C. Local Governments and Other Entities**

Other governing entities within the Scenic Area, [\*\*7] including local governments and Indian tribes, also play a management role. For example, *section 544d(e)* provides that the Commission and the Secretary "shall exercise their responsibilities pursuant to [the Scenic Area Act] in consultation with Federal, State, and local governments having jurisdiction within the scenic area or expertise pertaining to its administration and with Indian tribes." The counties are also permitted to adopt land use ordinances consistent with the management plan. However, if a county fails to do so within the time provided by the Scenic Area Act, the Commission "shall make and publish a land use ordinance setting standard for the use of non-Federal lands in such county within the boundaries of the national scenic area, excluding urban areas." *Id. § 544e(c)(1)*.

### **D. The Management Plan**

The Scenic Area Act mandates that the Commission adopt a Scenic Area management plan within three years of the Commission being formed. *Id. § 544d(c)*. The terms of the plan relating to federal land and special management areas are to be provided by the Secretary and incorporated without change by the Commission. *Id. §§ 544d(c)(4), (c)(5)(A)*. Once the Commission adopts a management [\*\*8] plan, including the provisions provided by the Secretary, it forwards the plan to the Secretary for review. *Id. § 544d(f)(1)*. The Secretary then has three options: he can (1) expressly concur, (2) do nothing for ninety days, which is then deemed a concurrence, or (3) deny concurrence and submit suggested modifications to the Commission. *Id. § 544d(f)(1)-(2)*. If concurrence is denied, the Commission can either revise and resubmit the plan or override the Secretary's denial with a two-thirds vote of its membership, including a majority from each state, in favor of adopting the plan without the Secretary's proposed modifications. *Id. § 544d(f)(3)*.

After a plan is adopted, the Commission must review it to determine whether it should be revised, "[n]o sooner than five years after adoption . . . but at least every ten years." *Id. § 544d(g)*. When the Commission adopts a revised management plan, it must be submitted to the Secretary for "review and concurrence," using the process described above. *Id.*

## **II. The Revised Management Plan**

The Commission adopted the initial management plan for the Scenic Area in October 1991. The Secretary concurred that the plan was consistent with the purposes and [\*\*9] standards of the Scenic Area Act in early 1992, and

the management plan has been in effect since that time. In 1997, the Commission and the Forest Service began the first review of the plan and the Commission adopted the final RMP in April 2004. The RMP was then sent to [\*1263] the Secretary for review, and the Secretary delegated his authority to review the plan to the Regional Forester for the Pacific Northwest Region of the Forest Service, Linda Goodman. Friends of the Gorge filed a complaint in Oregon state court in June 2004, challenging the Commission's adopted revisions. In August, Regional Forester Goodman issued a written decision expressing the Secretary's concurrence with the RMP. Friends of the Gorge filed this action in October 2004.

The Secretary filed a motion to dismiss, a motion for partial summary judgment, and a motion to stay the case pending a decision by the Oregon Court of Appeals in the concurrent state case. In December 2005 the court denied the motion to dismiss and granted the motion to stay the case. In March 2006 the court denied the motion for partial summary judgment, with leave to refile. The stay ended in January 2008 after the Oregon Court of Appeals issued [\*\*10] its decision in *Friends of the Columbia Gorge, Inc. v. Columbia River Gorge Commission*, 215 Ore. App. 557, 171 P.3d 942 (Or. Ct. App. 2007).<sup>2</sup> The parties then filed cross-motions for summary judgment.

<sup>2</sup> The decision of the Oregon Court of Appeals was appealed to the Oregon Supreme Court, which allowed review in July 2008. *Friends of the Columbia Gorge, Inc. v. Columbia River Gorge Comm'n*, 345 Ore. 94, 189 P.3d 749 (Or. 2008).

Friends of the Gorge seeks (1) a declaration that the Secretary's concurrence and the challenged portions of the RMP violate the Scenic Area Act, and (2) an injunction against implementation of the challenged portions of the RMP until they comply with the Act.

In his cross-motion for summary judgment, the Secretary counters that: (1) Friends of the Gorge lacks standing to pursue their claims; (2) the claims are not ripe for adjudication; and (3) the Secretary's concurrence was not arbitrary or capricious and was in accordance with a reasonable interpretation of the Scenic Area Act.

## STANDARD OF REVIEW

For cross-motions for summary judgment, the court "evaluate[s] each motion separately, giving the nonmoving party in each instance the benefit of all reasonable inferences." *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 790-91 (9th Cir. 2006) [\*\*11] (quoting *ACLU of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1097 (9th Cir. 2003)). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(c)*.

The Scenic Area Act provides for judicial review, 16 U.S.C. § 544m(b), but does not provide a standard of review; therefore, the Administrative Procedure Act ("APA") standards apply. See *Ninilchik Traditional Council v. United States*, 227 F.3d 1186, 1193-94 (9th Cir. 2000). Under the APA, a court may "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

An agency action is arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983). [\*\*12] Generally, "review under the 'arbitrary and capricious' standard is narrow and a [\*1264] court is not to substitute its judgment for that of the agency." *Id.* The Ninth Circuit, in *Lands Council v. McNair*, 537 F.3d 981 (9th Cir. 2008) (en banc), reiterated the importance of granting deference to the agency, stating that the court is to ensure only that the agency has "made no 'clear error of judgment' that would render its action 'arbitrary and capricious.'" *Id.* at 993 (citing *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 378, 109 S. Ct. 1851, 104 L. Ed. 2d 377 (1989)). However, in order for agency action to be upheld, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts

found and the choice made." *Motor Vehicle Mfrs.*, 463 U.S. at 43 (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168, 83 S. Ct. 239, 9 L. Ed. 2d 207 (1962)).

The Secretary argues that because Friends of the Gorge made facial challenges to the RMP, they bear the burden of demonstrating that no set of circumstances exists under which the challenged portions of the plan may be lawfully applied. (Defs.' Mem. in Supp. of Summ. J. (# 92) at 29 (citing *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987) [\*\*13] ("A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."); *Reno v. Flores*, 507 U.S. 292, 301, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993) (extending the "no set of circumstances" standard to agency regulations reviewed for inconsistency with the authorizing statute).) However, the Ninth Circuit has recently called the "no set of circumstances" standard into question. See *Sierra Club v. Bosworth*, 510 F.3d 1016, 1023-24 (9th Cir. 2007) (stating that Supreme Court jurisprudence is divided on whether the standard is dicta or a generally applicable rule, collecting cases, and refusing to apply the standard to the Forest Service's establishment of National Environmental Policy Act ("NEPA") categorical exclusions). Therefore, this court will apply the traditional arbitrary and capricious standard in this case.

When a court reviews an agency's construction of a statute it administers, it must first determine "whether Congress has directly spoken to the precise question at issue." *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). When Congress [\*\*14] has expressed its clear and unambiguous intent both the court and the agency must give effect to that intent. *Id.* at 842-43. However, "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843. Thus, deference is due to the agency's interpretation of a statute only when a statute is silent or ambiguous as to the question at issue.

## DISCUSSION

### I. Justiciability

The Secretary's motion for summary judgment argues that the court lacks subject matter jurisdiction over the case because (1) Friends of the Gorge lacks standing and (2) the case is not ripe for adjudication. (Defs.' Mem. in Supp. of Summ. J. (# 92) at 25, 27.) "The party asserting federal jurisdiction bears the burden of proving the case is properly in federal court." *In re Ford Motor Co./Citibank (S.D.), N.A.*, 264 F.3d 952, 957 (9th Cir. 2001).

#### A. Standing

"A suit brought by a plaintiff without Article III standing is not a 'case [\*1265] or controversy,' and an Article III federal court therefore lacks subject matter jurisdiction over the suit." *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004) [\*\*15] (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998)). To establish constitutional standing, the "'plaintiff must show that (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *Id.* (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000)). The Secretary does not challenge the causation element of standing, therefore it is not analyzed below.

Where the plaintiff is an organization, as several of the plaintiffs are here, it has standing to sue on behalf of its members where the "members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Laidlaw Envtl. Servs.*, 528 U.S. at 181. Friends of the Gorge, Columbia Riverkeeper, and 1000 Friends of Oregon are non-profit [\*\*16] organizations dedicated to the protection and enhancement of the resources of the Scenic Area or of Oregon as a whole, making the interests at stake in this case

germane to the purposes of the organizations. Participation by individual plaintiffs is not necessary in this case. Thus, if at least one member of Friends of the Gorge, Columbia Riverkeeper, or 1000 Friends of Oregon has standing, standing is established.

### 1. Injury in Fact

To establish an injury-in-fact, plaintiffs must allege that they have suffered a concrete, particularized harm as to each individual claim. *See id. at 185* ("Standing is not dispensed in gross." (quoting *Lewis v. Casey*, 518 U.S. 343, 358 n.6, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996))). Harm to the environment in general is not sufficient. *Id. at 181*.

In *Laidlaw*, the defendant was given a permit to discharge treated water into a nearby river. Testing showed that Laidlaw was exceeding the allowable pollution levels under its permit. An environmental action group sued the company for failing to comply with the permit standards. Plaintiffs asserted they were harmed by Laidlaw's actions because they had used the river for various recreational activities, but were now afraid to do so because of the [\*\*17] smell and pollution caused by Laidlaw. The Supreme Court held the group had standing because "they aver that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity." *Laidlaw Envtl. Servs.*, 528 U.S. at 183 (internal quotations and citation omitted).

The fact that an injury has not yet occurred does not defeat a finding of standing. *See Wilbur v. Locke*, 423 F.3d 1101, 1108 (9th Cir. 2005) (holding that "[o]ne does not have to await the consummation of threatened injury before challenging" an action and seeking declaratory relief (quoting *Canatella v. California*, 304 F.3d 843, 852 (9th Cir. 2002))). In *Wilbur*, plaintiffs alleged they would suffer injury from a compact between the state and an Indian Tribe. However, because the compact had not yet been enacted, the district court held the injury was only "likely," not "actual or imminent." *Id.* The Ninth Circuit [\*\*1266] reversed, holding that where the complaint stated that the compact would be enacted "within the near future," plaintiffs' alleged injury was "sufficiently imminent to satisfy the requirement of an injury in fact." *Id.*

Here, Friends of the Gorge [\*\*18] has alleged sufficient injury for standing. They allege that their purpose is to protect and enhance the resources of the Scenic Area and that their members use the land at issue for "hiking, wildlife viewing, photography, camping, bird watching, and other recreational pursuits." (Gorman Decl. (# 101) at 2.) Further, there are several individual plaintiffs who live, do business, or own property in the Scenic Area. Collectively, Friends of the Gorge asserts implementation of the plan revisions will have a direct negative impact on their activities and interests.<sup>3</sup> Some of the plaintiffs have also alleged potential financial injury due to the Secretary's action. (Third Am. Compl. (# 73) at 4.) The RMP has been adopted by the Commission and ratified by the Secretary, thus the potential injury is sufficiently imminent under *Wilbur*.

<sup>3</sup> Plaintiffs have filed individual declarations (## 100-109) to this effect.

### 2. Redressability

To have standing, plaintiffs must show that there is a substantial likelihood that the requested relief, if granted, will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). The Scenic Area Act grants plaintiffs the right to bring suit challenging [\*\*19] a final action of the Secretary "requesting such action . . . be modified, terminated, or set aside." 16 U.S.C. § 544m(b)(4)(A). Here, Friends of the Gorge seeks three types of relief relevant to this inquiry: (1) a declaratory judgment that the Secretary's actions violated the Act, (2) a declaratory judgment that the revised plan violates the Act, and (3) an injunction prohibiting implementation of the challenged portions of the revised plan "until such time as the Plan is corrected to comply with the . . . Act." (Third Am. Compl. (# 73) at 14.) The first request for relief relates specifically to the Secretary's concurrence, requesting that it be set aside by this court. The second and third requests for relief relate to the rest of Friends of the Gorge's claims regarding injuries allegedly caused by specific provisions of the RMP with which the Secretary concurred.

The Secretary argues that Friends of the Gorge's claims are not redressable because the Secretary's concurrence is

not required for the RMP to go into effect. (Defs.' Reply (# 112) at 7.) He further argues that this court does not have the power to require the Secretary to deny his concurrence because the Scenic Area Act [\*\*20] expressly states that the Secretary need not act at all. (*Id.*) Under the Act, the Secretary has ninety days to concur or deny his concurrence with the Commission regarding the management plan's consistency with the Scenic Area Act; if no action is taken within ninety days, the Secretary is deemed to have concurred. *16 U.S.C. § 544d(f)(1)*. If the concurrence is denied by the Secretary, the Commission has 120 days to revise and resubmit the plan to the Secretary or to pass the management plan over the dissent of the Secretary by a two-thirds vote of the Commission membership, including a majority from each state. *Id. § 544d(f)(3)*.

Perhaps the single biggest obstacle to the Secretary's position on redressability is that the Scenic Area Act specifically provides for judicial review--review that is presumably designed to redress errors in the implementation of the Act. If the Secretary were correct regarding the power of this court, he would effectively be insulated from suit under the statute. [\*1267] This was not the intent of Congress in creating the citizen suit and judicial review provisions of the Scenic Area Act. *See id. §§ 544m(b)(2)* (citizen suit provision), *544m(b)(4)* (judicial review [\*\*21] provision), *544m(b)(5)* (giving federal courts jurisdiction over "any civil action brought against the Secretary pursuant to this section").<sup>4</sup>

4 The Oregon Court of Appeals determined that the management of the special management areas was entrusted solely to the Secretary of Agriculture and the Forest Service, not to the Commission. *Friends of the Columbia Gorge, Inc. v. Columbia River Gorge Comm'n*, 215 Ore. App. 557, 171 P.3d 942, 958-59 (2007) (citing *16 U.S.C. § 544d(c)(4)*). Therefore, the court rejected all the special management area related claims. *Id.* This issue does not appear to be before the Oregon Supreme Court on appeal. *See* Or. S. Ct. Media Release (July 2, 2008) at 1-5. Review of actions taken regarding the special management areas is therefore not available in the Oregon courts and would be completely unavailable if this court did not have jurisdiction.

In any event, it is purely speculative whether the Commission would have chosen (or would choose in the future) to overrule a denial of concurrence by the Secretary. Furthermore, the Secretary's failure to act (which becomes a concurrence after ninety days) is subject to review, because Friends of the Gorge would be adversely affected by [\*\*22] that final inaction of the Secretary. *See id. § 544m(b)(4)*.

The Secretary also argues that this court does not have the power to set aside portions of the RMP as a remedy because the "agency action" involved was a concurrence indicating that the Secretary found the plan to be consistent with the Scenic Area Act, rather than the actual adoption or implementation of the plan. (Defs.' Reply (# 112) at 7.) This is somewhat disingenuous because the Secretary is charged with developing guidelines applicable to the special management areas. *16 U.S.C. § 544f(f)(1)*. The Scenic Area Act states that the Secretary "shall promptly transmit the guidelines to the Commission for inclusion in the management plan," *id.*, and the management plan "shall incorporate without change the management direction for the use of Federal lands within and the land use designations for the special management areas adopted by the Secretary," *id. § 544d(c)(4)*. Friends of the Gorge's claims relate solely to the special management areas.

This unusual piece of legislation is grounded in the idea of cooperation among different levels of government. It seems out of character with the terms of the Scenic Area Act to suggest [\*\*23] that any order by this court will simply be ignored, rather than taken into account, in implementing the RMP.

### **B. Ripeness**

The Secretary also asserts that this court lacks jurisdiction because the case is not ripe. "[T]he ripeness requirement is designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 732-33, 118 S. Ct. 1665, 140 L. Ed. 2d 921 (1998) (citing *Abbott*



*Labs. v. Gardner*, 387 U.S. 136, 148-49, 87 S. Ct. 1507, 18 L. Ed. 2d 681 (1967)). In deciding whether a case is ripe, courts consider the "fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Id.* at 733 (internal quotations and citations omitted). The Court, in *Ohio Forestry*, considered: "(1) whether delayed review would cause hardship to the plaintiffs; (2) whether judicial intervention would inappropriately [\*1268] interfere with further administrative action; and (3) whether the courts would benefit from [\*\*24] further factual development of the issues presented." *Id.*

In *Ohio Forestry*, the Secretary of Agriculture had developed a land and resource management plan under the National Forest Management Act of 1976 for a national forest in Ohio. *Id.* at 728-29. As part of the plan, the Forest Service set logging goals for the forest, but did not authorize the cutting of any trees. *Id.* at 729. Rather, before the Forest Service could issue a logging permit, it had to propose a specific project, ensure that it fit within the bounds of the management plan, and provide due process to those affected by the proposal. *Id.* at 729-30. Adopting the general management plan did, however, make the occurrence of logging activities more likely. *Id.* at 730. Before the Forest Service issued any logging permits or identified a specific logging project, the Sierra Club filed suit challenging the management plan. *Id.* The Supreme Court held that the case was not ripe. First, withholding immediate review would not cause the Sierra Club significant hardship because the management plan itself did not create or alter any legal rights or obligations, or grant, withhold, or modify any formal legal license. *Id.* at 733. The [\*\*25] plan did not impose a practical harm on the Sierra Club's interests because before logging could occur, the Forest Service would have to go through the process outlined above. *Id.* at 733-34. The plan did not force the Sierra Club to alter its behavior. *Id.* at 734. Second, an immediate decision would interfere with agency efforts to refine its policies through application of the plan in practice. *Id.* at 735. Third, the court would benefit from further factual development because the claims were currently abstract and required the court to predict "consequences that may affect many different parcels of land in a variety of ways." *Id.* at 736. Finally, the Court noted that Congress had not provided for pre-implementation review of forest plans. <sup>5</sup> *Id.* at 737.

5 Friends of the Gorge also argues that the Scenic Area Act expressly contemplates pre-implementation judicial review of the management plan's consistency with the standards and purposes of the Act. (Pls.' Reply (# 98) at 13.) The citizen suit provision of the Scenic Area Act does not allow challenges to the consistency of the draft management plan prior to the certification or adoption of the plan. 16 U.S.C. § 544m(b)(3)(A)(iii). The [\*\*26] court declines to adopt Friends of the Gorge's argument that it "logically follows that those challenges are allowed *after* the Secretary's concurrence determination" but before the plan is implemented. (Pls.' Reply (# 98) at 14.) The court holds that Congress has not explicitly provided for pre-implementation review, therefore ripeness is governed by the *Ohio Forestry* analysis.

Friends of the Gorge attempts to distinguish *Ohio Forestry*, pointing out that in that case the Forest Service, the agency who adopted the plan, would have significant future involvement before any ground-disturbing activity would occur. They state that in the present case the Secretary will have no further involvement in implementing the revised plan except with regard to special management area forest practices and decisions regulating uses of federal land. (Pls.' Reply (# 98) at 13.) However, federal land comprises the vast majority of the special management areas of concern in this case, therefore the Secretary and the Forest Service will be involved in the future management of the majority of the relevant land. <sup>6</sup>

6 In the Scenic Area, 115,000 acres are designated as special management areas, *Friends of the Columbia Gorge*, 171 P.3d at 948, [\*\*27] and as of fall 2005, 27,376 of those acres are not federally owned, (Blosser Decl. (# 105) at 2.), leaving 87,624 acres of federal land within the control of the Secretary and the Forest Service. Of the non-federal land, 8,012 acres are privately owned and 19,364 acres are owned by the states and counties. (Blosser Decl. (# 105) at 2.)

[\*1269] Friends of the Gorge argues that if this court finds some or all of the claims unripe it will merely delay review to a less advantageous time, after the harm has already occurred. In essence, this argument proves too much. Whenever a court determines that a case is not ripe for adjudication, review is delayed until the alleged injury has

become more concrete. They also argue that the counties will not "flesh-out" the regulations, therefore any flaws in the RMP will be carried down into the county ordinances. This prediction by Friends of the Gorge illustrates the ripeness problem in this case. This court has no way to know whether or not this prediction is true because the counties will not write their ordinances until the RMP goes into effect. More fundamentally, even if Friends of the Gorge is correct and the regulations stay the same, a future court [\*\*28] would have the benefit of a more specific factual scenario on which to base a decision.

Because a ripeness analysis varies based on the facts and circumstances involved in a particular claim, the ripeness of each of Friends of the Gorge's claims is analyzed below. Due to the complexity of the case and the difficulty of resolving the question of ripeness for some of the claims the court has also taken the opportunity to discuss the merits of each claim.

## II. Cross-Motions for Summary Judgment

Friends of the Gorge brought twelve claims challenging the Secretary's concurrence with several different elements of the RMP. Generally, the claims argue that implementation of the RMP will cause adverse effects on the scenic, natural, and cultural resources of the Scenic Area by allowing development, grazing, and other potentially disruptive activities to occur.

### A. Claims 1.1, 2.1, and 6: Cumulative Adverse Effects on Scenic, Natural, and Cultural Resources

The Scenic Area Act requires that the management plan protect the Gorge's scenic, natural, and cultural resources from adverse effects. *See, e.g., 16 U.S.C. §§ 544d(d)(7)-(9)*. Adverse effects are defined as:

[A] reasonable likelihood of more than [\*\*29] moderate adverse consequences for the scenic, cultural, recreation or natural resources of the scenic area, the determination of which is based on: (1) the context of a proposed action; (2) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence; (3) the relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts; and (4) proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant affects to an insignificant level.

*16 U.S.C. § 544(a)*.

In claims 1.1, 2.1, and 6, Friends of the Gorge asserts that the RMP fails to protect the scenic, natural, and cultural resources in the special management areas from adverse cumulative effects.<sup>7</sup> Generally, [\*\*1270] Friends of the Gorge claims that the Scenic Area Act requires that the management plan contain "standards" with a sufficient degree of specificity to prevent adverse cumulative impacts and that the RMP does not contain such standards. (Pls.' Reply (# 98) at 22.)

<sup>7</sup> The Oregon Court of Appeals found for the Secretary on a similar [\*\*30] claim related to the general management areas. *Friends of the Columbia Gorge, 171 P.3d at 960-61, 964, 967* (assignments of error 2.1, 3.1, and 4.1). The Oregon Supreme Court may review this on appeal. Or. S. Ct. Media Release (July 2, 2008) at 3.

### 1. Ripeness of the Cumulative Adverse Effects Claims

The court holds that claims 1.1, 2.1, and 6 are not ripe. First, there is no hardship to the plaintiffs if review is delayed because there is no identified project that is going forward, no resource identified by name that will be harmed, and no identified agency action that is proceeding because of delayed review. Second, the challenged portions of the RMP related to scenic, natural, and cultural resources contemplate future review, either by the Forest Service or by some other administrative body. *See, e.g., RMP I-3-33* ("All new developments and uses . . . shall be evaluated . . ."); *I-2-23* ("An assessment shall be undertaken to determine whether any cultural resources . . . are present . . ."). [\*\*31]

Third, the court would benefit from further factual development because it is impossible to know today what regulations might allow or successfully prevent adverse cumulative effects in the future.

## **2. The Secretary's Concurrence with the Cumulative Adverse Effects Guidelines**

The court holds that the Secretary's concurrence was not arbitrary and capricious or contrary to law as to claims 1.1, 2.1, and 6. The Scenic Area Act does not define what is necessary to prevent adverse effects to scenic, natural, and cultural resources, leaving this to the Secretary, Forest Service, and Commission. Cumulative effects are addressed when adverse effects are addressed because the definition of adverse effects includes cumulative effects. *See 16 U.S.C. § 544(a)(3)*. The RMP contains provisions designed to protect the scenic, *see* RMP I-1-36 to -43, natural, *see* RMP I-3-30 to -45, and cultural, *see* RMP I-2-22 to -26, resources of the Scenic Area. Thus, the Secretary has not "entirely failed to consider an important aspect of the problem" and his decision was not arbitrary and capricious. *Motor Vehicle Mfrs., 463 U.S. at 43*.

### **B. Claim 1.2: Compatible Development**

In claim 1.2, Friends of the Gorge states that [\*\*32] the RMP violates the Scenic Area Act because it contains no standards requiring that the height, overall mass, and other exterior dimensions of new development in the special management areas to be compatible with that of existing development (a requirement that is found in the general management area portion of the RMP). *See* RMP I-1-3 (general management area provision); RMP I-1-36 to -43 (special management area provisions).

#### **1. Ripeness of the Compatible Development Claim**

The court holds that claim 1.2 is not ripe. Again, the RMP does not create any legal rights or obligations. Further agency action will occur before any new development in special management areas is allowed because permits, either state or federal, are required before any building can occur. As noted, most of the land in the special management areas is federal land, so that a decision by a federal agency would be required before a specific project could go forward. That decision would allow for review of the compatible development claim in a much clearer factual context. The same basic rationale applies on non-federal land. Given the unique co-operative nature of the Scenic Area Act, the *Ohio Forestry* analysis applies [\*\*33] even when, as here, the subsequent administrative [\*1271] action is by a different government agency. For these reasons, additional factual development is required to determine whether the failure to include this requirement would actually allow building to occur in violation of the Scenic Area Act.

#### **2. The Secretary's Concurrence with the Compatible Development Guidelines**

The court holds that the Secretary's concurrence was not arbitrary and capricious or contrary to law as to claim 1.2. The RMP contains several pages of policies and guidelines related to the protection and enhancement of scenic resources through limits on new development. *See* RMP I-1-36 to -43. In particular, the RMP requires that "scenic standards shall be met by blending new development with the adjacent natural landscape elements rather than with existing development." RMP I-1-39. A difference of opinion between Friends of the Gorge and the Secretary regarding the best way to control new development does not demonstrate a "clear error in judgment" on the part of the Secretary. *See Lands Council, 537 F.3d at 993*. Because there is a rational basis for the Secretary's concurrence, his decision was not arbitrary, capricious, [\*\*34] or in violation of the law. *See Motor Vehicle Mfrs., 463 U.S. at 43*.

### **C. Claim 2.2: Water Resource Buffers**

In claim 2.2, Friends of the Gorge argues that the RMP's special management area water resource buffer policies and guidelines violate the Scenic Area Act by failing to protect natural resources in the special management areas from the individual and cumulative adverse effects of land uses and development.<sup>8</sup> The RMP requires a buffer of 200 feet for wetlands, ponds, lakes, and perennial fish-bearing streams and fifty feet for non-fish-bearing intermittent and ephemeral streams.<sup>9</sup> RMP I-3-33 to -34. Incursion into the buffer area is allowed with a mitigation plan that requires that adverse

effects on the natural resources of the Scenic Area be avoided. RMP I-3-33 to -36. The RMP provides for enlargement of water resource buffers when necessary to protect resource values. RMP I-3-34.

8 The Oregon Court of Appeals found for the Secretary on a similar claim related to the general management areas. *Friends of the Columbia Gorge*, 171 P.3d at 964-65 (assignment of error 3.3). The Oregon Supreme Court does not appear to be reviewing this on appeal. Or. S. Ct. Media Release (July 2, 2008) at [\*\*35] 3.

9 Ephemeral streams are those "that contain flowing water only during, and for a short duration after, precipitation events." RMP Glossary at 7.

Friends of the Gorge contends that the water resource buffer policy violates the Scenic Area Act for three reasons. First, they argue that the buffers are too small, thus failing to protect natural resources. (Pls.' Mem. in Supp. of Summ. J. (# 78) at 16.) Second, they state that allowing any incursions into the buffer areas is a violation of the Scenic Area Act. (*Id.* at 17-18.) Third, they suggest that the special management area guidelines violate the Act by being less protective of natural resources than the general management area guidelines, which include a public interest test missing from the special management area guidelines. (*Id.* at 18.)

### **1. Ripeness of the Water Resource Buffer Claim**

The court holds that claim 2.2 is not ripe. I look first at the argument that the buffer zones are too small. There is no hardship to Friends of the Gorge if review is delayed because there is no identified stream, pond, or wetland that will be [\*1272] harmed by the proposed buffer zones. Furthermore, a decision regarding the size of the buffer zones today would [\*\*36] interfere with the Secretary's further review of the buffer zones under the RMP, which provides for enlargement of buffers where necessary to protect resource values. RMP I-3-34. Finally, the court would benefit from further factual development because the proper width of a buffer zone will vary for each pond, wetland, lake, and stream in the Scenic Area.

As for the claim that the RMP improperly allows incursions into the buffer zones, similar concerns exist. Again, there is no particular water resource that Friends of the Gorge can state will be harmed if this court does not decide this issue today. Incursions are only allowed "subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources," therefore the Secretary will have further involvement before any incursions occur. RMP I-3-30. And finally, this court does not have the benefit of knowing the nature of the incursion or the nature of the water resource, both of which are necessary for an understanding of the what, if any, adverse effects may be caused by an incursion.

Finally, the difference between the special and general management area water resource guidelines does not make this [\*\*37] claim ripe. If it were true that the general management area guidelines were more protective than those for the special management area, there would be an argument that the Secretary's concurrence was irrational. However, that is not the case here. The special and general management areas have different schemes for the protection of water resources. The public interest test does not necessarily make the general management area guidelines more protective. In fact, once the guidelines are implemented, the special management area guidelines may prove to be more protective, even without the public interest test. Nothing in the language of the two sets of guidelines dictates that the general management areas will get more protection. Therefore, the above ripeness concerns are applicable to this challenge as well. Friends of the Gorge is not immediately harmed by the existence of these guidelines. The Secretary will have further involvement in the development of the buffer zones on a case by case basis. And if, in the future, Friends of the Gorge believes that the failure to conduct a public interest test causes a water resource buffer to violate the Scenic Area Act, the hypothetical future [\*\*38] court would have the benefit of a specific factual scenario upon which to base a decision.

### **2. The Secretary's Concurrence with the Water Resource Buffer Guidelines**

The court holds that the Secretary's concurrence was not arbitrary and capricious or contrary to law as to claim 2.2.

There is evidence in the record that the Washington Department of Fish and Wildlife, among others, argued for larger buffer areas. (See Kahn Decl. in Supp. of Mot. for Summ. J. (# 79) at Ex. K.) However, two Forest Service scientists conducted a "Biological Evaluation of the Potential Impacts to Sensitive Flora and Fauna" to determine the efficacy of the chosen buffers and determined that the buffers were sufficient so that there would be a "'no effects' call." (Defs.' Reply (# 112) at Ex. F.) "When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts even if, as an original matter, a court might find contrary views more persuasive." *Lands Council, 537 F.3d at 1000* (quoting *Marsh, 490 U.S. at 378*). The Forest Service experts indicated that the Biological Evaluation was based on a review [\*1273] of the original management plan and the changes [\*39] made in the RMP. (Defs.' Reply (# 112) at Ex. F.) They found that because the RMP allows the exact buffer size to be determined by a biologist, on a case by case basis, that the RMP adequately protected water resources. (*Id.*) This is a reasonable opinion. Therefore, it is not arbitrary and capricious for the Secretary to base his concurrence on the Forest Service scientists' opinions, even though it was contrary to evidence presented by other experts.

#### **D. Claim 2.3: Livestock Grazing**

In claim 2.3, Friends of the Gorge argues that the RMP provision allowing agricultural uses in the special management areas as "uses allowed outright" violates the Scenic Area Act by failing to protect natural resources from the individual and cumulative adverse effects of livestock grazing.<sup>10</sup> See RMP II-7-11. Agricultural uses, including livestock grazing, are allowed within the special management areas only on land that has been "previously disturbed and regularly worked." *Id.* The RMP defines "previously disturbed" as "[a]n area of land where the natural surface has been graded, excavated, paved and/or graveled." RMP Glossary at 14. Grazing is not allowed in areas designated as "open spaces,"<sup>11</sup> see RMP [\*40] II-7-16 to -20, and any new grazing on federal land must be reviewed under NEPA and the National Forest Land and Resource Management Plan. (Defs.' Mem. in Supp. of Summ. J. (# 92) at 38.)

<sup>10</sup> The Oregon Court of Appeals found for the Secretary on a similar claim related to the general management areas. *Friends of the Columbia Gorge, 171 P.3d at 965-66* (assignment of error 3.4). The Oregon Supreme Court may review this on appeal. Or. S. Ct. Media Release (July 2, 2008) at 3.

<sup>11</sup> "Open spaces represent some of the most significant and sensitive resources in the Scenic Area." RMP II-3-1. The open space designation protects these resources from "uses that could adversely affect them." RMP II-3-2.

#### **1. Ripeness of the Livestock Grazing Claim**

Although livestock grazing is a "use allowed outright," the parties seem to agree that before it occurs on any federal, state, or county owned land in the special management area, further review will occur. (Summ. J. Hr'g Tr. at 26-29.) This leaves about 8,000 acres, out of 115,000 acres in the special management areas, where immediate grazing might occur without further review. A claim that allowing such grazing fails to protect natural resources from adverse [\*41] effects seems to be an exercise in speculation. Key questions like how much grazing, on what land, with what sort of adverse effects, are left unanswered. There remains substantial uncertainty, however, about the nature of any subsequent agency review of specific grazing applications, at least on public land. And it appears to be possible that grazing could occur on private land without any further review--albeit only on land that has been previously disturbed. Because the parties were unable to clarify this issue, the court will assume the claim is ripe.

#### **2. The Secretary's Concurrence with the Livestock Grazing Guidelines**

The court holds that the Secretary's concurrence was not arbitrary and capricious or contrary to law as to claim 2.3. Friends of the Gorge states that "scientific research shows that grazing has a high potential to adversely affect water resources, fish and wildlife habitat, rare plants, and native plant communities." (Pls.' Mem. in Supp. of Summ. J. (# 78) at [\*1274] 19 (citing Exs. Q and R).) However, livestock grazing is only allowed on land that has been "regularly worked" and graded, excavated, paved, and/or graveled. See RMP Glossary at 14. It does not appear likely [\*42] that grazing would be possible on much land meeting this description, or even that rare plants or other wildlife will be found

in such an area. Furthermore, a goal of the Scenic Area Act is to "protect and support the economy of the Columbia River Gorge" in a way that is consistent with the "enhancement of the scenic, cultural, recreational, and natural resources" of the Gorge. *16 U.S.C. § 544a*. Thus, allowing this very modest economic use of land is in keeping with the purposes of the Act. Considering the goals of the Act and the restrictions on the type of land that can be grazed, the Secretary's concurrence was not arbitrary and capricious, at least in the abstract sense involved in this facial challenge.

### **E. Claim 2.4: Replacement of Culverts on Ephemeral Streams**

In claim 2.4, Friends of the Gorge claims that the RMP provision allowing the replacement and expansion of existing culverts for ephemeral streams and ditches in the special management areas, including areas zoned open space, as "uses allowed outright" violates the Scenic Area Act by failing to protect natural resources from individual and cumulative adverse effects.<sup>12</sup> *See* RMP II-7-13 (all land use designations except open [\*\*43] space and agricultural-special), -17 (areas designated open space). The visible ends of the new culverts are required to be "dark and non-reflective." *Id.* Replacement of culverts on perennial streams is allowed only after review for impacts to protected resources. *See* RMP I-3-30 ("Uses that may impact wetland, streams, ponds, lakes, and riparian areas acreage and functions, water quality, natural drainage, or wildlife habitat may be allowed in their buffer zones, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources and the approval criteria in this section.")

<sup>12</sup> The Oregon Court of Appeals found for the Secretary on a similar claim related to the general management areas. *Friends of the Columbia Gorge*, 171 P.3d at 968 (assignment of error eight). The Oregon Supreme Court does not appear to be reviewing this on appeal. Or. S. Ct. Media Release (July 2, 2008) at 3.

### **1. Ripeness of the Culvert Replacement Claim**

Like livestock grazing, culvert replacement on ephemeral streams seems to be very limited in scope, but the record is unclear as to whether any meaningful administrative action will occur before a specific culvert is replaced. [\*\*44] The challenged provision is limited in scope because it allows only for replacing culverts, not the building of new culverts, and only in ephemeral streams. Some further review appears to be necessary, at least at the county level, because county, state, and federal regulations as to air and water quality must be followed in all actions taken in the special management areas. *See* RMP I-3-31. Permits are probably necessary for construction on federal, state, or county land and may be necessary on private land, depending on county ordinances not before the court. However, the permitting processes, even those on federal land, would not necessarily take into account the concerns of the Scenic Area Act in protecting the scenic, natural, and cultural resources of the Gorge. It is worth comparing this action with an action challenging replacement of a culvert on a perennial stream—a portion of the RMP not challenged by Friends of the Gorge. In such a hypothetical future case, the reviewing court would know which culvert [\*1275] was at issue, on what sort of land, having what sort of alleged impacts. None of those questions are answered here.

As with the livestock grazing claim, the court has serious [\*\*45] concerns regarding the ripeness of this claim because further factual development would be helpful to determine whether the regulations in the RMP allow adverse effects in the Scenic Area. Any hardship to the Friends of the Gorge results only from a chain of hypothetical events that the court cannot know will happen because it is possible that culverts can and will be replaced without creating the relevant adverse effects. But because the record is not clear as to the nature or even the availability of any subsequent administrative review, the court will assume ripeness.

### **2. The Secretary's Concurrence with the Culvert Replacement Guidelines**

The court holds that the Secretary's concurrence was not arbitrary and capricious or contrary to law as to claim 2.4. The RMP requires that all county, state, and federal regulations for air or water quality be followed at all times within the special management areas. *See* RMP I-3-31. Therefore, culverts cannot be replaced if the replacement would cause the water quality of the ephemeral stream, ditch, or other water source, to fall below the relevant standards. Because of

the ratio of public to private land, in almost all imaginable cases ensuring [\*\*46] the maintenance of water quality would be the subject of some permitting process.

Further, culverts in ephemeral streams and ditches are in locations that have already been disturbed by building the road, digging the ditch, and placing the original culvert. The Secretary also notes that failing to replace an undersized culvert can cause extensive resource damage. (Defs.' Mem. in Supp. of Summ. J. (# 92) at 39.) Taking these factors into account, the Secretary's explanation does not run "counter to the evidence" and his concurrence is not arbitrary and capricious or contrary to law. *See Motor Vehicle Mfrs.*, 463 U.S. at 43.

### **F. Claim 3**

Friends of the Gorge appears to have dropped this claim as it is not discussed in the pleadings.

### **G. Claim 4: Forest Practices**

In claim four, Friends of the Gorge argues that the RMP's special management area forest practices policies and guidelines violate the Scenic Area Act because they fail to ensure that forest practices in the special management areas will not adversely affect the scenic and natural resources of the Scenic Area. *See RMP II-2-16-27.*

The RMP contains new rules allowing "vegetation management" to promote "forest health," subject to review for [\*\*47] compliance with scenic, cultural, natural, and recreational resources guidelines, *see RMP at II-3-12*, and deviations from forest practices guidelines to promote "forest health" and "ecosystem function," *see, e.g., RMP at II-2-25, -26*. "Forest health" is defined as: "A measure of the robustness of forest ecosystems. Forests are deemed healthy when they have capacity across the landscape for renewal, for the maintenance of wildlife habitats, for recovery from a wide range of disturbances, and for retention of their resilience." RMP Glossary at 8.

#### **1. Ripeness of the Forest Practices Claim**

The court holds that claim four is not ripe. This claim is almost identical to the question before the Supreme Court in *Ohio Forestry*. *See 523 U.S. 726, 118 S. Ct. 1665, 140 L. Ed. 2d 921*. First, withholding immediate review would not cause Friends of the [\*\*1276] Gorge significant hardship. As with the management plan at issue in *Ohio Forestry*, the RMP does not create any rights or liabilities with regard to forest stands. *See id. at 733*. A site plan must be prepared by an applicant before any forest practice may occur. The site plan will then be reviewed by the Forest Service, in collaboration with county and/or state regulatory agencies. RMP II-2-16. [\*\*48] Second, an immediate decision would interfere with the Forest Service's ability to revise its policies with regard to particular forest stands and ensure forest health across the Scenic Area. *See Ohio Forestry, 523 U.S. at 735*. Third, the court would benefit from further factual development. A future court would have the benefit of knowing exactly what "vegetation management" was proposed, how many trees would be cut, where the cutting would occur, and how the cutting would occur, none of which is before the court today.

#### **2. The Secretary's Concurrence with the Forest Practices Guidelines**

The court holds that the Secretary's concurrence was not arbitrary and capricious or contrary to law as to claim four. The management plan guidelines direct the Forest Service to review a site plan for all special management area forest practices for compliance with the RMP regarding protection of scenic, natural, and cultural resources. RMP II-2-16. To aid in the required review, the RMP contains quantitative metrics for use in designing treatments so as to achieve the desired forest structure and pattern. RMP II-2-27. Further, the Secretary argues that the definition of "forest health" must be somewhat [\*\*49] elastic because all forest stands are different. (Defs.' Mem. in Supp. of Summ. J. (# 92) at 40.) Finally, Congress delegated development of the management plan to the Commission, Secretary, and Forest Service, and the Forest Service has significant expertise in the area of forest practices, therefore deference to the agency's opinion is appropriate. *See Chevron, 467 U.S. at 843-44.*

### **H. Claim 5: Recreation Guidelines**

In claim five, Friends of the Gorge argues that the special management area Recreation Intensity Class 2 guidelines violate the Scenic Area Act by allowing recreational vehicle campgrounds in special management area Recreation Intensity Class 2 zones, thereby failing to protect recreation resources on lands zoned for semi-primitive use. *See* RMP I-4-27. The RMP designates Recreational Intensity Classes ("RICs") for land throughout the Scenic Area and the RIC level dictates the scope and intensity of allowed recreational uses. RIC 2 areas are restricted to "low intensity" uses, where "the emphasis is to provide opportunities for semi-primitive recreation," where people can "escape from noise and crowds." RMP I-4-27. "Semi-primitive" recreation opportunities are defined as "[a]reas [\*\*50] accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting." RMP Glossary at 15.

In the general management areas, regulations of RIC 2 areas limit campgrounds to tents only and allow only cars, not "vehicles," which might include recreational vehicles. RMP I-4-17. In the special management areas, regulations of RIC 2 areas allow for "vehicles," not just cars. RMP I-4-27. Friends of the Gorge argues that the special management area guidelines violate the Scenic Area Act because they adversely affect recreation resources, are inconsistent with the RMP definition of RIC 2 areas, and are less protective than the guidelines for the general management areas. (Pls.' Mem. in Supp. of Summ. J. (# 78) at 24-26.)

#### **[\*1277] 1. Ripeness of the Recreation Guidelines Claim**

The court holds that claim five is not ripe. First, the court would benefit from further factual development because it is impossible to know today whether the use of the word "vehicle" will adversely affect recreation resources in violation of the Scenic Area Act. Second, further review will occur before any potential for injury to Friends [\*\*51] of the Gorge. The development of new and the retrofitting of current recreation areas is done by county, state, and federal agencies. In implementing the RMP, those agencies could choose to further refine the regulations, as was the case in *Ohio Forestry*. For example, while recreational vehicles are not expressly prohibited in these RIC 2 areas under the RMP, it may be the case that they are never actually allowed. Even if they are allowed in some RIC 2 areas, a later court could make a determination on whether allowing recreational vehicles violates the Scenic Area Act or is inconsistent with the definition of RIC 2 areas, based on location specific facts. Third, the difference in the use of "car" versus "vehicle" does not necessarily mean that the RIC 2 campgrounds in general management areas are more protective of recreation resources. Agencies may never allow recreational vehicles, or they may limit the size or allow only handicapped visitors to enter with such vehicles.

#### **2. The Secretary's Concurrence with the Recreation Guidelines**

The court holds that the Secretary's concurrence was not arbitrary and capricious or contrary to law as to claim five. There is no evidence in the record [\*\*52] that the use of the word vehicle will adversely affect recreation resources in violation of the Scenic Area Act. In the absence of such evidence, the Secretary's concurrence was not arbitrary and capricious. The second argument appears to arise out of a disagreement over the definition of terms used in the RMP, specifically "semi-primitive recreation." Internally inconsistent definitions within the RMP would be evidence that the Secretary had acted in an arbitrary and capricious manner. However, an "*emphasis* [on providing] opportunities for semi-primitive recreation" does not so limit the Secretary that allowing recreational vehicles is inconsistent with the definition of a RIC 2 zone. RMP I-4-27 (emphasis added). Finally, although it would be logical for the RIC 2 areas to have similar guidelines for general and special management areas, it does not follow that it is arbitrary and capricious for the guidelines to have minor differences in wording. Because there is no evidence that the use of the term "vehicle" will cause special management area RIC 2 zones to be less protected than those in the general management areas, the Secretary's concurrence was not arbitrary and capricious [\*\*53] or contrary to law.

### **I. Claim 7: New Dwellings**



In claim seven, Friends of the Gorge argues that the RMP violates the Scenic Area Act by allowing new dwellings on parcels smaller than forty acres in the special management areas. The Scenic Area Act requires that the management plan "prohibit major development actions in special management areas," except for certain exceptions not applicable to this case. *16 U.S.C. § 544d(d)(5)*. "Major development actions" are defined as, among other things, "permits for siting or construction within a special management area of any residence or other related major structure on any parcel of land less than forty acres in size." *Id. § 544(j)(4)*.

Friends of the Gorge points to three places where the RMP allegedly violates this provision of the Scenic Area Act. First, new single-family dwellings are allowed on any legally created lot, with no mention [\*1278] of parcel size. RMP II-4-11. Second, construction of "new dwelling units" [\*\*54] is allowed at Rowena Dell, even though many of the lots are under forty acres. RMP II-4-10. Third, the forty-acre minimum parcel size is not incorporated in a guideline allowing the construction of farm-labor dwellings. RMP II-1-23 to -24.

### **1. Ripeness of the New Dwellings Claim**

The court holds that the claim is ripe as to the Rowena Dell guideline and not ripe as to the single-family and farm-labor dwelling guidelines. Applications for development must be reviewed by county agencies before any building may occur. There is no way to know whether the agencies will allow building to occur on parcels that are less than forty acres, outside of Rowena Dell. Friends of the Gorge argues that because counties generally draft their ordinances based on the management plan, if the management plan is not specific regarding the limitation it will not be incorporated in the agency's decision making process. (Pls.' Reply (# 98) at 42.) However, a ripeness analysis does not ask the court to guess at how likely a result will be, rather it asks whether review at a later time is more appropriate. In this case, Friends of the Gorge can bring suit if and when a county approves plans to construct a single-family [\*\*55] or farm-labor dwelling on a lot that is less than forty acres. The question of Rowena Dell is different because the parcels have already been created and the RMP specifically allows development, therefore the counties would be in violation of the management plan if they refused to allow construction on the Rowena Dell lots.

### **2. The Secretary's Concurrence with the New Dwellings Guidelines**

The court holds that the Secretary's concurrence was contrary to law as to the Rowena Dell guideline. The Secretary argues that allowing building on less than forty acres is a "reasonable accommodation of the other purposes" of the Scenic Area Act, namely that the Act should protect and support the economy of the Gorge and the agricultural lands for agricultural uses, *see 16 U.S.C. § 544a*, particularly as to Rowena Dell, which was approved before the Scenic Area Act was passed. (Defs.' Mem. in Supp. of Summ. J. (# 92) at 43.) He argues that his interpretation of the statute should receive deference in the absence of a manifest "plain meaning" of the statute. (Defs. Mem. in Supp. of Summ. J. (# 92) at 43 (citing *United States v. Mead Corp.*, 533 U.S. 218, 227, 121 S. Ct. 2164, 150 L. Ed. 2d 292 (2001)).) The Secretary states that the meaning [\*\*56] is not plain because there is tension between the goals of the statute: not allowing development on parcels less than forty acres and supporting the economy and agricultural uses. (Defs.' Reply (# 112) at 21.)

The court holds that the Scenic Area Act's ban on major development actions is plain and unambiguous. Specifically, the prohibition against residences on "less than forty acres" is about as unambiguous as a statute can get. The Secretary's contrary interpretation is not entitled to deference. *See Chevron*, 467 U.S. at 842-43 ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."). The Rowena Dell guideline at issue, *see* RMP II-4-10, is in direct contradiction of the plain language of the statute. Therefore, the Secretary's concurrence was contrary to law.

### **J. Claim 8: Expansion of Commercial and Multifamily Uses**

In claim eight, Friends of the Gorge argues that the RMP provision allowing [\*1279] expansion of existing commercial and multifamily residential uses in the special management areas, *see* RMP II-7-8, violates the Scenic Area

Act because the provision allows major [\*\*57] development actions, which are expressly prohibited by the Act.<sup>13</sup> As discussed above, the Act prohibits major development actions in the special management areas. *See 16 U.S.C. § 544d(d)(5)*. "Major development actions" include, "any permit for siting or construction outside urban areas of multifamily residential, industrial or commercial facilities, except such facilities as are included in the recreation assessment." *Id. § 544(j)(2)*.

13 The Oregon Court of Appeals found for Friends of the Gorge on a similar claim related to the general management areas. *Friends of the Columbia Gorge*, 171 P.3d at 971-72 (assignment of error thirteen). The Oregon Supreme Court does not appear to be reviewing this on appeal. Or. S. Ct. Media Release (July 2, 2008) at 3.

The RMP allows existing commercial and multifamily residential uses in the special management areas to "expand as necessary for successful operation on the dedicated site." RMP II-7-8. The "dedicated site" is defined as the "area actively devoted to the current use and as delineated on the site plan." RMP Glossary at 6. Friends of the Gorge states that because the dedicated site plan can be larger than the area currently covered by the [\*\*58] structure, the RMP guideline allows "construction" of commercial and multifamily residential facilities. (Pls.' Mem. in Supp. of Summ. J. (# 78) at 28.) The Secretary contends that allowing expansion of the applicable existing uses under narrowly tailored conditions is a reasonable interpretation of the Scenic Area Act. (Defs.' Mem. in Supp. of Summ. J. (# 92) at 44.)

### **1. Ripeness of the Expansion of Commercial and Multifamily Uses Claim**

The court holds that claim eight is ripe. As with the Rowena Dell portion of claim seven, Friends of the Gorge's claim here requires only that the court look at the language of the RMP and the language of the Scenic Area Act to determine whether there has been a violation. No further factual development is necessary. It is not necessary, for example, to know which particular site is being developed, with what sort of business. Nor is it merely speculative whether a county would approve such a project, because the county must conform to the requirements of the RMP.

### **2. The Secretary's Concurrence with the Commercial and Multifamily Uses Guidelines**

The court holds that the Secretary's concurrence was contrary to law as to claim eight. The Secretary argues [\*\*59] that the guideline is a reasonable interpretation of the Scenic Area Act, which accommodates existing uses, and that this court should defer to the Secretary's reasonable interpretation. (Defs.' Mem in Supp. of Summ. J. (# 92) at 44.) However, as discussed in relation to claim seven, Congress was clear in the Scenic Area Act that major development actions, as defined, are prohibited in special management areas. The Secretary is not entitled to deference in interpreting a plain and unambiguous statutory provision. *See Chevron*, 467 U.S. at 842-43. Here, the Secretary essentially contends that expansion of existing structures would not necessarily involve "siting or construction," as those words are used in the Act. I disagree. The language of the RMP is in direct violation of the plain and unambiguous language of the Scenic Area Act, therefore the Secretary's concurrence was contrary to law, as to this claim.

### **[\*1280] III. The Secretary's Motion for a Stay**

The court denies the Secretary's motion for a stay pending the decision of the Oregon Supreme Court in the appeal taken from the Oregon Court of Appeals decision, *Friends of the Columbia Gorge, Inc. v. Columbia River Gorge Commission*, 215 Ore. App. 557, 171 P.3d 942 (Or. Ct. App. 2007). [\*\*60] The Oregon Court of Appeals has stated that Oregon courts do not have jurisdiction over claims relating to the special management areas of the Scenic Area and that issue was not appealed to the Oregon Supreme Court, therefore there is no risk of inconsistent decisions.

## **CONCLUSION**

Based on the foregoing, Friends of the Gorge's Motion for Summary Judgment (# 76) is GRANTED IN PART and DENIED IN PART. The motion is GRANTED as to Rowena Dell in claim seven and as to claim eight and DENIED as to the remainder of claim seven and as to claims one through six. The Secretary's Cross-Motion (# 91) is therefore

GRANTED IN PART and DENIED IN PART. The motion is DENIED as to Rowena Dell in claim seven and as to claim eight and GRANTED as to the remainder of claim seven and as to claims one through six. The Secretary's Motion for a Stay (# 97) is DENIED.

IT IS SO ORDERED.

Dated this 24th day of November, 2008.

/s/ Michael W. Mosman

MICHAEL W. MOSMAN

United States District Judge

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## 2022 PLANNING COMMISSION WORK PROGRAM

Approved 11.1.21

Below is the approved 2022 Work Program. The following priorities informed project ranking:

1. Projects with a health-life safety component
2. Required projects (New State laws, Metro, Gorge Commission, FEMA, etc.)
3. Required projects that implement the Comprehensive Plan
4. Amendments which result in efficiencies (procedural or otherwise)

The 2022 Work Program is shorter than in past years, but includes projects most likely to be brought to the Planning Commission in 2022 given current resources. Table A below represents top priority projects based the factors listed above.

Staff also maintains a list of ‘on-deck’ projects (Attachment 1) that are not included in Table A as a way to keep track of projects for inclusion in future work programs along with other sources such as legislative bills related to land use and the 2016 Comprehensive Plan.

Though ‘on-deck’ projects are not included in the 2022 work program, they may be brought to the Planning Commission if the issue becomes more pressing and/or the opportunity arises to elevate the project. ‘On deck’ projects (or specific aspects of projects) may be bundled with related projects for efficiency. We will plan for one meeting per month, making adjustments as needed; however, no Planning Commission meeting will be scheduled in August to help accommodate commissioner and staff vacations.

Finalizing a work program helps the Land Use Planning (LUP) Division prioritize work. It does not mandate project completion, nor does it preclude work on other projects not identified. Having this flexibility, together with support from the Commission on work program priorities helps LUP best serve the community.

# Table A: 2022 Work Program Projects

## **Required Projects**

*This list is populated when projects are required by the State Legislature, the Columbia River Gorge Commission, FEMA, State Rulemaking, case law, and so on.*

	Project Name & Case Number	Brief Summary	Status	Year Added	Source
A1	Sauvie Island Levee Accreditation and FIRM Updates  FEMA Mandates  (PC-2019-12292)	<p>The Sauvie Island levee system (maintained by the Sauvie Island Drainage Improvement Company) is in the process of being accredited by the Federal Emergency Management Agency (FEMA) as meeting specific federal design, operation and maintenance standards which reduce flood risk.</p> <p>In January 2019, Multnomah County received the final report from the US Army Corps of Engineers certifying the Sauvie Island levee system for 10 years and recommending to FEMA to maintain levee accreditation status.</p> <p>Multnomah County is required as part of the federal levee accreditation process to submit a Letter of Map Revision (LOMR) application to FEMA to include consideration of new flood data for lands inside the Sauvie Island levee system. This project is anticipated to involve map revisions to the Flood Insurance Rate Maps, which in turn inform the location of the County's Flood Hazard Zones.</p> <p>Maintaining accurate flood zone maps supports the County's participation in the National Flood Insurance Program Community Rating System.</p>	Consulting engineers are producing draft maps. Public outreach is being planned.	2019	FEMA
A2	EFU / CFU Omnibus	A number of recent bills affect EFU and CFU zones. Staff may combine some or all of these resource land projects for efficiency under a resource lands omnibus ordinance. Attachment 2 provides brief descriptions of the State legislation relating to the project. The listed projects do not necessarily need to be added to County code in 2022 and can be applied directly from Statute.	<p>Not yet begun.</p> <ul style="list-style-type: none"> <li>- See Attachment 2.</li> <li>- May include some related on deck projects</li> </ul>	2015-2021	State

## ***Health/Life-Safety Projects***

A3	Floating Structure Regulation; <b>2011</b> (PC-2011-1974)	Implements Comprehensive Plan Policy 10.11: Building, Plumbing, Electrical, Mechanical Standards for Floating Structures.	Staff has begun exploring implementation options related to Portland's role as the contracted building agent for Multnomah County.	2011	Comp Plan
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## ***Efficiency Projects***

A4	Various Code Amendments (PC-2020-13166)	This is a placeholder for smaller corrections and simple code improvements that can be rolled into a single project.	Staff is preparing the staff report	2019	Staff
A5	Minor improvement projects and full code compliance	<p>Consider certain minor improvements, such as solar installations for an exemption from the full compliance standard in the land use code.</p> <p>MCC 39.1515 requires that the County not make a land use decision approving development unless the property is in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.</p> <p>Existing exceptions include projects that are, necessary to protect public safety. This type of exception could be expanded to include residential solar projects.</p>	Not yet begun	2021	Community Request

## **Attachments**

**Attachment 1: On Deck Work Program Projects**

**Attachment 2: EFU – CFU Omnibus Project List**

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## Attachment 1 – to the 2022 PC Work Program

### List of ‘on-deck’ potential future Planning Commission Work Program Projects

Below is a list of ‘on-deck’ projects that are not included in the current work program. Staff maintains this list as a way to keep track of projects for inclusion in future work programs along with other sources such as legislative bills related to land use and the 2016 Comprehensive Plan. Though ‘on-deck’ projects are not included in the current work program, projects may be brought to the Planning Commission when an issue becomes more pressing and/or the opportunity arises to elevate the project. ‘On deck’ projects (or specific aspects of these projects) may be bundled with related projects for efficiency.

### Table B: ‘On-Deck’ Projects

- Unlikely to be advanced in 2022 given existing resources. Can be considered for advancement to a future Work Program during future annual work program discussions

	Project Name & Year Either Added to Work Program or Identified	Brief Summary	Status	Year Added	Source
<b>Health/Life-Safety Projects</b>					
B1	Wildfire Safety Improvement; <b>2017</b> (PC-2017-9605)	Implements Comprehensive Plan Policy 7.7: Fire safety and mitigation standards in areas prone to wildfire risk. Also an action item identified in 2017 Multnomah County Natural Hazard Mitigation Plan ( <a href="https://multco.us/em/natural-hazard-mitigation-plan-document-library">https://multco.us/em/natural-hazard-mitigation-plan-document-library</a> ) and 2015 Climate Action Plan (CAP) ( <a href="https://multco.us/sustainability/2015-climate-action-plan">https://multco.us/sustainability/2015-climate-action-plan</a> ).  SB 762 passed in the 2021 legislative session and there’s a lot in the bill. From electrical utilities, to health systems for smoke and more. The most directly relevant (for land use planning) provisions address land use, building codes and defensible space.	Likely to be on 2023 work program pending state rule-making  Briefing was held on December 3, 2018. New statewide legislation	2017-2021	County: Comp Plan CWPP NHMP  State: SB 762 (2021) <i>Chapter 592, 2021 Laws</i>

		<p>Among other things, the legislation requires DLCDC to identify updates to the statewide land use planning program and local comprehensive plans and zoning codes that are needed in order to incorporate wildfire risk maps and minimize wildfire risk.</p> <p>Updates may include, but need not be limited to, provisions regarding sufficient defensible space, building codes, safe evacuation and development considerations in areas of extreme and high wildfire risk, allowing for regional differences.</p> <p>Similar requirement for the development of wildfire hazard mitigation building code standards that apply to new dwellings and the accessory structures of dwellings.</p> <p>We anticipate that much of the state rulemaking and development of risk maps will take place in 2022 and staff will continue to follow the progress.  <a href="https://olis.oregonlegislature.gov/liz/2021R1/Masures/Overview/SB762">https://olis.oregonlegislature.gov/liz/2021R1/Masures/Overview/SB762</a></p> <p>Staff is also participating in the development of the updates to the County’s Community Wildfire Protection Plan (CWPP) and the Natural Hazard Mitigation Plan (NHMP):  <a href="https://www.multco.us/em/wildfire-mitigation-planning">https://www.multco.us/em/wildfire-mitigation-planning</a>  <a href="https://www.multco.us/em/natural-hazard-mitigation-planning">https://www.multco.us/em/natural-hazard-mitigation-planning</a></p> <p>This project remains on the 2022 Work Program and staff plans to provide updates to the Planning Commission as the project develops further.</p>	<p>passed in 2021.  Participating in Updates to County Hazard Plans</p>		
B2	<p>Geologic Hazards (Landslides and Seismic Hazards); <b>2018</b> (PC-2018-10262)</p>	<p>Implements Comprehensive Plan Policy 7.1-7.2: Update slope hazard maps and regulations. Consider Policy 7.3: Development protection regulations in high liquefaction risk areas. Also an action item in 2017 Multnomah County Natural Hazard Mitigation Plan (<a href="https://multco.us/em/natural-hazard-mitigation-plan-document-library">https://multco.us/em/natural-hazard-mitigation-plan-document-library</a>) and 2015 Climate Action Plan (<a href="https://multco.us/sustainability/2015-climate-action-plan">https://multco.us/sustainability/2015-climate-action-plan</a>).</p>	<p>A Briefing was held December 3, 2018</p> <p>Additional scoping required</p>	2018	<p>Comp Plan  NHMP</p>



B3	Mass Gatherings; <b>2016</b> (PC-2016-6021)	Implements Comprehensive Plan Policy 3.5: Mass Gatherings.	A Briefing was held March 6, 2017  New laws were adopted by the State Legislature in 2019: HB 2790 (2019) and SB 696 (2019)	2016	Comp Plan
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***Significant Environmental Concern Permit / Goal 5 Resources***

B4	ESEE Implementation ; <b>2017</b> (PC-2017-7228)	Updates to SEC habitat, SEC stream and SEC water resource extent based off the 2016 Comprehensive Plan ESEE analyses.	Work session held April 3, 2017	2017	Comp Plan
B5	Update SEC Maps, overlay extent and stream centerlines (PC-2017-9602); <b>2017</b>	Implements Comprehensive Plan Policy 5.18 - 5.26: Update SEC maps and stream centerlines.	Some mapping has occurred. <b>May integrate with ESEE project above</b>	2017	Comp Plan
B6	SEC-h building footprint; <b>2018</b>	Implements Comprehensive Plan Policy 5.36: Limit size and footprint of houses in SEC-h overlay in order to minimize harm to wildlife.	Not yet begun	2018	Comp Plan
B7	Tree Removal and Tree Planting in SEC-h; <b>2018</b>	Implements Comprehensive Plan Policy 5.40: Update development requirements related to tree removal and tree plantings.	Not yet begun	2018	Comp Plan
B8	Add prohibited uses list to PAM code from the West Hills Reconciliation Report; <b>2019</b>	Amend PAM code to specifically list prohibited uses that are in the West Hills Reconciliation report. Consider adding the allowed and conditional uses from the Reconciliation Report as well.	Not yet begun	2019	Staff
B9	SEC-h Sub-designations	Consider sub designations in the SEC-h that are protective of species of concern / critical habitat areas. This would require additional ESEE analysis to determine the geography and recommended criteria for these additional Goal 5 overlays.	Not yet begun	2019	Requested by FPNA

B10	Clarify term 'within' at MCC 39.5860 (B)(2)	39.5860 (B)(2): Consider a definition for the term 'within' for MCC 39.5860(B)(2): "Development shall occur <b>within</b> 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site."	Not yet begun	2020	Staff
B11	SEC criteria – vegetation favorable to pollinators	Consider SEC mitigation criteria that allows for native shrubs / low growing vegetation that favors pollinators (bees, butterflies etc.). Especially useful under power lines easements.	Not yet begun	2019	Requested by FPNA
B12	Define 'subject property' for the purpose of MCC 39.5860(A)(7)	Consider defining 'subject property' for the purpose of MCC 39.5860(A)(7), "The 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." This would be helpful when considering projects that are within an easement.	Not yet begun	2019	Requested by FPNA
B13	Simplify and Restructure the SEC Code	The SEC code appears to have become increasingly complex and difficult to navigate. The goal of this project will be to achieve the same or better Goal 5 protections through a more streamlined SEC Code.	Not yet begun	2020	Staff

### ***Public Facilities and Utilities***

B14	Public Facilities; <b>2017</b>	Implements Comprehensive Plan Strategy 11.10-1: Public Facilities. Requires alternatives analysis prior to approving electrical substation or water system storage tank or reservoir intending to solely serve uses within the UGB.	Not yet begun	2017	Comp Plan
B15	Under-grounding Communication Lines; <b>2019</b> (PC-2019-11702)	Implements Comprehensive Plan Strategy 11.14-2: Undergrounding Communication Lines. Require undergrounding of personal power and communication lines serving new or replaced development.	Not yet begun. Possible candidate for housekeeping bill	2019	Comp Plan

### ***Procedures, Review Process, Use Assessment, Covenants, Tax Deferral, Lot of Record***

B16	Lot of Record Maps; <b>2017</b>	Adopt historic tax assessment property configuration maps and establish associated standards to help streamline Lot of Record (legal parcel) determinations. Consider process improvements including creating a Type 1 lot of record review. Comprehensive Plan Policies 1.1 and 2.40	Not yet begun	2017	Comp Plan
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B17	Lot of Record – Measure 49 Remainder Lots; <b>2019</b>	Add a standard in MCC 39.3005 (Lot of Record Generally) that explicitly allows the County recognize remainder lots or parcels.	Not yet begun	2019	Staff
B18	Lot of Record Flexibility	Concept: Create a degree of flexibility in the code around LOR. Are there any ways to better help property owners resolve LOR problems who didn't create the issue?	Not yet begun	2020	Staff
B19	Lot of Record Deed Restriction; <b>2017</b>	Implements Comprehensive Plan Policy 3.3: Lot of Record Deed Restriction.	Not yet begun	2017	Comp Plan
B20	Procedural Provisions Update (PC-2012-2296); <b>2012</b>	Update procedural provisions.	Planning Commission work sessions held 10.1.12, 2.4.13 and 6.3.13. Project was put on hold until after conclusion of Code Consolidation	2012	Staff
B21	Review Processes; <b>2018</b>	Consider most appropriate review path for various uses. Comprehensive Plan Policies 1.1 and 2.40	Not yet begun	2018	Comp Plan
B22	Conditional Uses; <b>2018</b>	Re-evaluate Conditional Use / Community Service provisions to determine if currently listed Conditional Uses are still appropriate within each zoning district. Comprehensive Plan Policies 2.8 and 3.6	Not yet begun	2018	Comp Plan
B23	Right to Farm and Forestry Measures in RC & MUA-20; <b>2018</b>	Implements Comprehensive Plan Policy 2.32 & Strategy 3.15-1 & 3.15-2: Implement right to farm measures for new or expanding uses in RC zone when adjacent to EFU or CFU zones. Implement right to farm measures for new, replacement, or expanded uses on MUA-20 zone when adjacent to EFU or CFU. Includes deed restriction for new and replacement dwellings and additions protecting surrounding forestry practices.	Not yet begun	2018	Comp Plan
B24	Extending Wildlife Habitat Tax Deferral Program	Implements Comp Plan Policy 5.3 (Formerly Policy 3.2 of the 2015 Sauvie Island / Multnomah Channel Rural Area Plan). Extends the county's wildlife habitat tax deferral program to additional zoning districts.	A briefing was held with the Planning Commission	2016	Comp Plan

	(PC-2015-4106); <b>2016</b>		n. ODFW must take action before county code amendments can be adopted. Project advancement dependent on ODFW resource availability		
B25	Creating distinct tiers for Type 1 permits; <b>2019</b>	Explore to create a distinction between Type 1 reviews that require an application that is assigned and processed by a planner and those that are processed over the counter.  A possible example:  Type 1-a: Building Permits, Type A Home Occupations, Floating Home Permit, sign permit etc.  Type 1-b: Erosion and Sediment Control, Flood Development, etc.  The idea is that Type 1-a follows a relatively simpler, quicker process than Type 1-b.	Not yet begun	2019	Staff
B26	Add standards to CS and CU in the National Scenic Area code (NSA); <b>2019</b>	Consider adding Conditional Use criteria to CS uses in Chapter 38 (NSA). Request to tie CU/CS to site review criteria.	Not yet begun	2019	Staff
<b>Other Projects</b>					
B27	Code changes related to Measure 49 approved dwellings and properties; <b>2016</b>	Consider code amendments to reference unique allowances and restrictions related to 2007 property rights Ballot Measure 49 approved dwellings and properties. Topics to research include but are not limited to farm and forest zoning aggregation requirements, PLA restrictions and references for setbacks to different types of forest dwellings in CFU zones.	Not yet begun <b>May combine with item B.17 above or may include in EFU/CFU Omnibus</b>	2016	Staff

B28	Short Term Rental; <b>2017</b>	Add short-term rental definition and potentially amend Home Occupation regulations to clarify how much of home can be dedicated to short-term rental and consider requiring owner occupancy.	Not yet begun	2017	Staff
B29	Surveys Required; <b>2016</b> (PC-2019-11569)	Assess when a survey should be required to confirm new development is accurately sited, particularly with respect to property setbacks. Objective is to address issue of structures not being constructed in the approved locations.	Not yet begun	2016	Staff
B30	Non-Conforming Uses; <b>2018</b>	Update non-conforming use standards. Consider other models including City of Portland, and consider breaking standards into sub-categories such as use, structure, and setback.	Not yet begun	2018	Staff
B31	Signs; <b>2018</b>	Re-evaluate sign code provisions for possible updates.	Not yet begun	2018	Staff
B32	Property Line Adjustments (PC-2014-3619); <b>2013</b>	Consider making PLAs a Type I permit. Consider code amendments addressing whether lots with road frontage should maintain that frontage after a PLA. Also, assess standards related to septic drainage systems.	Not yet begun	2013	Comp Plan
B33	EFU Equal Area Exchange - Flexibility	Consider adding flexibility to EFU equal area requirements for PLA. Comprehensive Plan Policy 2.40	Not yet begun  <b>May include in EFU/CFU Omnibus</b>	2016	Comp Plan
B34	Emergency Projects; <b>2018</b>	Create expedited permit review process for reconstruction in the event of widespread community emergency. Establish requirement that bond be submitted for all emergency repair/response projects.  Review APA model disaster ordinance to see if there are some things we should do now (procedurally) to make sure we can function after a disaster if we can't get a PC quorum together, or to speed up permit review somehow. Proactively adopt alternative procedures or even rules for rebuilding in the event the governor declares an emergency that lasts longer than X days?	Not yet begun	2018	Staff
B35	Oxbow Park District; <b>2018</b>	Implements Comprehensive Plan Policy 8.11-1: Work with Metro to develop a park designation for Oxbow Park.	Not yet begun	2018	Comp Plan
B36	Historic Preservation; <b>2017</b>	Implements Comprehensive Plan Strategy 6.1-4: Historic Preservation -Add uses to HP overlay	Not yet begun	2018	Comp Plan

B37	Rural Center Commercial and Industrial Uses; <b>2017</b>	Implements Comprehensive Plan Policy 2.16: Rural Center Commercial and Industrial Uses. Removes limitation that industrial uses must serve the rural community and surrounding area.	Initial scoping begun	2017	Comp Plan
B38	Private Property Burials; <b>2016</b>	Assess whether land use code should be amended to address requests for private property burials. Preliminary goal is to have ability to authorize, where allowable, in a short timeframe.	Not yet begun	2016	Staff
B39	Accessory Structure Provisions; <b>2019</b>	1) Clarify how one story is measured for Allowed Use review. Intent is to prevent easy unpermitted conversion of storage loft to living space. 2) Consider limiting size of tree houses to discourage unpermitted occupation as living quarters.	Not yet begun	2019	Staff
B40	Tualatin Basin Water Quality; <b>2019</b>	Assess the exemption in the Geologic Hazard provisions which refer to Tualatin Basin water provisions (OAR 340-041-0345(4)) to see if exemption language can be relaxed further and whether doing so would require amendments to Erosion and Sediment Control, Minimal Impact Project and Stormwater Control provisions for compliance with DEQ rules. The driving issue is that minor projects in the Tualatin Basin are occasionally being required to go through GH review rather than ESC or MIP review.  Amendment should indicate that erosion and sediment control practices are still required for ground disturbing activities.	Issue scoped as part of PC-2016-5384 where it was determined a discrete project was warranted. Further research needed, including discussion with DEQ	2019	Staff
B41	Flood Hazard Rewrite; <b>2019</b>	Rewrite Flood Hazard code to improve readability.	Not yet begun	2019	Staff
B42	Willamette River Greenway Updates; <b>2016</b>	Implements Comprehensive Plan Policy 5.15; Update to WRG regulations.	Not yet begun	2016	Comp Plan
B43	Temporary Use of Live-aboard Boats; <b>2018</b>	Implements Comprehensive Plan Policy 10.15: Consider standards to allow temporary use of live-aboard boats.	Not yet begun.	2018	Comp Plan
B44	Third Party Experts; <b>2019</b>	Should the Administrative Procedures be amended to specify that the Planning Director has the authority to require a third party expert(s), when the Planning Director believes that an outside expert should provide additional information and/or that a second opinion is warranted in order to provide more clarity/certainty in a land use matter?	Not yet begun	2019	Staff

		Should applicant be required to pay third party expert?			
B45	Parking Code	<p>Update the use formulas in the County's parking code.</p> <p>Consider, among other things, the parking requirements for religious uses – currently tied to pew space.</p> <p>Update to reflect uses currently in code.</p> <p>Expressly allow option for parking study.</p>	<p>Not yet begun</p> <p>Also see item B.54 (Removing Barriers to and adding support for Transportation Demand Management Strategies in the Zoning code)</p>	2019	Requested by FPNA
B46	CU and CS Code Provide factors relating to 'Character of the area'	Conditional Use Approval criteria that the use be consistent with the character of the area - consider adding the word 'rural' to that standard. Standard is at MCC 39.7015()(1): "Is consistent with the character of the area"	Not yet begun	2019	Requested by FPNA
B47	Define the term 'primarily' in the standard at MCC 39.7015(A)(8)	Consider project to define the term 'primarily' in the standard at MCC 39.7015(A)(8): "The use is limited in type and scale to primarily serve the needs of the rural area."	Not yet begun	2019	Requested by FPNA
B48	Tie Design Review standards to native plant list	Similar to above, consider tying Design Review landscaping standards to same native plant list with same prohibition on nuisance plants.	Not yet begun	2019	Requested by FPNA
B49	Retroactive permitting of structures that do not meet current zoning.	Consider criteria for retroactive compliance for structures and development if they would have met certain zoning requirements in effect at the time but didn't receive land use or building permits.	Not yet begun	2020	Staff
B50	Metro – Regionally Significant Industrial Areas	Parts of Unincorporated Multnomah County are designated as Regionally Significant Industrial Areas (RSIA) by the State and Metro. There are criteria for uses and development that are not listed in the zoning code. Currently, planners instruct applicants and potential buyers to look into Metro's requirements found in Metro's Title 4.	Not yet begun	2020	Staff

B51	Exemption for small temporary accessory structures	Add exemptions for all land use review for small temporary accessory structures such as children’s play houses, mailboxes, dog houses, etc. May not be able to exempt in FH zone per FEMA requirements. May need to define thresholds, such as assuming no BP needed, not occupiable space and no more than one story. LUP team discussed on 7/24/20 and agreed such an approach would be helpful. See Tualatin code for example.	Not yet begun	2020	Staff
B52	Restriction on city or county refusal of building permit in residential subdivision	<p>Add new provision to Land Division Code:</p> <p>ORS 455.175 Restriction on city or county refusal of building permit in residential subdivision</p> <p>(1)As used in this section:</p> <p>(a)“Conditions of development” means requirements that, as part of a residential subdivision, a developer, declarant or owner must construct public improvements that are contained in:</p> <p>(A)A development agreement under ORS 94.504 (Development agreements) to 94.528 (Recording);</p> <p>(B)Conditions of approval under ORS 92.040 (Application for approval of subdivision or partition), 215.416 (Permit application) or 227.175 (Application for permit or zone change); or</p> <p>(C)Any other agreement with, or conditional approval by, a local government.</p> <p>(b)“Residential subdivision” means a residential development requiring a developer, declarant or owner to subdivide land, as defined in ORS 92.010 (Definitions for ORS 92.010 to 92.192), and to obtain a permit under ORS 215.416 (Permit application) or 227.175 (Application for permit or zone change).</p> <p>(c)“Substantial completion” means the city, county or other appropriate public body has inspected, tested and found acceptable under applicable code requirements, unless the parties agree to a lower standard:</p>	Not yet begun	2020	State



		<p>(A)The water supply system;</p> <p>(B)The fire hydrant system;</p> <p>(C)The sewage disposal system;</p> <p>(D)The storm water drainage system, excepting any landscaping requirements that are part of the system;</p> <p>(E)The curbs;</p> <p>(F)The demarcating of street signs acceptable for emergency responders; and</p> <p>(G)The roads necessary for access by emergency vehicles.</p> <p>(2)A city or county may not deny a building permit allowing the construction of residential dwellings under a residential subdivision on the basis that the conditions of development have not been met, if:</p> <p>(a)Substantial completion of conditions of development for the residential subdivision occurs; and</p> <p>(b)The developer, declarant or owner, to secure the completion of the remaining public improvements included as conditions of development for the residential subdivision:</p> <p>(A)Obtains and maintains a bond; or</p> <p>(B)Undertakes an alternative form of financial guarantee, if any, that is acceptable to, but may not be required by, the city or county.</p> <p>(3)Subsection (2) of this section does not prevent a city or county from declining to issue certificates of occupancy for any residential dwellings if all conditions of development are not fully completed or the conditions for the release of the bond are not fulfilled. [2019 c.397 §1]</p> <p>Note: 455.175 (Restriction on city or county refusal of building permit in residential subdivision) was enacted into law by the Legislative Assembly but was not added to or</p>			
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		made a part of ORS chapter 455 or any series therein by legislative action.			
B53	Clarifying intent of 'customarily incidental or subordinate' in accessory structure code.	Consider clarifying "customarily incidental or subordinate" language in accessory structure code.	Not yet begun	2020	Staff
B54	TDM in the Zoning Code <b>2019</b>	Removing Barriers to and adding support for Transportation Demand Management Strategies in the Zoning code (i.e. parking fees).	Not yet begun  Also see item B.45 (Revise Parking Code)	2019	TSP
B55	TSP Update  Amend Comp Plan – Adding a Transit Element to the Transportation System Plan	HB 2017 (2017) provides for rural transit in counties. Project will consist of developing a transit element to the Transportation System Plan (Chapter 12 of the Comprehensive Plan).	Project scoping in progress.	2017	State: HB 2017 (2017) <i>Chapter 750, (2017 Laws):</i> <i>Effective date October 6, 2017.</i>
B56	Agricultural Fill Revisions (PC-2016-5384)	Agricultural Fill regulations were adopted on March 14, 2019 through County Ordinance 1271 as part of a larger legislative project related to regulation of ground disturbing activities (project PC-2016-5384). In implementing the Agricultural Fill regulations, staff have identified provisions of the Code that would benefit from further study and possible amendment.	Not yet begun	2020	Comp Plan & County Ord. 1271
B57	Zoning Designations in the Columbia River Gorge National Scenic Area	Update zoning designations and boundaries in the Columbia River Gorge National Scenic Area consistent the Columbia River Gorge Management Plan.	Scoping is underway	2021	CRGNSA Management Plan
B58	Emergency shelters / affordable housing	Limits local government's restrictions on conversions of certain properties into emergency shelters or affordable housing. 'hotel or motel, to use as an emergency shelter' – Applies inside the Urban Growth Boundary. Chapter 16, (2021 Laws): Effective date May 6, 2021. <a href="https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3261">https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3261</a>	Not yet begun	2021	State: HB 3261 (2021) <i>Chapter 16, (2021 Laws):</i> <i>Effective date May 06, 2021.</i>

		May add to Part 6 of the zoning code as applicable within the UGB only.			
B59	Climate Friendly Equity Communities CFEC	<p>On March 10, 2020, Governor Brown issued Executive Order 20-04, directing state agencies to reduce climate pollution. In response, the Department of Land Conservation and Development (DLCD) is drafting updates to Oregon's transportation and housing planning rules and has convened a rulemaking advisory committee. That rulemaking process is currently underway.</p> <p>Cities and Counties affected by the rules are required to adopt code changes possibly by March 31, 2023 as is currently proposed. It is not yet clear what will be required in unincorporated Multnomah County and staff is tracking the progress of the rulemaking. For more information: <a href="https://www.oregon.gov/lcd/LAR/Pages/CFEC.aspx">https://www.oregon.gov/lcd/LAR/Pages/CFEC.aspx</a></p>	Rules are still in the rulemaking process with DLCD	2021	State <i>Governor's Executive Order 20-04 - March 10, 2020</i>
B60	Judgments Affecting Lawful Units of Land	Provides that lawful units of land whose property lines are relocated by certain judgments remain lawful units. Prohibits requiring additional validating procedures or denying permits because of judicial boundary changes.	Not yet begun	2021	State: HB 2312 (2021) <i>Chapter 219, (2021 Laws): Effective date January 01, 2022.</i>
B61	Open Space Land Divisions in Exclusive Farm Use and Forest Use Zones	<p>Open Space Land Divisions are a conservation tool allowed under state law that Multnomah County does not currently authorize in EFU and CFU Zones.</p> <p>Counties may authorize these types of land divisions pursuant to ORS 215.263(10) (circa 1999) for EFU lands and ORS 215.783 (circa 2007) for CFU and mixed farm-forest lands.</p>	<p>Not yet begun</p> <p><b>May include in EFU/CFU Omnibus</b></p>	2021	Requested by WMSWCD

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## Attachment 2 – to the 2022 PC Work Program

### List of amendments related to EFU/CFU zones

<p style="text-align: center;"><b>Table C: EFU/CFU Legislation</b>  <i>Relates to Project A2 on the 2022 Work Program.</i></p>					
	Project Name & Year Either Added to Work Program or Identified	Brief Summary	Status	Year Added	Source
C1	Defines 'center of tract' as it relates to approval of certain forest dwellings; <b>2019</b>	<p><b>HB 2225 (2019)</b>                      Bill summary:</p> <p>Defines "center of the subject tract" as the <b>mathematical centroid of the tract</b> for siting certain permissible forest dwellings.                      Adds the following requirements for a prospective proposed dwelling:                      (1) the lot or parcel on which the dwelling will be sited was lawfully established;                      (2) any property line adjustment complied with property line adjustment provisions in replatting statutes;                      (3) any property line adjustment after January 1, 2019 did not have the effect of qualifying the lot or parcel for a dwelling under this Act; and                      [this may change dates in existing code – However county likely able to retain existing earlier date thresholds that are more restrictive]                      (4) if the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract.</p> <p>Becomes <b>operative on November 1, 2023</b> in Multnomah County (different dates apply for various counties). Prohibits counties from implementing these provisions until on or after</p>	Not yet begun.	2019	HB 2225 See ORS 215.750

		the specified operative date for that county (this is only an issue relating to the effective date for any County ordinance). Because of the late effective date work on this ordinance <b>need not be taken up during the 2022 work program.</b>			
C2	Replacement dwellings in EFU; <b>2013</b> (PC-2013-3193)	<p>In order to qualify for replacement dwelling in the EFU zone, a dwelling must have intact walls, a roof, electricity, plumbing, and a heating system.</p> <p>However, structures that were once dwellings but have since been converted to other uses, are dilapidated, or have long been removed from the property do not qualify for replacement under current law.</p> <p>Under <b>HB 2746 (2013)</b> structures that were once dwellings but have become dilapidated, converted to other uses (like ag buildings), or have been removed from the property may be used to qualify a property for a replacement dwelling. The effect of this bill is to allow dwellings on EFU zoned properties that would otherwise not qualify for a dwelling.</p> <p><b>Note:</b> Law sunsets in 2024.</p> <p><b>Note:</b> There is now case law on this (See Oregon Supreme Court: Landwatch Lane County v. Lane County, 364 Or 724 (2019), Apr 25, 2019 (reversed and remanded)) – see notes from Legal Issues 2019...</p>	Project has been scoped. Multnomah County has authority to apply statute directly until such time amendments are approved. Expanded replacement dwelling regulations sunset in 2024.	2013	HB 2746 See ORS 215.291
N/A	Replacement Dwellings in EFU; <b>2019</b>  <b>Note:</b> This will be rolled into above project.	<p><b>HB 3024 (2019)</b> – Modifies 2013 Bill (HB 2746) listed above.</p> <p>Prohibits county from considering property tax classification of dwellings that were previously removed, destroyed, demolished or converted to nonresidential uses when reviewing application for replacement dwelling on lands zoned for exclusive farm use.</p> <p>Summary: Bill modifies requirements for a lawfully established dwelling in an exclusive farm use zone to be altered, restored, or replaced based on status of the dwelling as follows: (1) for a dwelling that was removed, destroyed, or demolished: dwelling tax lot does not have an ad valorem tax lien and the removal,</p>	Not yet begun.	2019	HB 3024 See ORS 215.291

		destruction, or demolition occurred on or after January 1, 1973; (2) for a dwelling in state of disrepair so as to be unsafe or constitute an attractive nuisance: dwelling tax lot does not have an ad valorem tax lien; (3) for any other dwelling: dwelling was assessed as a dwelling for purpose of ad valorem taxation for either the previous five property tax years or from the time it was erected or affixed to the land and became subject to taxation.			
C3	Solar facilities on high value EFU land in Willamette Valley; <b>2016</b> (PC-2019-11629)	New rules ( <b>OAR 660-033-0130(38)</b> ) limit, but do not prohibit, solar development on high-value farmland located in EFU zones the Willamette Valley.	Not yet begun.	2016	OAR 660-033-0130(38)
C4	Property line adjustments in EFU and CFU zones; <b>2017</b>	<b>HB 3055 (2017)</b> clarifies current law that restricts the use of property line adjustments on high-value farm and forest lands or within a ground water restricted area where land unit is the result of a subdivision or partition authorized by a waiver. For two-acre land units, requires that unit before the adjustment is two acres in size or smaller. For five-acre land units, requires that unit before the adjustment is five acres or smaller.	Not yet begun.	2017	HB 3055 See ORS 92.192
C5	Remanded land use decisions affecting EFU and CFU zones; <b>2018</b>	<b>HB 4124 (2018)</b> relates to remanded land use decisions; and declaring an emergency. Allows county governing body, upon remand of matter from Land Use Board of Appeals to county, to have planning commission or hearings officer conduct hearing and make decision regarding lands designated under statewide planning goal addressing agricultural lands or forestlands. Requires county governing body to review planning commission or hearings officer decision and take one of three specified actions on decision.	Not yet begun.	2018	HB 4124 See ORS 215.431
C6	Cider Business and Breweries on EFU. SB 677 ( <b>2017</b> ) SB 287 ( <b>2019</b> )	Cider Businesses and Breweries are now allowed in ORS 215.283 (1)(y) and (z).  Add to code as review use similar to winery code.  Cider Business: <b>SB 677 (2017) - 215.451</b>  Brewery: <b>SB 287 (2019) – Now ORS 215.449</b>	Not yet begun.	2017 - 2019	SB 677 and SB 287 See ORS 215.451 and 215.449

		Staff will review recently adopted winery code for consistency when preparing draft code.			
C7	Facilities that are less than 2,500 square feet for the purpose of processing farm products in the EFU zone; <b>2019</b>	<p><b>HB 2844 (2019)</b></p> <p>Authorizes counties to allow farm product processing facilities with processing areas smaller than 2,500 square feet to be a permitted use on lands zoned for exclusive farm use (EFU) notwithstanding siting standards. Reorganizes statute.</p> <p>Removes provision excepting marijuana farm processing facilities from authorization to county to allow farm product processing facilities using less than 2,500 square feet for a processing area in exclusive farm use zones notwithstanding siting standards.</p> <p>Background: Counties have been authorized by the legislature to allow farm product processing facilities with processing areas smaller than 10,000 square feet that are in compliance with applicable siting standards to be a permitted use on EFU-zoned lands under ORS 215.283. A processing facility is defined in statute. Counties are prohibited from applying siting standards in a manner that would prohibit the siting of these farm product processing facilities. HB 2844 authorizes counties to allow farm product processing facilities with processing areas smaller than 2,500 square feet to be a permitted use on EFU-zoned lands without regard to siting standards.</p> <p>Staff will need to research a little further. <b>It appears from the Bill that siting standards cannot be used to prohibit processing facilities less than 2,500 on EFU land</b> - except those expressly listed in rule (floodplains, geologic hazards, beach and dune hazards, airport safety, tsunamic hazards and fire siting standards.</p>	Not yet begun.  See ORS 215.255  ORS 215.283 (1)(r)	2019	HB 2844 See ORS 215.255  And ORS 215.283 (1)(r)
C8	Nonconforming Schools in EFU zones; <b>2019</b>	<p><b>HB 3384 (2019)</b> limits reasons counties may deny expansion of certain schools on EFU land.</p> <p>ORS 215.135 Expansion of nonconforming school in exclusive farm use zone. (1) Notwithstanding ORS 215.130, 215.213 or 215.283 or any local zoning</p>	Not yet begun.	2019	HB 3384 See ORS 215.135

		<p>ordinance or regulation, a public or private school, including all buildings essential to the operation of the school, formerly allowed pursuant to ORS 215.213 (1)(a) or 215.283 (1)(a), as in effect before January 1, 2010, may be expanded provided:</p> <p>(a) The expansion complies with ORS 215.296;</p> <p>(b) The school was established on or before January 1, 2009;</p> <p>(c) The expansion occurs on a tax lot:</p> <p>(A) On which the school was established; or</p> <p>(B) Contiguous to and, on January 1, 2015, under the same ownership as the tax lot on which the school was established; and</p> <p>(d) The school is a public or private school for kindergarten through grade 12.</p> <p>(2) A county may not deny an expansion under this section upon any rule or condition establishing:</p> <p>(a) A maximum capacity of people in the structure or group of structures;</p> <p>(b) A minimum distance between structures; or</p> <p>(c) A maximum density of structures per acre. [2009 c.850 §14; 2019 c.416 §1]</p>			
C9	Biosolid pre-treatment; <b>2018</b>	<p><b>HB 2179 (2017)</b> Permits onsite treatment of septage prior to application of biosolid on exclusive farm use land using treatment facilities that are portable, temporary and transportable by truck trailer during authorized period of time.</p> <p>ORS 215.283(1) (v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed</p>	Not yet begun.	2017	HB 2179 See ORS 215.283(1) (v)



		water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter. For the purposes of this paragraph, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.			
C10	Solar facilities on high value EFU land in Willamette Valley; <b>2019</b> (PC-2019-11629)	New rules ( <b>OAR</b> 660-033-0130(38) limit, but do not prohibit, solar development on high-value farmland located in EFU zones the Willamette Valley.  Also See HB 2109 (2021): Modifies definition of "renewable energy facility" for purposes of county permitting process for certain energy facilities. HB 2329 (2019) fix Defines acreage limits on farm land based on soil type and other factors. Chapter 60, (2021 Laws). <a href="https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB2109">https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB2109</a>	Not yet begun.	2019	OAR See OAR 660-033-0130(38)
C11	Land Divisions in EFU for siting utilities	<b>SB 408 (2019)</b> Allows county to approve certain divisions of land zoned for exclusive farm use for purposes of siting utility facilities necessary for public service.  ORS 215.263 (3) The governing body of a county or its designee may approve a proposed division of land in an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (1)(c) or (2) or 215.283 (1)(c) or (2) if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use. The governing body may establish other criteria as it considers necessary. Land that is divided under this subsection pursuant to ORS 215.213 (1)(c) or 215.283 (1)(c) may not later be rezoned by the county for retail, commercial, industrial or other	Not yet begun.	2019	SB 408 See ORS 215.263 (3)

		<p>nonresource use, except as provided under the statewide land use planning goals or under ORS 197.732.</p> <p>For Reference:</p> <p>ORS 215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules. (1) The following uses may be established in any area zoned for exclusive farm use:</p> <p>***</p> <p>(c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:</p> <p>(A) ORS 215.275; or</p> <p>(B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and 469.300.</p> <p>***</p> <p>(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296: ...</p>			
C12	Building permits / agricultural buildings	<p>(4) An agricultural building may be used for uses in addition to the uses listed in subsection (2)(a) of this section if the additional uses:</p> <p>(a) Are incidental and accessory to the uses listed in subsection (2)(a) of this section;</p> <p>(b) Are personal to the farm owner and the farm owner’s immediate family or household; and</p> <p>(c) Do not pose a greater hazard to persons or property than the uses listed in subsection (2)(a) of this section.</p>	Not yet begun.	2021	HB 2611 <i>Chapter 120, (2021 Laws):</i> <i>Effective date January 01, 2022</i> <i>Amends ORS 455.315</i>
C13	Childcare Facilities in EFU	<p>Limits certain restrictions by local governments on use of property for child care facilities. Allows development of certain uses for children as conditional use on lands zoned for exclusive farm use.</p>	Not yet begun	2021	HB 3109 <i>Chapter 369, (2021 Laws):</i> <i>Effective</i>

		Chapter 369, (2021 Laws): Effective date January 1, 2022. <a href="https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3109">https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3109</a>			<i>date</i> <i>January 01, 2022.</i> <i>Amends</i> <i>ORS</i> <i>329A.440,</i> <i>329A.280,</i> <i>329A.250</i>
C14	Dog Training Facilities on EFU land	Exempts dog training facilities from state structural specialty codes. <a href="https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3318">https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3318</a>	Not yet begun	2021	HB 3318 <i>Chapter</i> <i>552, (2021</i> <i>Laws):</i> <i>Effective</i> <i>date</i> <i>September</i> <i>25, 2021.</i> <i>ORS</i> <i>455.315</i>