

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

MINUTES OF JULY 2, 2018

- I. **Call to Order:** Chair John Ingle called the meeting to order at 6:30 p.m. on Monday, July 2, 2018 at the Multnomah Building, Room 101, located at 501 SE Hawthorne Blvd., Portland, OR.
- II. **Roll Call:** Present - Ingle, Victoria Purvine, Alicia Denney, Tim Wood and Chris Foster  
Absent – Katharina Lorenz, Jim Kessinger, Bill Kabeiseman and Susan Silodor
- III. **Approval of Minutes: April 2, 2018.**  
Motion by Denney; seconded by Purvine.  
Motion passed unanimously.
- IV. **Opportunity to Comment on Non-Agenda Items:**  
None.
- V. **Hearing – Amendments to the Procedures Relating to Type 1 Applications (PC-2018-10281)**  
Ingle read into the record the Legislative Hearing Process for the Planning Commission for a public hearing, and the process to present public testimony. The Commissioners disclosed no actual or potential financial or other interests which would lead to a member's partiality. There were no objections to the Planning Commission hearing the matter.

Kevin Cook, Multnomah County Senior Planner, began by explaining the process for a Type I application. The approval of a Type I permit assures that the applicant has met the non-discretionary criteria, which has clear and objective standards. The next order of permits is the Type II, which consists of a staff level review and allows some level of discretion. Planners may make judgment calls with respect to how the standards are met, and there are notice requirements and appeal rights. Type III permits are hearings that typically come before a hearings officer, and Type IV permits typically involve the comprehensive plan and have the highest level of discretion. And of course, we have our Planning Commission permits, which are legislative.

We currently have standards in our code for the Type II through IV permits with respect to the expiration and renewal of a permit, but they are less clear with a Type I permit. There has been confusion about what to do about an incomplete permit, whether this type of permit expires and if so, when.

Most of the language proposed here mirrors the Type II permits, with the exception of the noticing and appeal rights. A Type I permit is a final decision. Cook then went through the eight points laid out in the staff report, as well as the proposed amendments to Chapter 37, Chapter 38, and the proposed Chapter 39 (consolidated code).

Ingle requested that the language be reworked on page 3, § 37.0685 (§ 39.1183) (B), as he thought the first sentence was unclear. He suggested that the sentence end at the word 'development', then begin the next sentence with the word 'However'. Staff agreed to do that.

Ingle asked for a motion to adopt PC-2018-10281. Wood moved to adopt PC-2018-10281, with the requested change. Purvine seconded. Motion passed unanimously.

**VI. Worksession – Amendments Relating to Ground Disturbing Activity including Minimal Impact Projects, Grading and Erosion Control, Agricultural Fill, Stormwater and Drainage Control, Hillside Development and Large Fill Permits (PC-2016-5384)**

Adam Barber, Senior Planner, gave the presentation on this proposal, which relates to the regulation of ground disturbing activities, noting that this has been one of the most complex projects he has worked on. The proposal is drafted in Chapter 39, which is the proposed consolidated code. The consolidated code was done for efficiency purposes, and he found it much easier to work on this project because of those efforts to consolidate.

The 2017 Comprehensive Plan contained several policies related to ground disturbing activities, most of which are in Chapter 2 or Chapter 5. We wanted to use this opportunity to implement a number of those policies, and in the process, clarify the interactions between the different categories of permits. We currently have Minimal Impact Projects (MIP); Grading & Erosion Control (GEC), which will be renamed Erosion Sediment Control (ESC); Hillside Development permit (HDP), renamed Geologic Hazards (GH); and Large Fill (LF). We are proposing to clarify some stormwater drainage requirements, and add a new permit called Agricultural Fill (AF).

Barber proceeded to give a visual presentation to the Commissioners. He said we currently have four ground disturbing related permits. Minimal Impact projects are for small projects, defined as disturbing less than 10,000 s.f., on slopes less than 10% grade, and more than 200 feet away from a waterbody. This is a Type 1 application, generally done over the counter. These regulations are described in Attachment A.1. Since this has worked well for us, the concept is being carried over to the new permit we are proposing.

For projects that exceed the Minimal Impact thresholds, we have a GEC permit, soon to be referred to Erosion and Sediment Control (also Attachment A.1). Although these are also Type 1 applications, they involve a review and take longer to process, typically 30-45 days.

There are areas where a geotechnical engineer or engineering geologist may need to be involved, and the appropriate permit is a Hillside Development permit, renamed Geologic Hazards permit in Chapter 39. (See Attachment A.2 for areas outside the Columbia Gorge National Scenic Area (NSA) and A.3 for areas inside the NSA.) This is a Type 2 process, which includes noticing and appeal rights and typically takes 4-6 months. A Type 2 is a fairly common land use process for us, so it is not unique to this geotechnical review.

A Large Fill permit comes under a Type 3 land use decision. This entails more than 5,000 cubic yards of fill imported to a site, requires a public hearing, and the hearings officer makes the decision rather than the planning director. The planning director prepares a recommendation to the hearings officer, neighbors are invited to attend the public hearing and the decision can be appealed either to the Land Use Board of Appeals (LUBA) or the Gorge Commission, if it is in the NSA. Similar to an HDP, a geotech is required to be involved in this review. These Large Fill proposals are only allowed in exception zones, such as Multiple Use Agriculture-20 (MUA-20), Rural Residential (RR) and Rural Center (RC). They are not allowed in farm and forest zones.

The original driver for this project is the Agricultural Fill. These permits typically have exemptions, one being routine agricultural management practices. This means farmers do not need a grading permit to till their ground and plant their seed. Typically, counties do not get involved in erosion review for farming; that is the Department of Agriculture. What we have seen in our jurisdiction is that the top foot or two of topsoil tends to be stripped off of construction sites, particularly industrial construction sites. They need to get rid of this material, and it is expensive for a contractor to haul this topsoil to a disposal site. It's cheaper to find a local field or flat area near the construction site. Generally farmers will accept this material as it is organic and they can use it for their farm. But this has caused problems. We have had a lot of construction, so there is a lot of material that needs to be disposed of, and farmers will claim this exemption saying it is routine farming and does not need an erosion review. However, when we have received calls and gone out to sites, some have been questionable as to whether they really are a routine agricultural management practice. Since the exemption has no definitions, there is no guidance on what kinds of projects qualify, and there have been concerns about erosion and stormwater. We have heard from the community about health and safety related concerns, so this issue rose to the level of Comp Plan policy.

In working on these policies, the concept arose that we should provide clarity in the exemptions. But exemptions do not typically have standards. You typically do not apply for a permit to get an exemption; a project is either exempt or goes through a permit process. We realized that a new permit type would be the most appropriate way to achieve the policy intent and still provide the clarity farmers need.

So we have a new permit with standards that provide flexibility for farmers, while addressing community impacts. The concept is to create a new Agricultural Fill permit (AF). This would be a Type 1, similar to the Minimal Impact process that, in theory, would be approved over the counter. We have designed the standards to avoid situations where a geologist or soils engineer would need to be involved. We want to focus on the externalities, such as minimizing muddy water, assuring that stormwater impacts do not occur, and offer incentives for avoiding geologically sensitive lands. The Agricultural Fill permit does not impose a fill volume cap, as long as that agricultural fill is outside a geologically sensitive land area. If it is topsoil and is being used as part of the farming practice, that is not a land use concern as long as we do not have erosion and stormwater problems.

In Attachment A.1, you will see that only topsoil can be brought in, that is the organic, mineral rich layer of the soil. And no compensation can be collected for accepting this material, which we believe will dramatically reduce the amount of activity we currently see under this exemption. Also, because farmers will not be required to engineer this fill, it cannot physically support a building that requires compaction densities and building permits.

The most important part of this is the Farm Management Plan. The farmer needs to talk about what type of farming is occurring onsite and how the fill is going to be used to support that farming activity. Erosion control and sediment control measures need to be used, and we have established a clear standard of no visible or measureable erosion. Also, we are not allowing fill trucks to transport during peak travel times, as we want to minimize conflicts with commuters.

Within the Geologic Hazard permit, we fine-tuned the exemptions to help prevent stability problems, and added a new permit trigger. Currently this permit is required for non-exempt

projects in the mapped slope hazard area or on slopes over 25% outside of the mapped area. We are adding another concept if a project is within 200 feet of a known landslide.

The existing Large Fill permit currently is prohibited in certain Significant Environmental Concern (SEC) areas, such as mapped stream areas or water resources areas, wetlands or the 100 year floodplain area. That list seems incomplete because other SEC overlays, the Willamette River Greenway (WRG) overlay, and high value farmland are not listed as prohibited areas.

We are proposing a time limit with a 20-year horizon to follow the Comp Plan horizon, and defining 'site' as a single lot of record, or legally created property; or contiguous lots of record under the same ownership, whichever is larger. We have pulled many of the stormwater standards out of this permit and created a new section, which should make it easier to implement.

Barber then discussed some key policy questions with the Commissioners.

## **VII. Director's Comments:**

As a reminder, there will be no meeting in August, to allow for vacation planning. Have a safe and happy 4<sup>th</sup> of July. Ingle asked about the Metro project. Katherine Thomas, Assistant County Attorney said we are waiting for more information from Metro, and at this point we are trying not predict a date because there is too much up in the air.

Meeting adjourned at 9:00 p.m.

**The next Planning Commission meeting is scheduled for September 10, 2018.**

Recording Secretary,

Kathy Fisher