

Carol Chesarek
13300 NW Germantown Road
Portland, OR 97231

November 5, 2018

To: Multnomah County Planning Commission
Re: Amendments Relating to Ground Disturbing Activity

Dear Chair Ingle and Commissioners,

Thank you for the opportunity to offer comments on these proposed code Amendments. I participated in the development of the updated Comprehensive Plan, and I am currently serving as President of the Forest Park Neighborhood Association. The Neighborhood Association has had many problems with grading and fill operations, and I believe the board will be pleased with the proposed code revisions, but the board has not had time to review them so these are my own personal comments.

I was very pleased to see the proposed code revisions relating to Ground Disturbing Activities – I think County staff has done an excellent job of simplifying and updating the code language. I believe these changes will make it easier for property owners to understand the rules, and perhaps more importantly will make it easier for county staff to enforce them. We have had many large unpermitted fill and grading operations in our neighborhood which appear to violate the spirit and intent of the current rules, but which are difficult for the county to enforce. Our neighborhood in western Multnomah County has a large proportion of steep slopes and landslide hazard areas, and large quantities of high quality wildlife habitat that the neighborhood works to protect. So there are concerns about erosion, landslides, and loss of wildlife habitat when large scale grading or fill operations take place, particularly when they are not permitted.

I do have some suggested changes, many of which are minor, but a few are more substantive. These are arranged according to the order of the Attachments provided by staff, all relating to Chapter 39 – Multnomah County Zoning Code. I am sorry not to provide these suggestions earlier, the time allowed to review the material was only a little over a week and I was out of town when it was made available.

ATTACHMENT A.1

6.B GROUND DISTURBING ACTIVITY AND STORMWATER

§ 39.6220 [29.333] MINIMAL IMPACT PROJECT PERMIT

(B) A Minimal Impact Project (MIP) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(13) No fill shall be permanently installed within the drip line of mature trees.

For the last two years, a property owner in City of Portland has been installing fill at depths of 4' and then 6' around the trunks of mature trees on his property. Adding dirt within the drip line and adjacent to the trunk of a mature tree is highly likely to kill it. (page 10)

§39.6225 [29.342] EROSION AND SEDIMENT CONTROL PERMIT

(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:

(2) Fill shall be composed of earth materials only.

No definition of “earth materials” is provided to prevent confusion about what is allowed (page 12). This term is used in several places in the proposed new code. I suggest adding the definition from Chapter 38, which applies to the Columbia River Gorge Natural Scenic Area (NSA) to the definitions ATTACHMENT A.5:

Earth materials: Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials, including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).

(3) Cut and fill slopes shall not exceed ~~2533~~ percent grade (~~43~~ Horizontal: 1 Vertical), unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in excess of ~~2533~~ percent is safe (including, but not limited to, not endangering or disturbing adjoining property) and suitable for the proposed development.

County Code considers natural slopes greater than 25% to be geologic hazards, so it seems unwise to allow up to 5000 cubic yards of fill, which is inevitably less stable after installation, to be installed at a steeper and unsupported slope. (page 13)

(4) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property line of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts and fills will not endanger or disturb adjoining property.

It isn't clear whether 4' in height is an average or a maximum. Based on discussions with staff, I believe that a maximum of 4' in any location is intended, so it would be helpful to make that clear. (page 13)

§39.6230 AGRICULTURAL FILL PERMIT

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

(8) Finished fill slopes shall not exceed ~~2533~~ percent grade (~~43~~ Horizontal: 1 Vertical);

Same comment as above. (page 17)

(9) Finished grade of the disturbed area at property lines shall not exceed the elevation of the land at such locations that existed prior to the ground disturbing activity if the finished fill slope is 20% or less, for greater slopes the edge of the fill should be set back from the property line a distance 8 times the height of the fill;

As written, the proposed code would allow unsupported fill slopes of 33% up to a property line, and there is no limit on the height of this fill. This risks erosion or slumps from the fill onto the adjacent property. I suggest that slopes up to 20% be allowed adjacent to the property line, but any steeper slope should be required to be set back at a distance of 8 times the height of the fill. (page 17)

§39.6235 [29.353] STORMWATER AND RUN-OFF DRAINAGE CONTROL.

(E) At a minimum, to establish satisfaction of the standards in this section and all other applicable stormwater-related regulations in this code, the following information must be provided to the planning director:

(1) A site plan drawn to scale, showing the property line locations, ground topography (contours), boundaries of all ground disturbing activities, roads and driveways, existing and proposed structures and buildings, existing and proposed sanitary tank and drainfields (primary and reserve), location of stormwater disposal, trees and vegetation proposed for both removal and planting and an outline of wooded areas, water bodies and existing drywells;

There appears to be a missing word in (E). I also suggest that the list of requirements in (1) would be more readable if it is separated into individual items, as was done in other parts of the proposed new code (see page 16, Agricultural Fill Permit, (A)(1)).

ATTACHMENT A.2

5.B – GEOLOGIC HAZARDS OVERLAY (GH)

§ 39.5080 EXEMPTIONS

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

It would be more appropriate to refer to the depth of an excavation, instead of height. (page 7)

(N) Uses not identified in subsections (A) through (M) that meet all of the following requirements:

- (1) Natural and finished slopes will be less than 25 percent; and,
- (2) The disturbed or filled area is 20,000 square feet or less; and,
- (3) The volume of soil or earth materials to be stored is 50 cubic yards or less; and,
- (4) Rainwater runoff is diverted, either during or after construction, from an area smaller than 10,000 square feet; and,
- (5) Impervious surfaces, if any, of less than 10,000 square feet are to be created; and,
- (6) No drainageway is to be blocked or have its stormwater carrying capacities or characteristics modified; and,
- (7) The use will occur outside the Tualatin River and Balch Creek drainage basins; and,-

(8) Trees and shrubs will be removed from an area less than 10,000 square feet.

Removal of tree and shrub cover from an area greater than 10,000 square feet in a geologic hazard area should require a permit because loss of that vegetative cover will increase stormwater runoff and could affect slope stability. (page 8)

§ 39.5090 GEOLOGIC HAZARDS PERMIT 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. 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.

I am troubled about allowing up to 5,000 cubic yards of fill on sites in geologic hazard areas, particularly for smaller properties such as the 2.5 acre property that I live on. It seems odd to allow the same maximum fill size on a 2.5 acre property as on a 40 acre property. I would like to suggest that these fills should be capped on a scale related to size of the property, perhaps:

- up to 500 cubic yards on properties up to 5 acres,
- up to 1000 cubic yards on properties up to 10 acres,
- up to 5000 cubic yards on properties larger than 10 acres. (page 11)

(C) Cut and fill slopes shall not exceed ~~2533~~ percent grade (~~43~~ Horizontal: 1 Vertical), unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in excess of ~~2533~~ percent is safe (including, but not limited to, not endangering or disturbing adjoining property) and suitable for the proposed development;

Same comment as above. (page 11)

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

Construction related pollutants and hazardous materials should be properly removed and disposed of after construction is completed. This language was in the old code. (page 14)

(Y) No fill shall be permanently installed within the drip line of mature trees.

(Z) No compensation, monetary or otherwise, is received for the receipt or placement of the fill;

Suggestion additions. As noted in a previous comment, adding dirt within the drip line and adjacent to the trunk of a mature tree is highly likely to kill it. (pages 11-14). A prohibition on compensation is proposed in Attachment A (page 17) for Agricultural Fills, and will be especially helpful. I believe it would also be good policy not to allow compensation for fills in Geologic Hazard areas.

ATTACHMENT A.4

PART 7 - Conditional Uses and Community Service Uses

7.A.2 – Large Fills (CU)

39.7205 Excluded Areas

Large fills shall not be allowed in:

- (A) In areas designated SEC (general), SEC-s, SEC-w, SEC-wr, or WRG;
- (B) In other stream areas protected by other local, state and federal agencies;
- (C) On wetlands which have not been approved for fill by the Army Corp of Engineers and Division of State Lands;
- (D) In 100 year floodplains; ~~or~~
- (E) On high-value farm land as defined in MCC 39.4210; or
- (F) In areas designated SEC-h.

Large fills will eliminate or modify wildlife habitat by eliminating vegetative cover, modifying slopes, and altering hydrology. They seem incompatible with our goals of protecting high value wildlife habitats, identified with SEC-h overlays. (page 2)

39.7215 Large Fill Permit Standards

(C) No compensation, monetary or otherwise, is received for the receipt or placement of the fill;

Large fill projects should not be undertaken for purposes of compensation. They disrupt neighbors, permanently alter the landscape, and can harm valuable wildlife habitat. (pages 5-8)

(2) Buffer requirements.

- (a) All existing vegetation and topographic features which would provide screening and which are within 100 feet of the proposed area of fill shall be preserved and protected from the fill. The applicant shall demonstrate that the existing screening is sufficient to ensure the project site will not noticeably contrast with the surrounding landscape, as viewed from an identified viewing areas, neighboring properties, or accessways, or

As noted above, some property owners stack fill up around trees and shrubs, and this should not be allowed in an area where the vegetation is to provide a buffer. (page 6)

(4) Timing of Operation.

- (a) Hours of operation shall be specified on each application. At a maximum operating hours shall be allowed from 7:00 am to 6:00 pm. Large fills shall not operate more than 5 days a week, on Sundays or on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day.

Long streams of dump trucks are disruptive to neighbors, who should be allowed at least two days a week of peace. (page 6)

ATTACHMENT A.5

PART 2: DEFINITIONS

Add the definition of earth materials copied from Chapter 38 (Columbia Gorge Natural Scenic Area (NSA)) in this section.

Earth materials: Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials, including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).

Please consider adopting these suggested changes, and either holding the hearing open or recommending the proposed code for approval.

I would be happy to answer any questions.

Thank you.



Carol Chesarek