

Memorandum

Date: January 4, 2019
To: Multnomah County Planning Commission
From: Kevin Cook, Senior Planner
Subject: Additional housekeeping items – Case PC-2018-11006

In addition to the items listed in the housekeeping amendments Staff Report (Case PC-2018-11006), a few more errors have been identified. The errors are found in Chapter 39 and are summarized below, along with the proposed corrections.

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

MCC 39.7515

MCC 39.7515 lists the approval criteria for Community Service uses. The consolidated code reconciled former MCC 36.6010 (the Approval Criteria for Community Service uses in the West of Sandy River Rural Plan Area) and the equivalent sections in the other planning areas (e.g., former MCC 33.6010 - West Hills Rural Plan Area), resulting in the approval criteria now listed in MCC 39.7515. The original code sections are attached for reference as Exhibit 1.

The Approval Criteria in former MCC 36.6010 mirrored those in the equivalent sections for the other planning areas, except that former MCC 36.6010 had one additional standard in subsection (I). Former MCC 36.6010(I) limited Community Service uses in type and scale to ‘primarily serve the needs of the rural area.’ In the consolidated code, subsection (I) was carried over to MCC 39.7515, but was not limited in application to the West of Sandy River Rural Plan Area.

As a result, in its current form, subsection (I) would now apply in all plan areas, including the Urban Plan Area and within the UGB. However, the consolidated code was intended to retain those standards that are unique to specific planning areas, but not to extend more restrictive standards to other plan areas. The amendment proposed below would restore the applicability of subsection (I) to the West of Sandy River Rural Plan area only. The proposed amendment is

consistent with the intent behind the consolidated code and aligns Chapter 39 with how the Code was structured prior to consolidation.

The proposed correction to MCC 39.7515(I) follows:

§ 39.7515 APPROVAL CRITERIA.

In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria, except for transmission towers, which shall meet the approval criteria of MCC 39.7550 through 39.7575, wireless communications facilities, subject to the provisions of MCC 39.7705, and except for regional sanitary landfills, which shall comply with MCC 39.7600 through 39.7625.

(I) In the West of Sandy River Rural Planning Area, ~~the~~ use is limited in type and scale to primarily serve the needs of the rural area.

MCC 39.7520(A)

Chapter 39.7520(A) contains a series of uses that are categorized as Community Service uses.

Subsection (6) of 39.7520(A) is missing text that did not copy over into the newly consolidated code. The missing text should be inserted in order to clarify that MCC 39.7515(I) does not apply to utility facilities regardless of which rural plan area the facility would be located in. Like the change above, this proposal will align Chapter 39 with the structure of the Code prior to consolidation.

The current text of subsection (6) reads:

“(6) Utility facilities,, including power substation or other public utility building or use.”

Subsection (6) was intended to reconcile differently worded subsections from former Chapter 36 and former Chapters, 33, 34, and 35. For reference:

Former MCC 36.6015(A) *“(6) Utility facilities, subject to the approval criteria in Section 36.6010(A) through (H).”* As noted above, former MCC 36.6010 also included a subsection (I), and this Code provision specified that subsection (I) did not apply to utility facilities.

Former MCC 33.6015(A) *“(12) Power substation or other public utility building or use.”* As noted above, former MCC 33.6010 did not contain a subsection (I), so that criterion never applied to these types of utility facilities in the other rural plan areas.

The proposed correction to MCC 39.7520(A)(6) 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.

Allowed Community Service Uses in the EFU, CFU and OR base zones are limited to those uses listed in each respective base zone

* * *

(6) Utility facilities, including power substations or other public utility buildings or uses, subject to the approval criteria in MCC 39.7515 (A) through (H).

MCC 39.5800

MCC 39.5800 contains the criteria for approval of a Significant Environmental Concern for Water Resource permit. Whereas former code versions did not label the introductory paragraph of this section (see Exhibit A), the final version of the consolidated code labeled the introductory paragraph of MCC 39.5800 as subsection (A), but did not adjust references to other subsections accordingly.

The proposed correction to MCC 39.5800 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 ~~(A)~~ or (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), and meets the general requirements in MCC 39.5560.

(B) Development on Low Impact Sites - Development on parcels in locations that would have low impacts on Water Resource Areas may be exempt from the Alternatives Analysis in subsection ~~(B)~~ (C) below. Development on sites that meet the following criterion may be allowed pursuant to the other applicable requirements of this Overlay including the Development Standards of subsection ~~(D)~~ (E) and the provisions for Mitigation in subsection ~~(E)~~ (F):

(1) The development site is at least one hundred (100) feet from top of bank or top of ravine, which ever results in a greater distance from the Protected Water Feature.

Top of ravine is the break in the > 25% slope. Slope should be measured in 25-foot increments away from the water feature until the slope is less than 25% (top of ravine), up to a maximum distance of 200' from the water feature. Where multiple resources are present (e.g., stream with wetlands along banks), the

starting point for measurement should be whichever offers greatest resource protection.

(C) Alternatives Analysis - Development proposed within a Water Resource Area may be allowed if there is no alternative, when the other requirements of this Overlay including the Development Standards of subsection ~~(D)~~ (E) and the provisions for Mitigation in subsection ~~(E)~~ (F) are met. The applicant shall prepare an alternatives analysis which demonstrates that:

- (1) No practicable alternatives to the requested development exist that will not disturb the Water Resource Area; and
- (2) Development in the Water Resource Area has been limited to the area necessary to allow for the proposed use;
- (3) Development shall occur as far as practically possible from the stream; and
- (4) The Water Resource Area can be restored to an equal or better condition; or
- (5) Any net loss on the property of resource area, function and/or value can be mitigated.

(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) has been submitted.
- (2) The riparian/vegetated corridor is certified to be in a marginal or degraded condition pursuant to Table 2 of this section. Buffer averaging is not allowed to encroach in areas certified to be in good condition.
- (3) The maximum encroachment does not exceed 20% of the frontage length of the vegetated corridor by 20% of the required width.
- (4) The entire remaining vegetated corridor on the project site or the first 50 feet closest to the stream (whichever is less) will be enhanced to "good" condition pursuant to Table 2 of this section.
- (5) The area of encroachment will be replaced with added buffer area at a 1:1 ratio.
- (6) The replacement area will be incorporated into the remaining vegetated corridor on the project site and meet the "good" condition pursuant to Table 2 of this section, regardless of its distance from the resource area.

(E) Development Standards- Development within the Water Resource Area shall comply with the following standards:

(1) Development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to minimize impacts on the natural resource while allowing for the enjoyment of the natural resource.

(2) Development in areas of dense standing trees shall be designed to minimize the numbers of trees to be cut. No more than 50 percent of mature standing trees (of 6-inch DBH greater) shall be removed without a one-for-one replacement with comparable species. The site plan for the proposed activity shall identify all mature standing trees by type, size, and location, which are proposed for removal, and the location and type of replacement trees.

(3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, so as to provide a transition between the proposed development and the natural resource, to provide food, water, and cover for wildlife, and to protect the visual amenity values of the natural resource.

(4) The Water Resource Area shall be ~~re-stored~~ restored to "good condition" and maintained in accordance with the mitigation plan pursuant to subsection ~~(E)~~ (F) below and the specifications in Table 2 of this section.

(5) To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Resource Area. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment.

(6) Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in MCC 39.5580 Table 1, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Nuisance plants shall be replaced with non-nuisance plants by the next growing season.