

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON
ORDINANCE NO. 677

An Ordinance amending the Multnomah County Code Chapter 11.15 by amending regulations applicable to grading and filling activities, and clarifying standards applicable to land disturbing activities within the Tualatin River Drainage Basin, and declaring an emergency.

(Language in brackets [] is to be deleted; underlined sections are new text.)

Multnomah County Ordains as follows:

Section I. Findings.

(A). On August 3, 1989, the State of Oregon Environmental Quality Commission (EQC) promulgated rules for the Tualatin River Basin that requires Multnomah County and all other counties and cities within the Tualatin River Drainage Basin to submit plans for control of urban storm runoff. Oregon Administrative Rules (OAR) 340-41-470(3)(g) states: "Within 18 months after adoption of these rules, Washington, Clackamas, Multnomah Counties and all incorporated cities within the Tualatin River and Oswego Lake subbasins shall submit to the Department a program plan for controlling the quality of urban storm runoff within their respective jurisdictions to comply with the requirements of sections (a) and (b) of this rule."

(B). Multnomah County Ordinance Number 643 amended MCC 11.15 (adopted February 20, 1990). These County Zoning Ordinance amendments were in part adopted to address 1989 OAR provisions regarding erosion control within the Tualatin Basin. Ordinance 643 added a "*Hillside Development and Erosion Control*" subsection to the Multnomah County Zoning Ordinance (MCC 11.15.6700 -.6735). The subsection requires a "*Grading and Erosion Control Permit*" for most land disturbing activities within the Tualatin Basin.

(C). The State of Oregon Department of Environmental Quality (DEQ) has indicated that implementing code provisions in MCC 11.15 do not sufficiently address all of the 1989 OAR 340 provisions. The County Zoning Code does not address storm water runoff and protection of streams and drainageways within the Tualatin River Drainage Basin. DEQ indicates that applicable OAR's can be addressed through text amendments to the *Hillside Development and Erosion Control* subsection of MCC 11.15.

(D). To avoid potential enforcement proceedings by DEQ, it is necessary to amend MCC Chapter 11.15 regarding erosion control and storm water runoff provisions applicable within the Tualatin River Drainage Basin.

(E). An emergency is declared because Multnomah County has not met the OAR 340 schedule of compliance.

(F). The State Department of Forestry requests text and format revisions to the "Exemptions" subsection relating to Forest Practices (MCC 11.15.6715).

Section II. Amendments.

Multnomah County Code Chapter 11.15 is amended to read as follows:

11.15.6700 Purposes

The purposes of the Hillside Development and Erosion Control subdistrict are to promote the public health, safety and general welfare, and minimize public and private losses due to earth movement hazards in specified areas and minimize erosion and related environmental damage in unincorporated Multnomah County, all in accordance with ORS 215, LCDC Statewide Planning Goal No. 7 and OAR 340-41-455 for the Tualatin River Basin, and the Multnomah County Comprehensive Framework Plan Policy No. 14. This subdistrict is intended to:

(A) Protect human life;

(B) Protect property and structures;

(C) Minimize expenditures for rescue and relief efforts associated with earth movement failures;

(D) Control erosion, production and transport of sediment; and

(E) Regulate land development actions including excavation and fills, drainage controls and protect exposed soil surfaces from erosive forces.

(F) Control stormwater discharges and protect streams, ponds, and wetlands within the Tualatin River Drainage Basin.

11.15.6710 Permits Required

(A) All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the "Slope Hazard Map", or on lands with average slopes of 25 percent or more shall obtain a Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC .6715.

(B) All persons proposing site grading where the volume of soil or earth material disturbed, stored, disposed of or used as fill exceeds 50 cubic yards, or which obstruct or alter a drainage course [or on any sites within the Tualatin River Drainage Basin], shall obtain a Grading and Erosion Control Permit as prescribed by this subdistrict, unless exempted by MCC .6715(B)(2) through (8) or .6715(C). Development projects subject to a Hillside Development Permit do not require a separate Grading and Erosion Control Permit.

(C) All persons proposing land-disturbing activities within the Tualatin River Drainage Basin shall first obtain a Grading and Erosion Control Permit, except as provided by MCC 11.15.6715(C) below.

11.15.6715 Exempt Land Uses and Activities

The following are exempt from the provisions of this Chapter:

(A) Development activities approved prior to February 20, 1990; except that within such a development, issuance of individual building permits for which application was made after February 20, 1990 shall conform to site-specific requirements applicable herein.

(B) General Exemptions – [All land-disturbing or land-filling activities or soil storage] Outside the Tualatin River Drainage Basin, all land-disturbing activities outlined below shall be undertaken in a manner designed to minimize earth movement hazards, surface runoff, erosion, and sedimentation and to safeguard life, limb, property, and the public welfare. A person performing such activities need not apply for a permit pursuant to this subdistrict, if :

(1) Natural and finished slopes will be less than 25 %; 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 activity will not take place within 100 feet by horizontal measurement from the top of the bank of a watercourse, the mean high watermark (line of vegetation) of a body of water ,or within the wetlands associated with a watercourse or water body, whichever distance is greater[; and,

[(8) Any tree clearing work will be subject to the State Forest Practices Act.]

(C) Categorical Exemptions – Notwithstanding MCC .6715(A) and (B)(1) through ([8]Z), the following activities are exempt from the permit requirements:

- (1) 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 height greater than five feet.
- (2) Cemetery graves, but not cemetery soil disposal sites.
- (3) Refuse disposal sites controlled by other regulations.
- (4) Excavations for wells.
- (5) Mineral extraction activities as regulated by MCC .7305 through .7335.
- (6) Exploratory excavations under the direction of certified engineering geologists or geotechnical engineers.
- (7) Routine agricultural crop management practices.
- (8) Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazards.
- (9) Forest practices as defined by ORS 527 (State Forest Practices Act) and approved by the Oregon Department of Forestry.

11.15.6720 Application Information Required

An application for development subject to the requirements of this subdistrict shall include the following:

- (A) A map showing the property line locations, roads and driveways, existing structures, trees with 8-inch or greater caliper or an outline of wooded areas, watercourses and include the location of the proposed development(s) and trees proposed for removal.
- (B) An estimate of depths and the extent and location of all proposed cuts and fills.
- (C) The location of planned and existing sanitary drainfields and drywells.
- (D) [Additional n] Narrative, map or plan information necessary to demonstrate compliance with MCC .6730(A). The application shall provide applicable supplemental reports, certifications, or plans

relative to: engineering, soil characteristics, stormwater drainage, stream protection, erosion control, and/or replanting.

11.15.6730 Grading and Erosion Control Permit Standards

Approval of development plans on sites subject to a Grading and Erosion Control Permit shall be based on findings that the proposal adequately addresses the following standards. Conditions of approval may be imposed to assure the design meets the standards:

(A) Design Standards For Grading and Erosion Control

(1) Grading Standards

(a) Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The Director or delegate may require additional studies or information or work regarding fill materials and compaction;

(b) Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;

(c) Cuts and fills shall not endanger or disturb adjoining property;

(d) The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;

(e) Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced streamflow for a storm of 10-year design frequency;

(2) Erosion Control Standards

(a) On sites within the Tualatin River Drainage Basin, erosion and stormwater control plans shall satisfy the requirements of OAR 340[-41-455]. [An *Erosion Control Plans Technical Guidance Handbook* (November, 1989) is available to assist applicants in meeting State erosion control standards in the Tualatin Basin.] Land-disturbing activities

1 within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the
2 bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or
3 within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340 is
4 approved for alterations within the buffer area.

5 (b) Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which
6 will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the
7 smallest practical area at any one time during construction;

8 (c) Development Plans shall minimize cut or fill operations and ensure conformity with
9 topography so as to create the least erosion potential and adequately accommodate the
10 volume and velocity of surface runoff;

11 (d) Temporary vegetation and/or mulching shall be used to protect exposed critical areas
12 during development;

13 (e) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

14 (f) Permanent plantings and any required structural erosion control and drainage measures
15 shall be installed as soon as practical;

16 (g) Provisions shall be made to effectively accommodate increased runoff caused by altered
17 soil and surface conditions during and after development. The rate of surface water runoff
18 shall be structurally retarded where necessary;

19 (h) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other
20 measures until the disturbed area is stabilized;

21 (i) Provisions shall be made to prevent surface water from damaging the cut face of
22 excavations or the sloping surface of fills by installation of temporary or permanent
23 drainage across or above such areas, or by other suitable stabilization measures such as
24 mulching or seeding;

25 (j) All drainage provisions shall be designed to adequately carry existing and potential surface
26 runoff to suitable drainageways such as storm drains, natural watercourses, drainage

swales, or an approved drywell system;

(k) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion;

(l) Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:

(i) Energy absorbing devices to reduce runoff water velocity;

(ii) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

(iii) Dispersal of water runoff from developed areas over large undisturbed areas.

(m) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures;

(n) 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.

(B) Responsibility

(1) Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project;

(2) It is the responsibility of any person, corporation or other entity doing any act on or across a communal stream watercourse or swale, or upon the floodplain or right-of-way thereof, to maintain as nearly as possible in its present state the stream, watercourse, swale, floodplain, or

right-of-way during such activity, and to return it to its original or equal condition.

(C) Implementation

(1) Performance Bond – A performance bond may be required to assure the full cost of any required erosion and sediment control measures. The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the the control measures have or can be expected to perform satisfactorily. The bond may be waived if the Director determines the scale and duration of the project and the potential problems arising therefrom will be minor.

(2) Inspection and Enforcement. The requirements of this subdistrict shall be enforced by the Planning Director. If inspection by County staff reveals erosive conditions which exceed those prescribed by the Hillside Development Permit or Grading and Erosion Control Permit, work may be stopped until appropriate correction measures are completed.

(D) Final Approvals

A certificate of Occupancy or other final approval shall be granted for development subject to the provisions of this subdistrict only upon satisfactory completion of all applicable requirements.

11.15.6735 Hillside Development and Erosion Control Related Definitions:

(A) *Certified Engineering Geologist* – Any person who has obtained certification by the State of Oregon as an engineering geologist.

(B) *Cut*:

- (1) An excavation;
- (2) The difference between a point on the original ground surface and the point of lowest elevation on the final grade;
- (3) The material removed in excavation work.

(C) *Development Area* – The total area of alteration of the naturally occurring ground surface resulting from construction activities whether permanent or temporary.

(D) *Drainage Area* – The subject property together with the watershed (acreage) contributing water runoff to and receiving water runoff from the subject property.

(E) *Drainageway* – Any natural or artificial stream, swale, creek, river, ditch, channel, canal or other open water-course.

(F) *Earth Movement* – Any type of land surface failure resulting in the downslope movement of material . The term includes, but is not limited to, soil creep, mudflow, rockslides, block failures, and massive landslides.

(G) *Erosion* – The wearing away or removal of earth surface materials by the action of natural elements or forces including, but not limited to, wind, water or gravity.

(H) *Excavation* – Any act by which earth, sand, gravel, rock or any similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated or bulldozed, including the conditions resulting therefrom.

(I) *Fill*:

(1) Any act by which earth, sand, gravel, rock or similar material is pushed, placed, dumped, stacked, pulled, transported, or in any way moved to a new location above the existing natural surface of the ground or on the top of a stripped surface, including the condition resulting therefrom.

(2) The difference in elevation between a point on the original ground surface and the point of higher elevation on a finished grade.

(3) The material used to make a fill.

(J) *Geotechnical Engineer* - A Civil Engineer, licensed to practice in the State of Oregon, who by training, education and experience is competent in the practice of geotechnical or soils engineering practices.

(K) *Geotechnical Report* – Any information required in addition to Form 1 which clarifies the geotechnical conditions of a proposed development site. Examples of this would be reports on test hole borings, laboratory tests or analysis of materials, or hydrologic studies.

(L) *Grading* – Any stripping, cutting, filling, stockpiling or any combination thereof, including the land in its cut or filled condition.

(M) *HDP Form-1* – The form required for specified developments subject to the Hillside Development and Erosion Control subdistrict. It contains a geotechnical reconnaissance and stability questionnaire which must be filled out and certified by a Certified Engineering Geologist or Geotechnical Engineer.

(N) [*Landscaping Activities* – The artistic adornment or improvement of a section of ground or site by contouring the land and by planting flowers, shrubs, trees, lawns or groundcover plants.] *Land-disturbing Activities* – Any act which alters earth, sand, gravel, or similar materials and exposes the same to the elements of wind, water, or gravity. Land-disturbing activities include: excavations or fills, site grading, tree clearing, and soil storage.

(O) *Mulch* – Materials spread over the surface of the ground, especially freshly graded or exposed soils, to prevent physical damage from erosive agents such as storm water, precipitation, or wind, and which shield soil surfaces until vegetative cover or other stabilization measures can take effect.

(P) *Ordinary High Water Mark* – Features found by examining the bed and banks of a stream and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all ordinary years, as to mark upon the land a character distinct from that of the abutting upland, particularly with respect to vegetation. For streams where such features cannot be found, the channel bank shall be substituted. In braided channels and alluvial fans, the ordinary high water mark shall be measured to include the entire stream feature.

([P] Q) *Slope*:

(1) Any ground whose surface makes an angle from the horizontal; or

(2) The face of an embankment or cut section.

([Q] R) *Slope Hazard Map* – A series of maps (Figures 1A. through 6A.) prepared by Shannon & Wilson, Inc., dated September, 1978, and on file in the Office of the Director, Department of Environmental Services;

1 ((R) S) *Spoil Material* – Any rock, sand, gravel, soil or other earth material removed by excavation or
2 other grading activities.

3 (T) *Stream* – Areas where surface waters flow sufficient to produce a defined channel or bed. A defined
4 channel or bed is indicated by hydraulically sorted sediments or the removal of vegetative litter or
5 loosely rooted vegetation by the action of moving water. The channel or bed need not contain
6 water year-round. This definition is not meant to include irrigation ditches, canals, stormwater
7 runoff devices or other entirely artificial watercourses unless they are used to convey Class 1 or 2
8 streams naturally occurring prior to construction. Those topographic features resembling streams
9 but which have no defined channels (e.g. swales) shall be considered streams when hydrologic and
10 hydraulic analyses performed pursuant to a development proposal predict formation of a defined
11 channel after development.

12 (U) *Stream Protection* – Activities or conditions which avoid or lessen adverse water quality and
13 turbidity effects to a stream.

14 ((S) Y) *Topographic Information* – Surveyed elevation information which details slopes, contour
15 intervals and drainageways. Topographic information shall be prepared by a registered land
16 surveyor or a registered professional engineer qualified to provide such information and represented
17 on maps with a contour interval not to exceed 10 feet.

18 ([T] W) *Vegetation* – All plant growth, especially trees, shrubs, grasses and mosses.

19 ([U] X) *Vegetative Protection* – Stabilization of erosive or sediment-producing areas by covering the
20 soil with:

- 21 (1) Permanent seeding, producing long-term vegetative cover;
- 22 (2) Short-term seeding, producing temporary vegetative cover;
- 23 (3) Sodding, producing areas covered with a turf or perennial sod-forming grass; or
- 24 (4) Netting with seeding if the final grade has not stabilized.

25 (Y) *Water Body* – Areas permanently or temporarily flooded which may exceed the deepwater boundary
26 of wetlands. Water depth is such that water, and not the air, is the principal medium in which

1 prevalent organisms live. Water bodies include rivers, creeks, lakes, and ponds.

2 (Z) Watercourse – Natural and artificial features which transport surface water. Watercourse includes a
3 river, stream, creek, slough, ditch, canal, or drainageway.

7 Section III. Adoption.

8 This ordinance, being necessary for the health, safety, and general welfare of the people of
9 Multnomah County, an emergency is declared and the Ordinance shall take effect upon its execution by the
10 County Chair, pursuant to Section 5.50 of the Charter of Multnomah County.

11 ADOPTED THIS 23rd day of April, 1991, being the date of its first
12 reading before the Board of County Commissioners of Multnomah County.



By

Gladys McCoy
Gladys McCoy, County Chair
MULTNOMAH COUNTY, OREGON

19 REVIEWED:

20
21 John DuBay
22 John DuBay, Deputy County Counsel
23 of Multnomah County, Oregon
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