

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

ORDINANCE NO. _____

Amending MCC Chapters 33, 34 and 36 Relating to Criteria for Approval of SEC-H Permit – Wildlife Habitat

(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 33.0140, 34.0140, 35.0140, 36.0140, 37.0710, and 38.0710 and in ORS 215.110.
- b. Planning Commission Resolution No. PC 2013-2795 relates to criteria for approval of SEC-H Permit - Wildlife. The Significant Environmental Concern for wildlife habitat regulations were adopted initially in the West Hills and Sauvie Island plan areas in 1994 and in the West of Sandy River plan area in 2002. Such regulations have continued to the present without substantial amendment. This ordinance amends such regulations by authorizing additional permit approval opportunities that are necessary to address constituent needs. In addition, with respect to such regulations, this ordinance establishes procedural efficiencies that will benefit both the County and its constituents by reducing permit processing time and cost while maintaining existing levels of resource protection.
- c. The Planning Commission held a public hearing on September 9, 2013, 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”) is 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.
- d. The Planning Commission’s recommendation is sound and derives from the proper execution of its duties and authority.

Multnomah County Ordains as Follows:

PART I – RELATING TO CRITERIA FOR APPROVAL OF SEC-H PERMIT – WILDLIFE HABITAT

Section 1. MCC 33.4570 and 34.4570 are amended as follows:

33.4570 CRITERIA FOR APPROVAL OF SEC-H PERMIT – WILDLIFE HABITAT

34.4570 CRITERIA FOR APPROVAL OF SEC-H PERMIT – WILDLIFE HABITAT

(C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

(3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), the wildlife conservation plan must demonstrate the following:

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.
- (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.
- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.
- (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.
- (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.

(5) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, the wildlife conservation plan must demonstrate the following:

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

(c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes. Existing fencing located in the front yard adjacent to a public road shall be consistent with MCC 33.4570(B)(6).

(d) For mitigation areas, all trees, shrubs and ground cover shall be native plants selected from the Metro Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the total developed area (including, buildings, pavement, roads, and land designated as a Development Impact Area) on a Lot of Record will be one acre or more, the applicant shall comply with Mitigation Option 2:

1. Mitigation Option 1. In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the development site. Trees that are removed from the development site shall be replaced as shown in the table below. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Tree Replacement Table

| <u>Size of tree to be removed (inches in diameter)</u> | <u>Number of trees and shrubs to be planted</u> |
|--|---|
| <u>6 to 12</u> | <u>2 trees and 3 shrubs</u> |
| <u>13 to 18</u> | <u>3 trees and 6 shrubs</u> |
| <u>19 to 24</u> | <u>5 trees and 12 shrubs</u> |
| <u>25 to 30</u> | <u>7 trees and 18 shrubs</u> |
| <u>over 30</u> | <u>10 trees and 30 shrubs</u> |

2. Mitigation Option 2. In this option, the mitigation requirement is calculated based on the size of the disturbance area associated with the development. Native trees and shrubs are required to be planted at a rate of five (5) trees and twenty-five (25) shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

(e) **Location of mitigation area.** All vegetation shall be planted within the mitigation area located on the same Lot of Record as the development and shall be located within the SEC-h overlay or in an area contiguous to the SEC-h overlay; provided, however, that if the vegetation is planted outside of the SEC-h overlay then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. (Note: an off-site mitigation option is provided in a streamlined discretionary review process). The mitigation area shall first be located within any existing non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas and last in forested areas or adjacent to landscaped yards.

(f) Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.

(g) Trees shall not be used as anchors for stabilizing construction equipment.

(h) Native soils disturbed during development shall be conserved on the property.

(i) An erosion and sediment control plan shall be prepared in compliance with the Grading and Erosion Control standards set forth in MCC 29.330 through MCC 29.348;

(j) **Plant size.** Replacement trees shall be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs shall be in at least a 1-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height.

(k) **Plant spacing.** Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.

(l) **Plant diversity.** Shrubs shall consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.

(m) **Nuisance plants.** Any nuisance plants listed in (B)(7) above shall be removed within the mitigation area prior to planting.

(n) **Planting Schedule.** The planting date shall occur within one year following the approval of the application.

(o) **Monitoring and reporting.** Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

(6) For Protected Aggregate and Mineral (PAM) resources within a PAM subdistrict, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.

(D) Optional Development Impact Area (DIA). For the purpose of clustering home sites together with related development within the SEC-h overlay, an applicant may choose to designate an area around the home site for future related development and site clearing. For the purposes of establishing the appropriate mitigation for development within the DIA, existing vegetation within the DIA is presumed to be ultimately removed or cleared in the course of any future development within the DIA. Establishment of a DIA is subject to all of the applicable provisions in MCC 33.4570 and the following:

(1) The maximum size for a DIA shall be no greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

(2) Any required mitigation for the DIA site under an approved wildlife conservation plan shall be completed within one year of the final approval of the application.

(3) The DIA shall contain an existing habitable dwelling or approved dwelling site.

(4) No more than one DIA is permitted per Lot of Record.

(5) The DIA can be any shape, but shall be contiguous and shall fit within a circle with a maximum diameter of 400 feet.

(6) For new dwellings that will be located on a Lot of Record that does not currently contain a dwelling, the DIA should be located within 200 feet of a public road or in the case of properties without road frontage, as close as practicable (accounting for required setbacks and fire safety zones) to the entry point of the vehicular access serving the property.

(7) No part of a DIA may be located in an SEC-s sub-district, mapped wetland, or flood hazard zone.

(8) All development within the DIA is subject to all development criteria in effect for the underlying zone and overlay zones at the time of development. Approval of a DIA does not preclude the applicant's responsibility to obtain all other required approvals.

(9) Once a DIA is approved and all pre-development conditions of approval are met, development within the DIA may commence at anytime thereafter provided the applicable approval criteria of MCC 33.4570 are the same as the criteria under which the DIA was originally approved. This provision does not waive the approval timeframe and/or expiration of any other permit approvals.

Section 2. MCC 36.4560 is amended as follows:

**36.4560 CRITERIA FOR APPROVAL OF SEC-H PERMIT – WILDLIFE
HABITAT**

(B) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one or two situations exist.

(3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (B)(5) of this section, the wildlife conservation plan must demonstrate the following:

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.
- (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.
- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.
- (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.
- (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.

(5) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, the wildlife conservation plan must demonstrate the following:

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.
- (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.
- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes. Existing fencing located in the front yard adjacent to a public road shall be consistent with MCC 34.4570(B)(6).

(d) For mitigation areas, all trees, shrubs and ground cover shall be native plants selected from the Metro Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the total developed area (including, buildings, pavement, roads, and land designated as a Development Impact Area) on a Lot of Record will be one acre or more, the applicant shall comply with Mitigation Option 2:

1. *Mitigation Option 1.* In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the development site. Trees that are removed from the development site shall be replaced as shown in the table below. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

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2. *Mitigation Option 2.* In this option, the mitigation requirement is calculated based on the size of the disturbance area associated with the development. Native trees and shrubs are required to be planted at a rate of five (5) trees and twenty-five (25) shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

(e) **Location of mitigation area.** All vegetation shall be planted within the mitigation area located on the same Lot of Record as the development and shall be located within the SEC-h overlay or in an area contiguous to the SEC-h overlay; provided, however, that if the vegetation is planted outside of the SEC-h overlay then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. (Note: an off-site mitigation option is provided in a streamlined discretionary review process). The mitigation area shall first be located within any existing non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas and last in forested areas or adjacent to landscaped yards.

(f) Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.

(g) Trees shall not be used as anchors for stabilizing construction equipment.

(h) Native soils disturbed during development shall be conserved on the property.

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(n) **Planting Schedule.** The planting date shall occur within one year following the approval of the application.

(o) **Monitoring and reporting.** Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

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- (3) The DIA shall contain an existing habitable dwelling or approved dwelling site.
- (4) No more than one DIA is permitted per Lot of Record.
- (5) The DIA can be any shape, but shall be contiguous and shall fit within a circle with a maximum diameter of 400 feet.
- (6) For new dwellings that will be located on a Lot of Record that does not currently contain a dwelling, the DIA should be located within 200 feet of a public road or in the case of properties without road frontage, as close as practicable (accounting for required setbacks and fire safety zones) to the entry point of the vehicular access serving the property.
- (7) No part of a DIA may be located in an SEC-s sub-district, mapped wetland, or flood hazard zone.
- (8) All development within the DIA is subject to all development criteria in effect for the underlying zone and overlay zones at the time of development. Approval of a DIA does not preclude the applicant's responsibility to obtain all other required approvals.
- (9) Once a DIA is approved and all pre-development conditions of approval are met, development within the DIA may commence at anytime thereafter provided the applicable approval criteria of MCC 34.4570 are the same as the criteria under which the DIA was originally approved. This provision does not waive the approval timeframe and/or expiration of any other permit approvals.

FIRST READING: _____

SECOND READING AND ADOPTION: _____

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury, County Chair

REVIEWED:

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

By _____
Jed Tomkins, Assistant County Attorney

SUBMITTED BY: Kim Peoples, Interim Director, Department of Community Services