

PO Box 730 • #1 Town & Country Square • White Salmon, Washington 98672 • 509-493-3323 • fax 509-493-2229
www.gorgecommission.org

TO: Columbia River Gorge Commission
FROM: Jennifer Ball Kaden, Planner
DATE: June 1, 2011 for the June 14, 2011 meeting
SUBJECT: Consistency Review of Multnomah County Ordinance 1179 to allow fish processing, prohibit the expansion of industrial uses, and make changes to legislative procedures.

Action Requested

Staff recommends the Gorge Commission find the amendments to Multnomah County's Scenic Area Code to allow fish processing, prohibit the expansion of industrial uses, and make changes to legislative procedures (as contained in Multnomah County Ordinance 1179) consistent with the Management Plan.

Introduction

Multnomah County adopted Ordinance 1179 to amend its Scenic Area ordinance (Chapter 38 of the Multnomah County Code) to allow fish processing in certain land use designations where there is access to the Columbia River, to prohibit the expansion of industrial uses, and simplify the county's legislative hearing process. The revisions related to fish processing and industrial uses mirror changes adopted in the Management Plan during plan review. The purpose of the legislative procedural changes is to simplify the process, fill procedural gaps identified by county counsel, and make Chapter 38 consistent with state law. Ordinance 1179 also makes changes to Chapters 33, 35, 36, and 37 of the county's code. These chapters do not affect the Scenic Area lands in Multnomah County and are not included in this review.

Ordinance 1179 was approved by the Multnomah County Board of Commissioners on April 21, 2011. On May 5, 2011, the Gorge Commission received a copy of the approved ordinance to review for consistency with the Management Plan. A copy of Ordinance 1179 is attached.

Statutory Requirements for Commission Consistency Review

Pursuant to Section 7(b)(3) of the Scenic Area Act, the Commission must review a county ordinance (and any amendments) for consistency with the Management Plan within 90 days of receipt of the ordinance. The deadline of 90 days for review of Ordinance 1179 is August 3, 2011. If the Commission fails to act within 90 days, the ordinance is deemed approved. Approval of the ordinance must be by majority vote, including at least three members from each state. Once deemed consistent by the Commission, the provisions that apply to the GMA may go into effect either immediately or on a date specified by a county. Multnomah County provided for the provisions to go into effect upon notification of approval by the Gorge Commission and, if necessary, concurrency the Secretary of Agriculture. If the Commission finds the ordinance inconsistent, the Commission must state the

reasons for finding the ordinance inconsistent with the Management Plan and submit suggested modifications to the County to make it consistent.

Section 8(i) of the Scenic Area Act specifies that the Commission shall review the SMA ordinance provisions within 90 days of receipt of the ordinance and make a tentative determination as to whether it is consistent with the Management Plan. Multnomah County Ordinance 1179 does not amend SMA ordinance provisions and, therefore, does not require concurrence by the Secretary of Agriculture.

Following the hearing, staff will prepare a written order for the Chair's signature. The written order will be the Commission's final order for this matter.

Amendment Summary

Part III of Multnomah County Ordinance 1179 amends Chapter 38, the county's scenic area land use ordinance, to: 1) delete language providing for the expansion of existing industrial uses, 2) add small-scale fishing support and fish processing operations as an allowed use on residential zoned land contiguous with the Columbia River, and 3) revise the county's legislative hearing process. These changes are discussed in corresponding order.

1. Section 11 of Ordinance 1179 strikes language that allowed for the expansion of existing industrial uses in the General Management Area. This change was mandated in a recent decision from the Oregon Court of Appeals. This update to Chapter 38 is consistent with the court ruling and the changes to the Management Plan adopted by the Gorge Commission in July, 2010.
2. Ordinance 1179 implements provisions included in the 2004 revisions to the Management Plan that allow small-scale fishing support and fish processing operations on certain lands that are contiguous with and have direct access to the Columbia River. The provisions include specified conditions for such operations. Ordinance 1179 implements the Management Plan provisions without change except that the small-scale fish process operations are limited to land zoned GMA Residential whereas the Management Plan also allows the use on lands zoned GMA Small Woodland and GMA Small-Scale Agriculture.
3. Ordinance 1179 includes provisions to simplify the county's legislative hearing process, fill procedural gaps identified by county counsel, and make these provisions in Chapter 38 consistent with other county code chapters and state law. The Management Plan doesn't provide direction to counties about legislative proceedings, ex parte contacts or conflicts of interest.

Parts I and II of Ordinance 1179 make changes to other chapters of Multnomah County's ordinance and are not relevant for this consistency review.

Consistency Analysis

Any amendment to a county's Scenic Area implementing ordinance must be found by the Gorge Commission to be consistent with the Management Plan for it to go into effect. A county ordinance is allowed to vary from the policies and guidelines in the Management Plan only if the variation provides greater protection for the scenic, cultural, natural and recreation resources of the Scenic Area.

1. As noted above, Ordinance 1179 strikes a provision in Multnomah County's Chapter 38 that allowed for the expansion of industrial uses in the GMA. In response to a ruling by the Oregon Court of Appeals, the Gorge Commission adopted changes to the Management Plan in July, 2010 that

removes this provision from the Management Plan. Ordinance 1179 follows suit and, therefore, is consistent with the Management Plan.

2. Ordinance 1179 authorizes small-scale fishing support and fish processing operations on lands designated Residential subject to Scenic Area review and consistency with specific conditions provided in the ordinance. The provisions related to fish processing in Ordinance 1179 mirror the Management Plan provisions that were included in the 2004 *Revisions to the Management Plan* with one variation. The provisions in Ordinance 1179 vary from the Management Plan only in that the county has limited the lands on which fish processing can occur to the Residential designation whereas the Management Plan allows for the use also to be reviewed on lands designated Small-Scale Agriculture and Small Woodland. Because this variation from the Management Plan further limits lands on which fish processing is allowed, the change is more protective of Scenic Area resources and, thus, is consistent with the policy that allows for county ordinances to vary from the Management Plan.

3. The provisions in Ordinance 1179 that address legislative proceedings, ex-parte contacts, and conflicts of interest are not addressed in the Management Plan. Because nothing in the Act or the Management Plan directly addresses these items, the amendments are not in conflict with the Management Plan.

None of the provisions in Ordinance 1179 are applicable to the Special Management Area, thus the Ordinance does not require concurrence by the Secretary of Agriculture.

Conclusion

Staff recommends the Commission find Multnomah County Ordinance 1179 consistent with the Management Plan.

Attachment: Multnomah County Ordinance 1179

MAY 5 2011

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

COLUMBIA RIVER GORGE COMM.

ORDINANCE NO. 1179

Amending MCC Chapters 33-38 Relating to Commercial Forest Use, Conflict of Interest and Legislative Hearing Procedures, and Changes to the Columbia River Gorge National Scenic Area Management Plan Related to Fish Processing, Industrial Uses, and to Amend Legislative Procedures

(Language ~~stricken~~ is deleted; double underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. Periodically there is a need to amend the County Land Use Planning Code (Zoning Code) provisions due to changing circumstances or for general housekeeping purposes. Such an update of the Zoning Code has become necessary for technical corrections, clarifications and consistency. This ordinance incorporates three amendments recommended by the Planning Commission: PC-10-004, *Commercial Forest Use Housekeeping*; PC-10-001, *Amendments Relating to Conflict of Interest and Legislative Hearing Procedures*; and PC 2011-1396, *Amendments Related to Changes to the Columbia River Gorge National Scenic Area Management Plan in Response to Oregon Court Rulings and to Amend Legislative Procedures (Industrial Uses and Fish Processing)*.
- b. The Planning Commission is authorized by Multnomah County Code Chapter subsections 33.0140, 34.0140, 35.0140, 36.0140, 37.0710, and by ORS 215.110 to recommend to the Board of County Commissioners the adoption of Ordinances to implement the Multnomah County Comprehensive Plan.
- c. Technical amendments are needed to MCC Chapters 33, 35, and 36 affecting the Commercial Forest Use zone to reduce permit requirements for structures located in close proximity to existing developed sites, clarify setbacks and safety zones for accessory buildings, and correct an omission by adding Lot of Exception provisions to Chapter 35. The term "access easement" is added to Chapters 33 through 36.
- d. The procedural provisions in MCC Chapter 37 are amended to simplify the legislative hearings process, render the code more consistent both internally and with state law, and fill procedural gaps. The amendments clarify that disclosure of potential bias is only relevant to quasi-judicial matters, remove requirements that procedures be read at the beginning of public hearings, and amend provisions related to conflict of interest, bias, and procedural objections.
- e. The changes to MCC Chapter 38 result from certain revisions to the Management Plan adopted by the Gorge Commission in response to court rulings on prior plan amendments. The revisions correct an inconsistency between plan provisions related to expansion of industrial uses and limitations to industrial uses in the National Scenic Area Act, and authorize the county to allow fish processing facilities in zones that have access to the Columbia River. MCC Chapter 38 is further amended to simplify the legislative hearing process, fill procedural gaps identified by county counsel, and render the code consistent with MCC Chapter 37 procedures and with state law.

- f. A public hearing was held for the amendments in PC-10-001 on May 3, 2010 and February 7, 2011; for PC-10-004 on June 7, 2010; and for PC-2011-1396 on March 7, 2011, before the Planning Commission. All interested persons were given an opportunity to appear and be heard. Notice of the Planning Commission hearing was published in the "Oregonian" newspaper and on the County Land Use Planning Program website.
- g. As stated in Planning Commission Resolutions for each of these cases, the Planning Commission has found that the proposed amendments and additions to Multnomah County Code Chapters 33-37 in this Ordinance are needed and recommends approval.
- h. No regulations are being proposed that further restrict the use of property thus no mailed notice to individual property owners is required ("Ballot Measure 56" notice). Notice of the Planning Commission hearing and the Board of County Commissioners hearing was published in the "Oregonian" newspaper and on the County Land Use Planning Program's web site.

Multnomah County Ordains as follows:

PART I – COMMERCIAL FOREST USE

Section 1. MCC 33.2020, 33.2220, 33.2420, 35.2020, 35.2220 and 36.2020, Allowed Uses, are amended as follows:

* * * * *

(D) Alteration, and-maintenance, replacement or restoration of an existing lawfully established habitable dwelling as defined in MCC 33.0005 and located within 100-feet from an existing dwelling.

(1) In the case of a replacement dwelling, the existing dwelling shall be removed, demolished or converted to an allowable nonresidential use within three months of the completion or occupancy of the replacement dwelling.

(2) Restoration or replacement due to fire, other casualty or natural disaster shall commence within one year from the occurrence of the fire, casualty or natural disaster.

* * * * *

(T) Accessory Structures:

(1) Other structures or uses listed below when customarily accessory or incidental to any use permitted or approved in this district located within 100 feet of the dwelling.

* * * * *

Section 2. MCC 33.2025, 33.2225, 33.2425, 35.2025, 35.2225 and 36.2025, Review Uses, are amended as follows:

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

(A) ~~Expansion, r~~Replacement or restoration of an existing lawfully established habitable dwelling more than 100 feet from the existing dwelling.

(1) In the case of a replacement dwelling, the existing dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the completion or occupancy of the replacement dwelling.

(2) Restoration or replacement due to fire, other casualty or natural disaster shall commence within one year from the occurrence of the fire, casualty or natural disaster.

* * * * *

Section 3. MCC 33.2056, 33.2256, 33.2456, 35.2056, 35.2256, 36.2056, Forest practices Setbacks and Fire Safety Zones, are amended as follows:

Table 1

Use Description of use and location	Forest Practice Setbacks			Fire Safety Zones
	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
* * * * *				
<u>Accessory structures located more than 100 ft. from the dwelling</u>	<u>N/A</u>	<u>30</u>	<u>130</u>	<u>Primary & Secondary required</u>
<u>Addition to an existing structure</u>	<u>May maintain current nonconforming setback(s) if less than 30 ft. to property line</u>	<u>30</u>	<u>30</u>	<u>Primary is required to the extent possible within the existing setbacks.</u>
* * * * *				

Section 4. MCC 33.2061, 33.2261, 33.2461, 35.2061, 35.2261 and 36.2061, Development Standards for Dwellings and Structures, are amended as follows:

All dwellings and structures shall comply with the approval criteria in (B) through (E) below except as provided in (A):

(A) For the uses listed in this subsection, the applicable development standards are limited as follows:

(1) Expansion of existing dwelling.

(a) Expansion of 400 square feet or less additional ground coverage to an existing dwelling: Not subject to development standards of MCC 33.2061;

(b) Expansion of more than 400 square feet additional ground coverage to an existing dwelling: Shall meet the development standards of MCC 33.2061(C);

(2) Replacement or restoration of a dwelling.

(a) Replacement or restoration of a dwelling that is within the same footprint of the original dwelling and includes less than 400 square feet of additional ground coverage: Not subject to development standards of MCC 33.2061;

(b) Replacement or restoration of a dwelling that is within the same footprint of the original dwelling with more than 400 square feet of additional ground coverage: Shall meet the development standards of MCC 33.2061(C);

(c) Replacement or restoration of a dwelling that is not located within the footprint of the original dwelling but it is located where at least a portion of the replacement dwelling is within 100 feet of the original dwelling: Shall meet the development standards of MCC 33.2061(C) and the applicable driveway/road requirements of 33.2061(E);

(3) Accessory buildings.

(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 33.2061(C);

(b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 33.2061(B)&(C);

(4) Temporary dwellings.

(a) A temporary health hardship mobile home located within 100 feet of the existing dwelling: Not subject to development standards of MCC 33.2061;

(b) A temporary health hardship mobile home located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 33.2061(B)&(C);

(c) A temporary mobile home used during construction or reconstruction of a dwelling located within 100 feet of the dwelling under construction: Not subject to development standards of MCC 33.2061;

(d) A temporary mobile home used during construction or reconstruction of a dwelling located farther than 100 feet of the dwelling under construction: Shall meet the development standards of MCC 33.2061(B)&(C);

(B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):

(1) The structure shall satisfy the following ~~Option 1, Non-discretionary Type 1 Permit~~ requirements:

- (a) To meet the Forest Practices Setback, the structure shall be located a minimum of 30-feet from a front property line adjacent to a county maintained road and 130-feet from all other property lines;
 - (b) The structure shall be located in a cleared area of at least 10,000 square feet that meets the tree spacing standards of a primary fire safety zone;
 - (c) The entirety of the development site is less than 30,000 square feet in total cleared area, not including the driveway;
 - (d) The structure is sited within 300-feet of frontage on a public road and the driveway from the public road to the structure is a maximum of 500-feet in length;
 - (e) The local Fire Protection District verifies that their fire apparatus are able to reach the structure using the proposed driveway; or
- (2) The structure shall satisfy the following ~~Option 2, Discretionary Type 2 Permit~~ requirements:
- (a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 33.2056;
 - (b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;
 - (c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;
 - (d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and
- (3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:
- (a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;
 - (b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the driveway standards of MCC 33.2061(E) with permanent signs posted along the access route to indicate the location of the emergency water source;

(C) The dwelling or structure shall:

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;
- (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;
- (3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

* * * * *

Section 5. MCC 35.2025, Review Uses, is amended as follows:

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

* * * * *

(K) Lots of Exception pursuant to all applicable approval criteria, including but not limited to MCC 35.2065, 35.2073 and 35.7700 et seq.

Section 6. MCC 35.2065 is added as follows:

35.2065 Lots of Exception.

An exception to permit the creation of a lot of less than the minimum specified in MCC 35.2263(A) may be authorized as provided in (A) or (B) below, subject to the following:

(A) A small parcel for an existing dwelling may be established subject to the following:

- (1) The Lot of Record to be divided exceeds the area requirements of MCC 35.2063(A);
- (2) The Lot of Exception will contain a dwelling which existed prior to January 25, 1990;
- (3) The Lot of Exception will be no larger than 5 acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall not be larger than 10 acres;
- (4) The division will create no more than one lot which is less than the minimum area required in MCC 35.2063(A);
- (5) The division complies with the dimensional requirements of MCC 35.2056; and
- (6) The parcel not containing the dwelling is not entitled to a dwelling. A condition of approval shall require that covenants, conditions and restrictions which preclude future siting of a dwelling on the parcel shall be recorded with the county Division of Records. The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the parcel is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands.

(B) A parcel that contains two dwellings may be divided provided that:

- (1) Two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;
- (2) Each of the dwellings complies with the criteria for a replacement dwelling under ORS 215.283 (1)(s);
- (3) One of the parcels created is between two and five acres in size;
- (4) At least one dwelling is located on each parcel created;

(5) The new property line proposed to divide the existing parcel shall be located such that:

(a) Forest Practices Setback dimensional requirements in MCC 35.2056 are met as nearly as possible considering parcel size and location of existing dwellings and other structures;

(b) Adverse impacts on forest practices will be minimized. Factors to consider in that evaluation include the location of: existing and potential logging access roads, existing and potential log landing areas, steep topography, and the size of the respective timber management areas.

(6) The development standards for dwellings and structures in MCC 35.2061, the exception standards for secondary fire safety zones in MCC 35.2110, and the land division requirement that "the tentative plan complies with the area and dimensional requirements of the underlying zoning district" shall not apply as approval criteria. The land division shall be reviewed as either a Category 1 or 3 land division, as applicable;

(7) The landowner of a lot or parcel created under this subsection provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the Multnomah County Recorder. A restriction imposed under this subsection shall be irrevocable unless a statement of release is signed by the County Planning Director indicating that the Comprehensive Plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use.

(C) The County Planning Director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by (A) and (B) above. The record shall be readily available to the public.

(D) Land Divisions for Park and Open Space.

(1) The governing body of a county or its designee may approve a proposed division of land in a forest zone or a mixed farm and forest zone to create two parcels if the proposed division of land is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase one of the resulting parcels as provided in this section.

(2) A parcel created by the land division that is not sold to a provider of public parks or open space or to a not-for-profit land conservation organization must comply with the following:

(a) If the parcel contains a dwelling or another use allowed under ORS chapter 215, the parcel must be large enough to support continued residential use of other allowed use of the parcel;
or

(b) If the parcel does not contain a dwelling, the parcel is eligible for siting a dwelling as may be authorized under ORS 195.120 or as may be authorized under ORS 215.705 to 215.750, based on the size and configuration of the parcel.

(3) Before approving a proposed division of land under this section, the governing body of a county or its designee shall require as a condition of approval that the provider of public parks or open space, or the not-for-profit land conservation organization, present for recording in the deed records for the county in which the parcel retained by the provider or organization is located an

irrevocable deed restriction prohibiting the provider or organization and their successors in interest from:

(a) Establishing a dwelling on the parcel or developing the parcel for any use not authorized in a forest zone or mixed farm and forest zone except park or conservation uses; and

(b) Pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

(4) If a proposed division of land under this section results in the disqualification of a parcel for a special assessment described in ORS 308A.718 or the withdrawal of a parcel from designation as riparian habitat under ORS 308A.365, the owner must pay additional taxes as provided under ORS 308A.371 or 308A.700 to 308A.733 before the county may approve the division.

(E) A landowner allowed a land division under this section shall sign a statement that shall be recorded with the Multnomah County Recorder, declaring that the landowner and the land-owner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

Section 7. The following definition is added to MCC 33.0005, 34.0005, 35.0005 and 36.0005:

Access Easement – An easement granted for the purpose of ingress and egress which crosses a property or properties owned by others.

PART II – CONFLICT OF INTEREST AND LEGISLATIVE HEARING PROCEDURES

Section 8. MCC 37.0710 is amended as follows:

37.0710 (PC) Legislative Hearing Process.

(A) Purpose. Legislative actions involve the adoption or amendment of the County's land use regulations, comprehensive plan, map inventories and other policy documents that affect the entire County or large portions of it. Legislative actions which affect land use must begin with a public hearing before the Planning Commission.

(B) Planning Commission Review:

(1) ~~Hearing r~~Required. The Planning Commission shall hold at least one public hearing before ~~recommending action on a legislative proposal~~ adopting a recommendation on a proposal for legislative action. ~~Recommendations by the Planning Commission shall be by majority vote of the entire Planning Commission. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing.~~

(2) ~~Planning Director's r~~Report. ~~Once the Planning Commission's hearing has been scheduled and notice provided under MCC 37.0720, the~~ The Planning Director shall

prepare and make available a staff report on the ~~legislative proposal~~ proposal for legislative action at least 7 days prior to the hearing described in paragraph (B)(1) of this section.

~~(3) At the beginning of the initial public hearing authorized under these procedures, a statement describing the following shall be announced to those in attendance:~~

~~(a) That the hearing will proceed in the following general order: staff report, public testimony, record closes, deliberation and decision;~~

~~(b) That all testimony and evidence submitted, orally or in writing, must be directed toward the relevant issues. If any person believes that other issues apply in addition to those addressed in the staff report, those issues must be listed and discussed on the record. The decision maker may reasonably limit oral presentations in length or content depending upon time constraints. Any party may submit written materials of any length while the public record is open;~~

~~(c) That failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue, may preclude appeal on that issue to the Land Use Board of Appeals;~~

~~(d) That the decision maker shall call for any ex parte contacts, conflicts of interest or bias before the beginning of each hearing item.~~

~~(43) Planning Commission Recommendation. At the conclusion of the initial hearing or a continued hearing under MGC 37.0730 the hearing on a proposal for legislative action, the Planning Commission shall adopt, by majority vote of the entire Planning Commission, a recommendation to the Board of Commissioners on the proposal. The Planning Commission may recommend adoption of the proposal as presented to or modified by the Planning Commission or rejection of the proposal. If the Planning Commission recommends adoption of some form of the proposal, the Planning Commission shall prepare and forward to the Board of Commissioners a report and recommendation to that effect. If the Planning Commission recommends rejection of the proposal to the Board of Commissioners. If the Planning Commission decides that no action is appropriate, the matter is terminated and may not be appealed unless otherwise provided by law. If the Board of Commissioners has initiated the legislative proposal, the Planning Commission shall submit prepare and forward to the Board of Commissioners a report and recommendation not to act of rejection. If the Planning Commission recommends adoption of some form of the proposal, the Planning Commission shall prepare and forward to the Board of Commissioner's a report and recommendation to that effect.~~

(C) Board of Commissioners Review:

(1) Board of Commissioners Action. Upon a recommendation from the Planning Commission on a proposal for legislative action, the Board of Commissioners shall hold at least one public hearing on the proposal. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the Board of Commissioners may adopt, modify or reject the legislative proposal, or it may remand the matter to the Planning Commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby amend the County's land use regulations, comprehensive plan, official zoning maps or some component of

any of these documents, the Board of Commissioners decision shall be enacted as an ordinance and final upon signing. The Board of Commissioner's decision is appealable to LUBA in accordance with OAR Chapter 661, Division 10 and ORS 197.830 or current applicable state statutes.

(2) Notice of ~~f~~Final ~~d~~Decision. Not later than 5 days following the Board of Commissioner's final decision on a proposal for legislative action, the Planning Director shall mail notice of the decision to DLCD in accordance with ORS 197.615 or current applicable state statutes.

Section 9. MCC 37.0780 is amended as follows:

37.0780 Ex Parte Contact, Conflict Of Interest And Bias.

The following rules ~~and procedures shall govern any challenges to a decision maker's participation in a quasi-judicial or legislative action proceeding or action affecting land use:~~

(A) Ex ~~p~~Parte ~~e~~Contacts. Any factual information obtained by a decision maker ~~by from~~ anyone other than staff outside the context of a quasi-judicial hearing shall be deemed an ex parte contact. Prior to the close of the record in any particular matter, any decision maker that has obtained any material factual information through an ex parte contact shall declare the content of that contact and allow any interested party to rebut the substance of that contact. ~~This rule paragraph does not apply to legislative proceedings or contacts between county staff and the decision maker.~~

(B) Conflict of ~~i~~Interest. ~~Whenever a decision maker, or any member of a decision maker's immediate family or household, has a financial interest in the outcome of a particular quasi-judicial or legislative matter, that decision maker shall not participate in the deliberation or decision on that matter.~~

(1) Planning Commission. A member of the Planning Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest: the member or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member; any business in which the member is then serving or has served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the Planning Commission where the action is being taken.

(2) Board of Commissioners. With respect to a potential or actual conflict of interest, a member of the Board of Commissioners shall participate in Board proceedings and actions in accordance with the Rules for Board Meetings.

(C) Bias. All decisions in quasi-judicial matters shall be fair, impartial and based on the applicable approval standards and the evidence in the record. Any decision maker who is unable to render a decision on this basis in any particular matter shall refrain from participating in the deliberation or decision on that matter. ~~This rule paragraph does not apply to legislative proceedings.~~

Section 10. MCC 37.0790 is amended as follows:

37.0790 Procedural Objections.

Any party who objects to the procedure followed in any particular matter, including bias, conflict of interest and undisclosed ex parte contacts, a quasi-judicial or legislative proceeding or action affecting land use must make a procedural objection prior to the County's rendering a final decision. Procedural objections may be raised at any time prior to a final decision, after which they are deemed waived. In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's substantial rights. No decision or action of the Planning Commission or Board of Commissioners shall be voided solely by reason of the failure of a member thereof to disclose an actual or potential conflict of interest.

PART III – EXISTING INDUSTRIAL USES, FISH PROCESSING AND LEGISLATIVE PROCEDURES IN THE NATIONAL SCENIC AREA

Section 11. MCC 38.0030 is amended as follows:

38.0030 Existing Uses and Discontinued Uses

* * * * *

(D) Changes to Existing Uses and Structures: Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to this Management Plan.

* * * * *

~~(2) Expansion of Existing Industrial Uses in the General Management Area: Existing industrial uses in the General Management Area may expand as necessary for successful operation on the Dedicated Site, subject to MCC 38.0045. Expansion beyond the Dedicated Site is prohibited.~~

(32) Conversion of Existing Industrial Uses in the General Management Area: In the General Management Area, existing industrial uses may convert to less intensive uses, subject to MCC 38.0045. A less intensive use is a commercial, recreation or residential use with fewer adverse effects upon scenic, cultural, natural and recreation resources.

(43) Existing Development or Production of Mineral Resources in the General Management Area: In the General Management Area, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to MCC 38.0000 through 38.0110, 38.1000 through 38.3295, and 38.7000 through 38.7085 if:

(a) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has

reverted to another beneficial use, such as grazing. Mined land shall not include terrain which was merely leveled or cleared of vegetation; or

(b) The site has not maintained a required state permit; or

(c) The site has not operated legally within 5 years prior to February 6, 1993, the date of adoption of the Management Plan.

(54) Uses involving the exploration, development or production of sand, gravel or crushed rock in the Special Management Area may continue when:

* * * * *

Section 12. MCC 38.3030 is amended as follows:

38.3030 Conditional Uses

(A) The following conditional uses may be allowed on lands designated GGR, pursuant to the provisions of MCC 38.0045 and MCC 38.7300 (C):

* * * * *

(16) Small-Scale Fishing Support and Fish Processing Operations pursuant to MCC 38.7332.

* * * * *

Section 13. MCC 38.7300 is amended as follows:

38.7300- Review and Conditional Uses

* * * * *

(C) Residential

(1) The proposed use would be compatible with the surrounding area. Review of compatibility shall include impacts associated with the visual character of the area, traffic generation, effects of noise, dust and odors.

(2) The proposed use will not require public services other than those existing or approved for the area.

(3) If the subject parcel is located within 500 feet of lands designated GGA or GGF, new buildings associated with the proposed use shall comply with MCC 38.0060.

(4) If the subject parcel is located within 500 feet of lands designated GGF, new buildings associated with the proposed use shall comply with MCC 38.00857305.

* * * * *

Section 14. MCC 38.7332 is added as follows:

38.7332 Small-Scale Fishing Support and Fish Processing Operations.

Small-scale fishing support and fish processing operations in conjunction with a family-based commercial fishing business may be allowed on parcels designated GGR Residential subject to the following:

(A) In addition to the provisions of the GGR district, the operation shall comply with the guidelines for "Treaty Rights and Consultation in MCC 38.0110 "Approval Criteria for Fire Protection" in MCC 38.7305, and "Approval Criteria for Siting of Dwellings on Forest Land" in MCC 38.7315.

(B) The following fishing support activities may be allowed: maintenance, repair, and storage of boats, nets, fish totes and other commercial fishing equipment that is used in the family-based commercial fishing business; and garaging of fish hauling trucks, trailers and all other related equipment that is used in the family-based commercial fishing business.

(C) The following fish processing activities may be allowed: cleaning, gutting, heading, and icing or freezing of fish that is caught by the family-based commercial fishing business. Other fish processing activities shall not be allowed, including, but not limited to, canning, smoking, salting or brining for wholesale or retail sale.

(D) The operation shall be located on a lawful parcel that is contiguous with and has direct access to the Columbia River. (E) The subject parcel shall include a lawful dwelling, and the permanent resident of the dwelling shall participate in the fishing support and fish processing operation.

(F) The operation may only employ residents of the dwelling and up to three outside employees.

(G) No more than 25 percent of the total actual living space of the dwelling may be used for the fishing support and fish processing operation.

(H) The operation may take place in an existing or new lawful accessory building or an existing agricultural building on the subject parcel. A new building constructed for the purpose of housing a fishing support and fish processing operation shall be considered an accessory building. An existing agricultural building shall not be expanded and a new agricultural building shall not be constructed for the purpose of housing a fishing support and fish processing operation.

(I) An accessory building used in the fishing support and fish processing operation may be allowed up to 2,500 square feet.

(J) Docks may be allowed as follows:

(1) One dock serving a parcel with an approved fishing support and fish processing operation may be allowed up to 500 square feet in size.

(2) For multiple contiguous parcels each with approved fishing support and fish processing operation, the area of the docks authorized in J(1) above may be combined into one dock, provided the total size of the dock shall not exceed 2,000 square feet.

(K) There shall be no outside visible evidence of the fishing support and fish processing operation, including storage, other than boats and docks.

(L) No retail sales may occur on the parcel.

(M) The operation shall only support and process fish caught by residents of the dwelling and up to three outside employees.

(N) Before beginning the operation, applicants shall demonstrate that they have obtained and complied with federal, state and/or local water quality and wastewater permits.

Section 15. MCC 38.0710 is amended as follows:

38.0710 (PC) Legislative hearing process.

(A) Purpose. Legislative actions involve the adoption or amendment of County land use or development regulations. Legislative actions which affect land use must begin with a public hearing before the Planning Commission.

(B) Planning Commission Review:

(1) ~~Hearing~~ Required. The Planning Commission shall hold at least one public hearing before ~~recommending action on a legislative proposal~~ adopting a recommendation on a proposal for legislative action. ~~Recommendations by the Planning Commission shall be by majority vote of the entire Planning Commission. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing.~~

(2) ~~Planning Director's~~ Report. ~~Once the Planning Commission's hearing has been scheduled and notice provided under MCC 38.0720, the~~ The Planning Director shall prepare and make available a staff report on the legislative proposal ~~proposal for legislative action at least 7 days prior to the hearing described in paragraph (B)(1) of this section.~~

(3) ~~At the beginning of the initial public hearing authorized under these procedures, a statement describing the following shall be announced to those in attendance:~~

~~(a) That the hearing will proceed in the following general order: staff report, public testimony, record closes, deliberation and decision;~~

~~(b) That all testimony and evidence submitted, orally or in writing, must be directed toward the relevant issues. If any person believes that other issues apply in addition to those addressed in the staff report, those issues must be listed and discussed on the record. The decision maker may reasonably limit oral presentations in length or content depending upon time constraints. Any party may submit written materials of any length while the public record is open;~~

~~(c) That failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue, may preclude appeal on that issue to the Columbia River Gorge Commission;~~

~~(d) That the decision maker shall call for any ex parte contacts, conflicts of interest or bias before the beginning of each hearing item.~~

~~(4) Planning Commission~~ Recommendation. ~~At the conclusion of the initial hearing or a continued hearing under MCC 38.0730 the hearing on a proposal for legislative action,~~ the Planning Commission shall adopt, by majority vote of the entire Planning Commission, a recommendation to the Board of Commissioners on the proposal. The Planning Commission may recommend adoption of the proposal as presented to or modified by the Planning Commission or rejection of the proposal. If the Planning Commission recommends adoption of some form of the proposal, the Planning Commission shall prepare and forward to the Board of Commissioners a report and

~~recommendation to that effect. If the Planning Commission recommends rejection of the proposal to the Board of Commissioners. If the Planning Commission decides that no action is appropriate, the matter is terminated and may not be appealed unless otherwise provided by law. If the Board of Commissioners has initiated the legislative proposal, the Planning Commission shall submit-prepare and forward to the Board of Commissioners a report and recommendation not to act of rejection. If the Planning Commission recommends adoption of some form of the proposal, the Planning Commission shall prepare and forward to the Board of Commissioner's a report and recommendation to that effect.~~

(C) Board of Commissioners ~~Review~~:

~~(1) Board of Commissioners a~~ Action. Upon a recommendation from the Planning Commission on a proposal for legislative action, the Board of Commissioners shall hold at least one public hearing on a proposed action to amend the County's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the Board of Commissioners may adopt, modify or reject the legislative proposal, or it may remand the matter to the Planning Commission for further consideration. If the Board of Commissioners adopts at least some form of the proposal, the proposal shall be enacted as an ordinance and shall be promptly submitted to the Columbia River Gorge Commission for review and approval and/or concurrence per Sections 7 and 8 of the Scenic Area Act. The legislative proposal will become effective after approval by the Gorge Commission and, if necessary, concurrence by the Secretary of Agriculture. Any person adversely affected by such a legislative proposal may appeal the action per Section 15 of the Scenic Area Act.

Section 16. MCC 38.0780 is added as follows:

38.0780 Ex Parte Contact, Conflict of Interest and Bias.

The following rules and procedures govern a decision maker's participation in a quasi-judicial or legislative proceeding or action affecting land use:

(A) Ex Parte Contacts. Any factual information obtained by a decision maker from anyone other than staff outside the context of a quasi-judicial hearing shall be deemed an ex parte contact. Prior to the close of the record in any particular matter, any decision maker that has obtained any material factual information through an ex parte contact shall declare the content of that contact and allow any interested party to rebut the substance of that contact. This paragraph does not apply to legislative proceedings or contacts between county staff and the decision maker.

(B) Conflict of Interest.

(1) Planning Commission. A member of the Planning Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest: the member or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member; any business in which the member is then serving or has served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the Planning Commission where the action is being taken.

(2) Board of Commissioners. With respect to a potential or actual conflict of interest, a member of the Board of Commissioners shall participate in Board proceedings and actions in accordance with the Rules for Board Meetings.

(C) Bias. All decisions in quasi-judicial matters shall be fair, impartial and based on the applicable approval standards and the evidence in the record. Any decision maker who is unable to render a decision on this basis in any particular matter shall refrain from participating in the deliberation or decision on that matter. This paragraph does not apply to legislative proceedings.

Section 17. MCC 38.0790 is amended as follows:

Any party who objects to the procedure followed in any particular matter, including bias, conflict of interest and undisclosed ex parte contacts, a quasi-judicial or legislative proceeding or action affecting land use must make a procedural objection prior to the County's rendering a final decision. Procedural objections may be raised at any time prior to a final decision, after which they are deemed waived. In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's substantial rights. No decision or action of the Planning Commission or Board of Commissioners shall be voided solely by reason of the failure of a member thereof to disclose an actual or potential conflict of interest.

Section 18. The amendments to Chapter 38 Columbia River Gorge National Scenic Area shall be effective upon notification of approval by the Columbia River Gorge Commission and, if necessary, concurrence by the Secretary of Agriculture.

FIRST READING:


April 14, 2011

SECOND READING AND ADOPTION:

April 21, 2011



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Jeff Cogen, Chair

REVIEWED:

HENRY H. LAZENBY, JR., COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 

Jed Tomkins, Assistant County Attorney

SUBMITTED BY: M. Cecilia Johnson, Director, Department of Community Services