



TO: Columbia River Gorge Commission

FROM: Joanna Kaiserman, Land Use Planner

DATE: June 4, 2019 for the June 11, 2019 Commission Meeting

SUBJECT: Consistency Review of Multnomah County Ordinance No. 1270 related to technical corrections and other housekeeping code amendments.

Action Requested

Staff recommends that at the June 11, 2019 hearing, the Gorge Commission:

1. Find the portions of Multnomah County Ordinance No. 1270 affecting lands in the General Management Area (GMA) consistent with the Management Plan; and
2. Tentatively find the provisions of Multnomah County Ordinance No. 1270 affecting lands in the Special Management Area (SMA) consistent with the Management Plan and direct staff to forward them to the Secretary of Agriculture for concurrence.

Introduction

Multnomah County adopted Ordinance 1270 to amend its National Scenic Area ordinance (Chapter 38 of the Multnomah County Code). This amendment makes technical corrections for, among other things, clarification and consistency (commonly referred to as “housekeeping amendments”) to County land use policies or regulations applicable to lands within the Multnomah County portion of the National Scenic Area. The technical corrections to the zoning code are minor ‘housekeeping’ fixes including spelling errors, cross references, outdated Oregon Revised Statutes citations, and clarifications of existing code.

Ordinance 1270 was approved by the Multnomah County Board of Commissioners on March 14, 2019. Multnomah County transmitted a copy of Ordinance No. 1270 to review for consistency with the Management Plan on March 19, 2019. A copy of Ordinance 1270 is attached. While Ordinance 1270 includes amendments to Chapter 38 and 39 of Multnomah County Code, only Chapter 38 applies to the National Scenic Area. Staff reviewed only the amendments made to Chapter 38 for consistency with the Management Plan. You need only review the amendments to Chapter 38 (pages 1–9 of the attached ordinance). You do not need to review or consider any amendments to Chapter 39.

Management Plan. You need only review the amendments to Chapter 38 (pages 1–9 of the attached ordinance). You do not need to review or consider any amendments to Chapter 39.

Statutory Requirements for Commission Consistency Review

Pursuant to Section 7(b)(3) of the National 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 90-day deadline for review of Ordinance No. 1270 is June 17, 2019. Approval of the ordinance requires a 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. If the Commission finds the ordinance inconsistent, the Commission must state the reasons why and suggest modifications to the County to make it consistent.

Section 8(i) of the National 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. If the Commission tentatively determines that the ordinance is consistent with Management Plan, the Commission then forwards the SMA ordinance provisions to the Secretary of Agriculture for concurrence. If the Secretary concurs, the provisions that apply to the SMA may go into effect either immediately upon concurrence or on a date specified by a county. If the Commission finds the ordinance inconsistent, the Commission must state the reasons why and suggest modifications to the County to make it consistent.

Amendment Summary and Consistency Analysis

Multnomah County Ordinance No. 1270 amends Chapters 38 and 39 of county code. Only Chapter 38, the County’s National Scenic Area Code, relates to amendments affecting the National Scenic Area. Multnomah County Code (MMC) Chapter 38 is amended in the following ways.

1. In Section 2 regarding signs, changing the term “non conforming” to “existing.”
2. Spelling corrections.
3. Updating cross references and citations.

The ordinance amendments described above do not conflict with the Management Plan. Changing “non conforming” uses to “existing” uses in reference to signs established pre-National Scenic Area Act does not create any conflicts with the Management Plan. The Management Plan uses the term “existing” rather than “non-conforming,” so the code amendment better aligns the Multnomah County Code with the Plan.

Conclusion

Staff recommends the Commission approve Multnomah County Ordinance No. 1270 as consistent with the Management Plan and direct staff to forward those provisions of the ordinance that apply to Special Management Area lands to the Secretary of Agriculture for concurrence.

Attachments: Multnomah County Ordinance No. 1270

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

ORDINANCE NO. 1270

Amending MCC Chapters 38 and 39 to Make Technical Corrections and Other Housekeeping Code Amendments.

(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 39.1645, 38.0340 and in ORS 215.110.
- b. Planning Commission Resolution No. PC 2018-11006 relates to technical corrections and similar “housekeeping” amendments to the Zoning Code to ensure, among other things, clarity and consistency in the Code.
- c. The Planning Commission held a public hearing on January 7, 2019, 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”) was 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. It is in the public interest to adopt this ordinance.

Multnomah County Ordains as Follows:

Section 1. MCC 38.0050 is amended as follows:

§ 38.0050 CONDITIONAL USES

The following Conditional Uses may be permitted when allowed by the district and found by the Approval Authority, pursuant to the provisions of MCC 38.0045, to satisfy MCC 38.7000 through 38.7085:

(A) Land Divisions – All Type I Land Divisions processed pursuant to MCC 38.7700 through 38.8035.

* * *

(C) Home Occupations and Cottage Industries

Home occupations and cottage industries may be established as authorized in various districts consistent with the following:

(1) A home occupation may employ only residents of the home.

* * *

(10) A bed and breakfast lodging establishment which is two bedrooms or less is considered a home occupation and shall meet the standards of MCC 38.0040(E) 7335.

* * *

Section 2. MCC 38.0080 is amended as follows:

§ 38.0080 SIGNS

(A) The following signs may be permitted without review in the General Management Area, and in the Special Management Area subject to MCC 38.0080(E):

(1) Election signs which are not displayed for more than 60 days. Removal must be accomplished within 30 days of election day.

* * *

(F) Any sign in the General Management Area which does not conform with subsections (A) and (D) and has existed prior to adoption of the Management Plan shall be considered ~~non-conforming~~ existing and subject to the following:

(1) Alteration of existing ~~non-conforming~~ signs shall comply with MCC 38.0080(A) and (D).

(2) Any ~~non-conforming~~ existing sign used by a business must be brought into conformance concurrent with any expansion or change in use which requires a development permit.

Section 3. MCC 38.0530 is amended as follows:

§ 38.0530 SUMMARY OF DECISION MAKING PROCESSES.

The following decision making processes chart shall control the County's review of the indicated permits:

APPROVAL PROCESS					
Permit Type	I	II	II Expedited	III	PC
Initial Approval Body:	(Not a "land use decision")	(Planning Director)	(Planning Director)	(Hearings Officer)	(Legislative)
Allowed Uses ¹	X				
* * *					
Extension of Decision	<u>X</u>	X			

* * *

Section 4. MCC 38.0800 is amended as follows:

§ 38.0800 APPLICABILITY IN THE EVENT OF CONFLICTS.

As applied to lands within the Columbia River Gorge National Scenic Area, the provisions of MCC 38.0510 through 38.0800 ~~supereedes~~supersede all conflicting provisions in the Multnomah County Code.

Section 5. MCC 38.2225 is amended as follows:

§ 38.2225 REVIEW USES

(A) The following uses may be allowed on lands designated GGA pursuant to the provisions of MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

(1) New cultivation, including actions implementing a Wildlife Habitat Conservation and Management Plan involving ground disturbing activity, subject to compliance with MCC 38.7045, 38.7055, 38.7060, 38.7065, and 38.7070.

* * *

(8) On lands designated GGA- 40, a single family dwelling in conjunction with agricultural use, upon a demonstration that:

* * *

(b) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, as defined in MCC 38.0015, where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. Current use includes a minimum area which would satisfy subsection (~~58~~) (c) 4. below; and

* * *

Section 6. MCC 38.3025 is amended as follows:

§ 38.3025 REVIEW USES

(A) The following uses may be allowed on lands designated GGR, pursuant to MCC 38.0530(B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

- (1) On single-family dwelling per legally created parcel.

* * *

- (7) Land divisions, pursuant to the provisions of MCC ~~38.0040~~ 38.7725(A).

* * *

Section 7. MCC 38.7040 is amended as follows:

§ 38.7040 SMA SCENIC REVIEW CRITERIA

The following scenic review standards shall apply to all Review and Conditional Uses in the Special Management Area of the Columbia River Gorge National Scenic Area with the exception of rehabilitation or modification of historic structures eligible or on the National Register of Historic Places when such modification is in compliance with the national register of historic places guidelines:

- (A) All Review Uses and Conditional Uses visible from KVAs. This section shall apply to proposed development on sites topographically visible from KVAs:

* * *

- (C) SMA Requirements for KVA Foregrounds and Scenic Routes

* * *

- (2) The following guidelines shall apply only to development within the immediate foregrounds of key viewing areas. Immediate foregrounds are defined as within the developed prism of a road or trail KVA or within the boundary of the developed area of KVAs such as Crown Pt. and Multnomah Falls. They shall apply in addition to MCC 38.7040(A).

* * *

- (b) Findings must evaluate the following:

1. The limiting factors to meeting the required scenic standard and/or applicable ~~provisions~~ provisions of 38.7040(A).

* * *

- (D) SMA Requirements for areas not seen from KVAs

Unless expressly exempted by other provisions in MCC 38.7040, colors of structures on sites not visible from key viewing areas shall be earth-tones found at the specific site. The specific colors or list of acceptable colors shall be approved as a condition of approval, drawing from the recommended palette of colors included in the Scenic ~~Resources~~Resources Implementation Handbook.

Section 8. MCC 38.7045 is amended as follows:

§ 38.7045 GMA CULTURAL RESOURCE REVIEW CRITERIA

- (A) Cultural Resource Reconnaissance Surveys

* * *

(E) The Planning Director shall submit a copy of all cultural resource survey reports to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC 38.0530 (B). Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer area.

* * *

(2) The Planning Director shall require an ~~E~~Evaluation of ~~S~~Significance if the ~~R~~Reconnaissance or ~~H~~Historic ~~S~~Survey or substantiated comment received indicate that the proposed use might affect any of the following:

* * *

(3) The Planning Director shall deem the cultural resource review process complete if no substantiated comment is received during the 30 day comment period and the ~~R~~Reconnaissance or ~~H~~Historic ~~S~~Survey indicate that the proposed use would have no ~~effect~~effect on the items listed in sub-section (2)(a) through (d) above.

* * *

- (F) Evaluation of ~~S~~Significance shall meet the following standards:

(1) Evaluation of ~~S~~Significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, n.d.) and *Guidelines for the Evaluation and Documentation of Traditional Cultural Properties* (Parker and King, n.d.). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

(2) To evaluate the significance of cultural resources, the information gathered during the ~~reconnaissance~~reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analysis, and archival research may be required.

* * *

(4) The ~~E~~valuation of ~~S~~ignificance shall follow the principles, guidelines, and report format recommended by Oregon SHPO (Oregon State Historic Preservation Office 1990). It shall incorporate the results of the ~~reconnaissance~~ reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.

* * *

Section 9. MCC 38.7075 is amended as follows:

§ 38.7075 SMA NATURAL RESOURCE REVIEW CRITERIA

All new developments and land uses shall be evaluated using the following standards to ensure the natural resources are protected from adverse effects. Proposed uses and development within wetlands, streams, ponds, lakes, riparian areas and their buffer zones shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse shall be prohibited. Comments from state and federal agencies shall be carefully considered.

(A) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in MCC 38.7075(A)(2)(a) and (2)(b). These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined in MCC 38.7075(A)(2)(a) and (2)(b).

* * *

Section 10. MCC 38.7090 is amended as follows:

§ 38.7090 RESPONSES TO AN EMERGENCY/DISASTER EVENT

Responses to an emergency/disaster event are allowed in all zoning districts within the Columbia River Gorge National Scenic Area when in compliance with the following standards:

(A) General standards for all response activities.

* * *

(E) Post-Emergency/Disaster Response Site Review Approval Criteria

Actions taken in all land use designations that are in response to an emergency/disaster event shall be reviewed for compliance with the following standards:

(1) Scenic Resources

* * *

(f) In the General Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action, shall comply with the following standards:

* * *

4. Disposal sites created according to MCC 38.0707090(E)(1)(f)1.b. shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from routine road maintenance activities shall not be deposited at these sites.

* * *

Section 11. MCC 38.7300 is amended as follows:

§ 38.7300 REVIEW AND CONDITIONAL USES

- (A) Agriculture

* * *

- (B) Forestry

- (1) The owners of land designated GGF or GGA within 500 feet of the perimeter of the subject parcel have been notified of the land use application and have been given at least 10 days to comment prior to a final decision;

* * *

- (4) The use will not significantly increase fire hazard, fire suppression costs or risks to fire suppression personnel and will comply with MCC ~~38.0085~~38.7305.

* * *

Section 12. MCC 38.7350 is amended as follows:

§ 38.7350 DISPOSAL SITES FOR SPOIL MATERIALS FROM PUBLIC ROAD MAINTENANCE ACTIVITIES

- (A) Application Requirements. In addition to other applicable requirements, land use applications for disposal sites shall include the same information that applicants are required to submit for expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

* * *

- (C) Scenic Resource Standards. Disposal sites shall comply with the same scenic resources protection standards as expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

- (1) Sites more than 3 miles from the nearest key viewing area shall be visually subordinate as seen from any key viewing area, according to MCC 38.7035(B)~~(2526)~~.

An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the start of on-the-ground activities.

(2) Sites less than 3 miles from the nearest key viewing area shall be fully screened from any key viewing area, according to MCC 38.7035(B)(2627).

An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the start of on-the-ground activities. Disposal activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

* * *

Section 13. MCC 38.7370 is amended as follows:

§ 38.7370 FOREST PRACTICES IN THE SPECIAL MANAGEMENT AREA

(A) Forest practices permitted as Review Uses in the Special Management Area in accordance with an approved forest practices application (see application requirements) and subject to the additional provisions in this chapter.

* * *

DESIRED FOREST STRUCTURE AND PATTERN								
1	2	3		4	5	6	7	
Vegetation Type [#]	Forest Structure (Average % total canopy closure (cc)) [*]	Typical Forest Openings Size Disturbance caused Historic (Natural) Desired		Percent Openings at One Time Historic (Natural) Desired	Leave Trees Includes all available remnant old forest	Average Down Wood Pieces 30 ft long per acre (scattered)	Average Snags (Conifers) No. per acre Snags are 20-40 ft in height	
* * *								
West Conifer	60-80% canopy closure Understory layer variable (0-60% of total)	Variable sizes with mosaic pattern, irregular shapes Mosaic	Retain forested character Allow openings up to 15 acres (up to 5	10% (mosaic fire) up to 55% (catastrophic fire) Intense	Not to exceed 8% of West Coniferio <u>Coniferous</u> <u>Woodland</u>	Leave 15% of existing trees per acre through out opening and in	18 – 25 pieces greater than 20” dbh	10 snags at 10”-20” dbh, and 7 snags greater than 20” dbh

	cc)	fire 1-100 acres Catastrophic fire over 100 acres	acres in the foreground of (KVAs) All openings 1 acre or less on National Forest land and all Open Space LUD Openings retain 15-40% canopy closure	fire return interval is 300 yrs	Landscap e Setting and not to exceed 4% for Gorge Walls, Canyonlands and Wildlands Landscap e Setting Widely dispersed, variable sized mosaic of irregular shapes blending with existing openings.	clumps. Include 3 trees per acre of the largest size trees available		
* * *								

Map available at the U.S. Forest Service National Scenic Area Office

* Does not apply to openings.

Dbh: Diameter at Breast Height

Section 14. MCC 39.1195 is amended as follows:

§ 39.1195 EXTENSION OF A TYPE II OR TYPE III DECISION.

(A) The Planning Director shall grant one extension period of 24 months for approvals of dwellings listed in MCC 39.1185(C) and shall grant one extension period of up to 12 months for all other approvals provided:

* * *

(C) Except for approvals of dwellings listed in MCC 39.1185(C), Additional one-year extensions shall be authorized where applicable criteria for the decision have not changed. For each additional extension, the Planning Director shall confirm compliance with the standards in MCC 39.1195(A)(1-4).

Section 15. MCC 39.3005 is amended as follows:

§ 39.3005 LOT OF RECORD – GENERALLY.

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either ~~(a)~~ satisfied all applicable zoning laws and ~~(b)~~ satisfied all applicable land division laws, or ~~(c)~~ complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

* * *

Section 16. MCC 39.4265 is amended as follows:

§ 39.4265 STANDARDS FOR SPECIFIED FARM DWELLINGS.

(A) **Farm Help Dwelling:** A farm help dwelling for a relative on real property used for farm use as provided in MCC 39.4225(B) is not allowed unless the dwelling is:

* * *

(B) **Customary Farm Dwelling:** A dwelling, including a mobile or modular home, customarily provided in conjunction with a farm use as provided in MCC 39.4225(C) is not allowed unless the following standards are met:

(1) High-value farmland soils, \$80,000 income. On lands identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

* * *

(e) Prior to the final approval for a dwelling, the applicant shall provide evidence that the covenants, conditions and restrictions form referred to as “Exhibit A” in OAR 660-033-0135(95)(b) has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling.

* * *

(4) Not high-value farmland soils, \$40,000 income or mid-point of median income range. On land not identified as high-value farmland a dwelling may be considered customarily provided in conjunction with farm use if:

* * *

(e) Prior to the final approval for a dwelling, the applicant shall provide evidence that the covenants, conditions and restrictions form referred to as "Exhibit A" in OAR 660-033-0135(95)(b) has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the applications for the primary farm dwelling.

* * *

(5) Commercial dairy farm. A dwelling may be considered customarily provided in conjunction with a commercial dairy farm if:

* * *

(g) "Commercial dairy farm" is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by OAR 660-033-0135(53)(a) or (74)(a), whichever is applicable, from the sale of fluid milk.

* * *

(C) **Accessory farm dwellings**, which includes all types of residential structures allowed by the applicable state building code, customarily provided in conjunction with farm use as provided in MCC 39.4225(D) are not allowed unless each accessory farm dwelling meets all of the following standards:

(1) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing, or caring for livestock, is or will be required by the farm operator; and

* * *

(4) In addition to the requirements in (1) through (3) in this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

* * *

(c) It is located on a commercial dairy farm as defined by OAR 660-033-0135(118); and

* * *

Section 17. MCC 39.5580 is amended as follows:

§ 39.5580- NUISANCE PLANT LIST.

Nuisance Plant List:

Common Name	Scientific Name
Lesser celandine	<i>Chelidonium majus</i>
* * *	

Traveler's Joy	<i>Clematis vitalba</i>
* * *	
Lady's nightcap	<i>Convolvulus seppium <u>sepium</u></i>
* * *	
Queen Ann's Anne's Lace	<i>Daucus carota</i>
* * *	
Giant Horsetail	<i>Equisetum telemateia <u>telmateia</u></i>
Crane's Bill <u>Cranesbill</u>	<i>Erodium cicutarium</i>
Roberts Geranium, <u>Herb Robert</u>	<i>Geranium roberianum <u>robertianum</u></i>
* * *	
St. John's Wort	<i>Hypericum perforatum</i>
English Holly	Hex <i>Ilex aquafolium</i>
* * *	
Fall Dandelion	Loentodon <i>Leontodon autumnalis</i>
* * *	
Climbing Binaweed <u>Bindweed, Wild buckwheat</u>	<i>Polygonum convolvulus</i>
* * *	
English, Portugese <u>Portuguese Laurel</u>	<i>Prunus laurocerasus</i>
* * *	
Himalayan Blackberry	Rubusdiscolor <i>Rubus <u>discolor</u></i>
* * *	
Common Dandelion	<i>Taraxacum officinale <u>officinale</u></i>
Common Bladderwort	<i>Utricularia vulgaria <u>vulgaris</u></i>

Stinging Nettle	Urtica <u>Urtica dioica</u>
* * *	
Spiny Cocklebur	Xanthium spinosum <u>spinosum</u>
* * *	

Section 18. MCC 39.5800 is amended as follows:

§ 39.5800 CRITERIA FOR APPROVAL OF SEC-WR PERMIT – WATER RESOURCE

(A) Except for the exempt uses listed in MCC 39.5515 and the existing uses pursuant to MCC 39.5550, no development shall be allowed within a Water Resource Area unless the provisions of subsections ~~(A)~~ or (B) or (C) or (D) below are satisfied. An application shall not be approved unless it contains the site analysis information required in MCC 39.5520(A) and (C), and meets the general requirements in MCC 39.5560.

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

* * *

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

* * *

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

* * *

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

* * *

Section 19. MCC 39.7515 is amended as follows:

§ 39.7515 APPROVAL CRITERIA.

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

* * *

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

Section 20. MCC 39.7520 is amended as follows:

§ 39.7520 USES.

(A) Except as otherwise limited in the EFU, all CFU and OR base zones, the following Community Service Uses and those of a similar nature, may be permitted in any base zone when approved at a public hearing by the approval authority.

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

* * *

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

Section 21. MCC 39.8210 is amended as follows:

§ 39.8210 ADJUSTMENT APPROVAL CRITERIA.

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through ~~(E)~~ are met:

(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

* * *

(F) The adjustment must be in support of a lawfully established use or in support of the lawful establishment of a use.

Section 22. MCC 39.8215 is amended as follows:

§ 39.8215 VARIANCE APPROVAL CRITERIA.

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (F) are met:

(A) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or base zone. The circumstance or condition may relate to:

* * *

(G) The variance must be in support of a lawfully established use or in support of the lawful establishment of a use.

FIRST READING:

March 7, 2019

SECOND READING AND ADOPTION:

March 14, 2019

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Deborah Kafoury

Deborah Kafoury, Chair

REVIEWED:

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

By *Katherine Thomas*
Katherine Thomas, Assistant County Attorney

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

BEFORE THE PLANNING COMMISSION
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. PC 2018-11006

Recommend to the Board of County Commissioners the adoption of one or more ordinances amending MCC Chapters 38 and 39 to make technical corrections and other housekeeping code amendments.

The Planning Commission Finds:

- a. The Planning Commission is authorized by Multnomah County Code Chapters 39.1645, 38.0340 and by ORS 215.110 to recommend to the Board of County Commissioners the adoption of Ordinances to amend the County Comprehensive Plan and land use regulations.
- b. Periodically, there is a need to make technical corrections and similar "housekeeping" amendments to the Zoning Code to ensure, among other things, clarity and consistency in the Code.
- c. The changes in this recommended ordinance include technical amendments involving code citation and numbering corrections, spelling corrections, and clarifying text.
- d. No property is being "rezoned," as that term is defined in ORS 215.503, and therefore no mailed notice to individual property owners is required ("Ballot Measure 56" notice). Notice was published in the Oregonian newspaper and on the Land Use Planning Program website. The Planning Commission held a public hearing on January 7, 2019 where all interested persons were given an opportunity to appear and be heard.

The Planning Commission resolves:

The adoption by the Board of County Commissioners of one or more ordinances amending MCC Chapters 38 and 39, in a form substantially similar to that approved by the Planning Commission, is hereby recommended.

ADOPTED this 7th day of January, 2019

PLANNING COMMISSION
FOR MULTNOMAH COUNTY, OREGON



John Ingle, Chair

1600 SE 190th Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

**STAFF REPORT FOR THE PLANNING COMMISSION HEARING
January 7, 2019**

**HOUSEKEEPING AMENDMENTS
(PC-2018-11006)**

Staff Contact:
Kevin Cook, Senior Planner
kevin.c.cook@multco.us (503) 988-0188

1.0 INTRODUCTION

This proposal, PC-2018-11006, relates to a range of housekeeping amendments to zoning codes which have been combined for efficiency into one proposal. These amendments generally make corrections to the zoning code, such as spelling errors, incorrect cross references, outdated ORS citations, and clarifications of existing code. The scope of the project is limited to ‘housekeeping items’ in the general category of minor code fixes. Explanations of the changes are included in the staff notes below where necessary.

2.0 SECTION 2.0 PROPOSED CODE AMENDMENTS – CHAPTER 38 - COLUMBIA RIVER GORGE NATIONAL SCENIC AREA

The following text is used within the proposed amendments:

Double Underline = Proposed new language
~~Strikethrough~~ = Language proposed for removal

* * * Indicates a minor gap in code for brevity, typically within the same section

2.1 – Rectifying An Absent Code Reference and Changing Term “Non-conforming” to “Existing”

Staff Note: The National Scenic Area Code (Chapter 38) does not use the term “non-conforming uses.” Instead, the concept of Existing Uses and Discontinued Uses (see MCC 38.0030) is used.

§ 38.0080 Signs

* * *

(F) Any sign in the General Management Area which does not conform with subsections (A) and (D) and has existed prior to adoption of the Management Plan shall be considered ~~non-conforming~~ existing and subject to the following:

(1) Alteration of existing ~~non-conforming~~ signs shall comply with MCC 38.0080 (A) and (D).

(2) Any ~~non-conforming~~ existing sign used by a business must be brought into conformance concurrent with any expansion or change in use which requires a development permit.

2.2 – Correcting a Code Citation Error

§ 38.7090 Responses to an Emergency/Disaster Event

Responses to an emergency/disaster event are allowed in all zoning districts within the Columbia River Gorge National Scenic Area when in compliance with the following standards:

* * *

(E)(1)(f) 4. Disposal sites created according to MCC 38.070 7090(E)(1)(f)1.b. shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from routine road maintenance activities shall not be deposited at these sites.

2.3 – Correcting Error in Identified Process for Type II or III Decision Extension

Staff Note: The 2004 Columbia River Gorge Management Plan states “Approval or denial of a request for extension shall be considered an administrative decision” – Chapter 7, GMA/SMA Guidelines, Subsection 6.D. ‘Expiration of Approvals,’ page II-7-4. This change is also consistent with MCC 38.0700 (Extension of Type II or Type III Decisions), which provides, “Any request for an extension shall be reviewed and decided upon by the Planning Director as a Type I decision.”

§ 38.0530 SUMMARY OF DECISION MAKING PROCESSES.

The following decision making processes chart shall control the County’s review of the indicated permits:

APPROVAL PROCESS					
Permit Type	I	II	II Expedited	III	PC
Initial Approval Body:	(Not a "land use decision")	(Planning Director)	(Planning Director)	(Hearings Officer)	(Legislative)
Allowed Uses ¹	X				
Expedited Uses			X		
Review Uses		X			
Conditional Uses				X	
Zone Code Text Changes (Initiated by County only)					X
Variance		X		X	
Extension of Decision	<u>X</u>	X			
Property Line Adjustments		X			
Planned Unit Developments				X	
Land Divisions					
Subdivision				X	
Major Partition		X			
Minor Partition		X			
Lot Consolidation	X				
Replat		X			
Revocation of Decisions				X	
Zoning Code Interpretations		X			
Temporary Health Hardship Permit Extension	X				
Hillside Development Permit		X			
Floodplain Development	X				
Grading and Erosion Control	X				
2.4 - Correcting a Code Citation Error					

Staff Note: Ordinance 1064 (2005) deleted MCC 38.0040 (Section 8 of Ordinance 1064), and moved the standards from MCC 38.0040(E) to MCC 38.7335 (Section 86 of Ordinance 1064). However, the cross-reference to MCC 38.0040(E) in MCC 38.0050 was not updated at that time.

§ 38.0050 Conditional Uses

The following Conditional Uses may be permitted when allowed by the district and found by the Approval Authority, pursuant to the provisions of MCC 38.0045, to satisfy MCC 38.7000 through 38.7085:

* * *

(C) Home Occupations and Cottage Industries

Home occupations and cottage industries may be established as authorized in various districts consistent with the following:

* * *

(10) A bed and breakfast lodging establishment which is two bedrooms or less is considered a home occupation and shall meet the standards of MCC 38.0040(E) 7335.

2.5 - Correcting a Code Citation Error

Staff Note: Section 80 of Ordinance 1064 (2005) renumbered MCC 38.0085 to MCC 38.7305, but the cross-reference in MCC 38.7300 was not updated at that time.

§ 38.7300- REVIEW AND CONDITIONAL USES

(B) Forestry

(4) The use will not significantly increase fire hazard, fire suppression costs or risks to fire suppression personnel and will comply with MCC ~~38.0085~~. 38.7305.

2.6 - Correcting a Code Citation Error

§ 38.7350 DISPOSAL SITES FOR SPOIL MATERIALS FROM PUBLIC ROAD MAINTENANCE ACTIVITIES

(C) Scenic Resource Standards. Disposal sites shall comply with the same scenic resources protection standards as expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

(1) Sites more than 3 miles from the nearest key viewing area shall be visually subordinate as seen from any key viewing area, according to MCC 38.7035 (B) ~~(25)~~(26). An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the start of on-the-ground activities.

(2) Sites less than 3 miles from the nearest key viewing area shall be fully screened from any key viewing area, according to MCC 38.7035 (B) ~~(26)~~(27). An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the start of on-the-ground activities. Disposal activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

2.7 - Correcting a Code Citation Error

§ 38.2225(A)(8) REVIEW USES

(b) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, as defined in MCC 38.0015, where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. Current use includes a minimum area which would satisfy subsection ~~(5)~~(8) (c) 4. below; and

2.8 - Correcting a Code Citation Error

Staff Note: Section 8 of Ordinance 1064 (2005) deleted MCC 38.0040(A) relating to Land Divisions. Those provisions were relocated to MCC 38.7725(A) in Section 98 of Ordinance 1064. However, the cross-reference to MCC 38.0040 in MCC 38.7300 was not updated at that time.

§ 38.3025 REVIEW USES

(A) The following uses may be allowed on lands designated GGR, pursuant to MCC 38.0530(B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

(7) Land divisions, pursuant to the provisions of MCC ~~38.0040~~ 38.7725(A).

2.9 – Changing spelling of ‘supercede’ to more common usage ‘supersede’ consistent with the spelling in other parts of the MCC.

38.0800 Applicability in the event of conflicts.

As applied to lands within the Columbia River Gorge National Scenic Area, the provisions of MCC 38.0510 through 38.0800 ~~supercede~~ supersede all conflicting provisions in the Multnomah County Code.

2.10 – Spelling error

§ 38.7040 SMA Scenic Review Criteria

§ 38.7040(C)(2)(a)

1. The limiting factors to meeting the required scenic standard and/or applicable ~~provisions~~ provisions of 38.7040(A),

2.11 – Spelling error

§ 38.7040 SMA Scenic Review Criteria

(D) SMA Requirements for areas not seen from KVAs Unless expressly exempted by other provisions in MCC 38.7040, colors of structures on sites not visible from key viewing areas shall be earth-tones found at the specific site. The specific colors or list of acceptable colors shall be approved as a condition of approval, drawing from the recommended palette of colors included in the Scenic ~~Resouces~~ Resources Implementation Handbook.

2.12 – Spelling errors and capitalization

§ 38.7045 GMA Cultural Resource Review Criteria

§ 38.7045(E)

(2) The Planning Director shall require an ~~Evaluation of Significance~~ evaluation of significance if the ~~Reconnaissance~~ reconnaissance or ~~Historic Survey~~ historic survey or substantiated comment received indicate that the proposed use might affect any of the following:

- (a) Cultural resources
- (b) Archaeological resources
- (c) Traditional cultural properties
- (d) Historic buildings or structures

(3) The Planning Director shall deem the cultural resource review process complete if no substantiated comment is received during the 30 day comment period and the ~~Reconnaissance~~ reconnaissance or ~~Historic Survey~~ historic survey indicate that the proposed use would have no ~~affect~~ effect on the items listed in sub-section (2)(a) through (d) above.

(4) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC 38.0530 (B) within 10 days of the expiration of the 30 day comment period.

(5) The decision of the Planning Director on an application for cultural resource review shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC 38.0530 (B).

(F) Evaluations of ~~Significance~~ significance shall meet the following standards:

(1) Evaluations of ~~Significance~~ significance shall follow the procedures in How to Apply the National Register Criteria for Evaluation (U.S. Department of the Interior, n.d.) and Guidelines for the Evaluation and Documentation of Traditional Cultural Properties (Parker and King, n.d.). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

(2) To evaluate the significance of cultural resources, the information gathered during the ~~reconnaissance~~ reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analysis, and archival research may be required.

(3) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.

(4) The Evaluation of Significance shall follow the principles, guidelines, and report format recommended by Oregon SHPO (Oregon State Historic Preservation Office 1990). It shall incorporate the results of the ~~reconnaissance~~ reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.

2.13 – Incomplete citation

§ 38.7075 SMA NATURAL RESOURCE REVIEW CRITERIA

All new developments and land uses shall be evaluated using the following standards to ensure that natural resources are protected from adverse effects. Proposed uses and development within wetlands, streams, ponds, lakes, riparian areas and their buffer zones shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse shall be prohibited. Comments from state and federal agencies shall be carefully considered.

(A) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in MCC 38.7075 (A)(2)(a) and (2)(b). These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined in MCC 38.7075 (A)(2)(a) and (2)(b).

2.14 – Spelling error

MCC 38.7370 Forest Practices in the Special Management Area

DESIRED FOREST STRUCTURE AND PATTERN						
1	2	3	4	5	6	7
Vegetation Type [#]	Forest Structure (Average % total canopy closure (cc)) [*]	Typical Forest Openings Size Disturbance caused Historic (Natural) Desired	Percent Openings at One Time Historic (Natural) Desired	Leave Trees Includes all available remnant old forest	Average Down Wood Pieces 30 ft long per acre (scattered)	Average Snags (Conifers) No. per acre Snags are 20-40 ft in height

DESIRED FOREST STRUCTURE AND PATTERN								
1	2	3		4	5	6	7	
West Conifer	60-80% canopy closure Understory layer variable (0-60% of total cc)	Variable sizes with mosaic pattern, irregular shapes Mosaic fire 1-100 acres Catastrophic fire over 100 acres	Retain forested character Allow openings up to 15 acres (up to 5 acres in the foreground of KVAs) All openings 1 acre or less on National Forest land and all Open Space LUD Openings retain 15 - 40 % canopy closure	10%(mosaic fire) up to 55%(catastrophic fire) Intense fire return interval is 300 yrs	Not to exceed 8% for West Coniferous <u>Coniferous</u> Woodland Landscape Setting and not to exceed 4% for Gorge Walls, Canyonlands and Wildlands Landscape Setting Widely dispersed, variable sized mosaic of irregular shapes blending with existing openings.	Leave 15% of existing trees per acre throughout opening and in clumps. Include 3 trees per acre of the largest size trees available	18 - 25 pieces greater than 20" dbh	10 snags at 10" - 20" dbh, and 7 snags greater than 20" dbh
East Conifer (Ponderosa Pine/Douglas fir)	40-80% canopy closure Understory layer less than 25% of total cc	Few Openings due to low intensity fires. ¼ to 2 acres	Openings less than 1 acre Openings have 0 - 40% canopy closure Openings widely dispersed	1 -10%	1 - 10% (% by vegetation type)	No leave trees required	3 - 6 pieces greater than 20" dbh	5 snags at 10"- 20" dbh and 3 snags greater than 20" dbh

3.0 SECTION 3.0 PROPOSED CODE AMENDMENTS – CHAPTER 39 – ZONING CODE

3.1 - Correcting spelling errors and adding to the list of common names to the Nuisance Plant List.

§ 39.5580- NUISANCE PLANT LIST.

Table 1

Nuisance Plant List:

Common Name	Scientific Name
Lesser celandine	<i>Chelidonium majus</i>
Canada Thistle	<i>Cirsium arvense</i>
Common Thistle	<i>Cirsium vulgare</i>
Western Clematis	<i>Clematis ligusticifolia</i>
Traveler's Joy	<i>Clematis vitalba</i>
Poison hemlock	<i>Conium maculatum</i>
Field Morning-glory	<i>Convolvulus arvensis</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>
Lady's nightcap	<i>Convolvulus seppium</i> <i>sepium</i>
Pampas grass	<i>Cortaderia selloana</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>
Scotch broom	<i>Cytisus scoparius</i>
Queen Ann's Anne's Lace	<i>Daucus carota</i>
South American Waterweed	<i>Elodea densa</i>
Common Horsetail	<i>Equisetum arvense</i>
Giant Horsetail	<i>Equisetum telemateia</i> <i>telmateia</i>
Crane's Bill <u>Cranesbill</u>	<i>Erodium cicutarium</i>
Roberts Geranium, <u>Herb Robert</u>	<i>Geranium roberianum</i> <i>robertianum</i>
English Ivy	<i>Hedera helix</i>
St. John's Wort	<i>Hypericum perforatum</i>
English Holly	<i>Ilex-Ilex</i> <i>aquafolium</i>
Golden Chain Tree	<i>Laburnum watereri</i>
Duckweed, Water Lentil	<i>Lemna minor</i>

Fall Dandelion	Loentodon <u>Leontodon</u> <u>autumnalis</u>
Purple Loosestrife	<u>Lythrum salicaria</u>
Eurasian Watermilfoil	<u>Myriophyllum spicatum</u>
Reed Canary grass	<u>Phalaris arundinacea</u>
Annual Bluegrass	<u>Poa annua</u>
Swamp Smartweed	<u>Polygonum coccineum</u>
Climbing Binaweed Bindweed, Wild buckwheat	<u>Polygonum convolvulus</u>
Giant Knotweed	<u>Polygonum sachalinense</u>
English, Portugese Portuguese Laurel	<u>Prunus laurocerasus</u>
Poison Oak	<u>Rhus diversiloba</u>
Himalayan Blackberry	Rubus discolor <u>Rubus</u> <u>discolor</u>
Evergreen Blackberry	<u>Rubus laciniatus</u>
Tansy Ragwort	<u>Senecio jacobaea</u>
Blue Bindweed	<u>Solanum dulcamara</u>
Garden Nightshade	<u>Solanum nigrum</u>
Hairy Nightshade	<u>Solanum sarrachoides</u>
Common Dandelion	Taraxacum officinale <u>officinale</u>
Common Bladderwort	Utricularia vulgaris <u>Utricularia vulgaris</u>
Stinging Nettle	Urtica <u>Urtica dioica</u>
Periwinkle (large leaf)	<u>Vinca major</u>
Periwinkle (small leaf)	<u>Vinca minor</u>
Spiny Cocklebur	Xanthium spinosum <u>spinosum</u>
Bamboo sp.	<u>various genera</u>

3.2 – Amend Adjustments and Variances code to explicitly state that adjustment/variance cannot be granted unless in support of a lawful use.

Staff Note: This recommended change stems from a land use case where a Hearings Officer denied an application for approval of an addition, but granted a variance for the required setback for that addition. The result was that the applicant could not implement the variance because it was not associated with an underlying lawful use. This amendment codifies staff's current practice in implementing the Code and is intended to avoid future confusion and incongruous holdings by Hearings Officers and other tribunals. The practical effect, however, will be the same – where there is no underlying lawful use, there can be no adjustment or variance of the standards for that use.

§ 39.8210 ADJUSTMENT APPROVAL CRITERIA.

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through ~~(E)~~ (F) are met:

(F) The adjustment must be in support of a lawfully established use or in support of the lawful establishment of a use.

§ 39.8215 VARIANCE APPROVAL CRITERIA.

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through ~~(F)~~ (G) are met:

(G) The variance must be in support of a lawfully established use or in support of the lawful establishment of a use.

3.3 – Clarifying that additional one year extensions do not apply to residential development in EFU and CFU zones.

Staff Note: The proposed additional text reinforces what is already stated in Subsection (A), that extensions for dwelling approvals listed in MCC 39.1185(C) are eligible for a one-time 24 month time extension. The new text makes it clear that the dwellings referenced in

MCC 39.1185(C) (Type II and III decisions approving residential development on EFU/CFU outside the UGB) are not eligible for additional one-year extensions.

§ 39.1195 EXTENSION OF A TYPE II OR TYPE III DECISION.

(A) The Planning Director shall grant one extension period of 24 months for approvals of dwellings listed in MCC 39.1185 (C) and shall grant one extension period of up to 12 months for all other approvals provided:

- (1) An applicant makes a written request for an extension of the development approval period;
- (2) The request is submitted to the county prior to the expiration of the approval period;
- (3) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
- (4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(B) Pursuant to OAR 660-033-0140, approval of an extension in EFU and CFU districts is an administrative decision, is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision. All other extension requests authorized by this section are land use decisions and shall be reviewed under the Type II procedures set forth in MCC 39.1125.

(C) Except for approvals of dwellings listed in MCC 39.1185 (C), ~~A~~ additional one-year extensions shall be authorized where applicable criteria for the decision have not changed. For each additional extension, the Planning Director shall confirm compliance with the standards in MCC 39.1195 (A) (1-4).

3.4 - Correcting OAR Citation Errors

§ 39.4265 STANDARDS FOR SPECIFIED FARM DWELLINGS.

§ 39.4265(B)(1)

(e) Prior to the final approval for a dwelling, the applicant shall provide evidence that the covenants, conditions and restrictions form referred to as "Exhibit A" in OAR 660-033-0135~~(9)~~(5)(b) has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants,

conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling.

§ 39.4265(B)(4)

(e) Prior to the final approval for a dwelling, the applicant shall provide evidence that the covenants, conditions and restrictions form referred to as “Exhibit A” in OAR 660-033-0135(9)(5)(b) has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling.

§ 39.4265(B)(5)

(g) “Commercial dairy farm” is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by OAR 660-033-0135(5)(3)(a) or (7)(4)(a), whichever is applicable, from the sale of fluid milk.

§ 39.4265(C)(4)

(c) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11)(8); and

3.5 – Fixes confusing lettering that could be read as a subsection rather than a sentence presenting ‘either/or’ logic.

§ 39.3005- LOT OF RECORD – GENERALLY.

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

Memorandum

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

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

The following text is used within the proposed amendments:

Double Underline = Proposed new language

~~Strikethrough~~ = Language proposed for removal

* * * Indicates a minor gap in code for brevity, typically within the same section

MCC 39.7515

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

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

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

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

The proposed correction to MCC 39.7515(I) follows:

§ 39.7515 APPROVAL CRITERIA.

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

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

MCC 39.7520(A)

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

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

The current text of subsection (6) reads:

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

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

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

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

The proposed correction to MCC 39.7520(A)(6) follows:

§ 39.7520 USES.

(A) Except as otherwise limited in the EFU, all CFU and OR base zones, the following Community Service Uses and those of a similar nature, may be permitted in any base zone when approved at a public hearing by the approval authority.

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

* * *

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

MCC 39.5800

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

The proposed correction to MCC 39.5800 follows:

§ 39.5800- CRITERIA FOR APPROVAL OF SEC-WR PERMIT -WATER RESOURCE

(A) Except for the exempt uses listed in MCC 39.5515 and the existing uses pursuant to MCC 39.5550, no development shall be allowed within a Water Resource Area unless the provisions of subsections ~~(A) or (B)~~ or (C) or (D) below are satisfied. An application shall not be approved unless it contains the site analysis information required in MCC 39.5520(A) and (C), and meets the general requirements in MCC 39.5560.

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

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

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

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

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

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

(D) Buffer Averaging - Development may be allowed to encroach into the 200' SEC-wr overlay zone or "buffer" when the provisions of (1) through (6) below are satisfied. These provisions are intended to allow development to extend a specific amount into the edges of the overlay zone without an alternatives analysis in exchange for increasing the area of vegetated corridor on the property that is in good condition.

- (1) Site assessment information pursuant to MCC 39.5520(A) and (C) has been submitted.
- (2) The riparian/vegetated corridor is certified to be in a marginal or degraded condition pursuant to Table 2 of this section. Buffer averaging is not allowed to encroach in areas certified to be in good condition.
- (3) The maximum encroachment does not exceed 20% of the frontage length of the vegetated corridor by 20% of the required width.
- (4) The entire remaining vegetated corridor on the project site or the first 50 feet closest to the stream (whichever is less) will be enhanced to "good" condition pursuant to Table 2 of this section.
- (5) The area of encroachment will be replaced with added buffer area at a 1:1 ratio.
- (6) The replacement area will be incorporated into the remaining vegetated corridor on the project site and meet the "good" condition pursuant to Table 2 of this section, regardless of its distance from the resource area.

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

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

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

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

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

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

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