



TO: Columbia River Gorge Commission

FROM: Jason Hildreth, GIS Analyst/Land Use Planner

DATE: May 23, 2017 for the June 13, 2017 Commission Meeting

SUBJECT: Consistency Review of Multnomah County Ordinance No. 1242 clarifying that accessory structures cannot be used for residential purposes.

Action Requested

Staff recommends that at the June 13, 2017 hearing, the Gorge Commission:

1. Find the portions of Multnomah County Ordinance No. 1242 affecting lands in the General Management Area (GMA) consistent with the Management Plan; and
2. Tentatively find the provisions of Multnomah County Ordinance No. 1242 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 1242 to amend its Scenic Area ordinance (Chapter 38 of the Multnomah County Code) to 1) Clarify the internal features allowed within Accessory Structures through the non-discretionary Allowed Use review process; 2) Clarify the internal features allowed within Accessory Structures through the discretionary Review Use review process; 3) Clearly state within the code that Accessory Structures cannot be used as a temporary or permanent dwelling; and 4) Provide additional opportunities for the siting of small accessory structures (subject to all other applicable Code provisions). The purpose of the legislative procedural changes is to address the rising interest in using accessory structures for dwelling purposes, and respond to growing complaints alleging the unlawful conversion of accessory structures into dwelling units.

Ordinance 1242 was approved by the Multnomah County Board of Commissioners on February 23, 2017. Multnomah County transmitted a copy of Ordinance No. 1242 to review for consistency with the Management Plan on March 13, 2017. A copy of Ordinance 1242 and a copy of the sections of Ordinance 1242 that are relevant to the National Scenic Area are 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 90-day deadline for review of Ordinance No. 1232 is June 11, 2017; however, Multnomah County granted the Commission an extension of time to allow the Commission to make its decision at its June 13, 2017 meeting. 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. 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. 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 determines that the ordinance is inconsistent with the Management Plan, it must return the ordinance to the county and state the reasons why it is inconsistent and suggest modifications to make the ordinance consistent.

Amendment Summary and Consistency Analysis

Multnomah County Ordinance No. 1242 amends several county code chapters relating to accessory structures. Multnomah County Code (MMC) Chapter 38, the County's National Scenic Area Code, is amended in the following ways.

1. A definition of "cooking facilities" is added to the definitions section.
2. Language is added to Part 4 – Zoning Districts that expressly prohibits residential uses in accessory structures. Language is also added to Part 4 that allows accessory structures in yard setbacks, provided the accessory structure meets all other applicable sections of the ordinance.
3. A section is added to Part 7 – Special Uses that expressly prohibits residential uses in accessory structures.

The ordinance amendments described above do not conflict with the management plan. "Cooking facilities" are not currently defined in the Management Plan and adding this definition does not create any conflicts.

The language prohibiting residential uses in accessory buildings is consistent with the Management Plan, which already does not allow residential uses in accessory buildings—it could be perceived as more restrictive than the Management Plan because it expressly prohibits residential uses in accessory buildings, whereas the Management Plan prohibits uses that are not expressly permitted. *Friends of the Columbia Gorge v. Skamania County*, CRGC No. COA-S-95-01 at 8–9 (Nov. 16, 1995). Residential uses in accessory buildings are not expressly allowed in any land use designation in the Management Plan. In addition, every place that the Management Plan allowed residential use, it allows only one residence per parcel.

The language allowing accessory structures in yard setbacks applies to setbacks that are contained in the MCC that do not exist in the Management Plan (i.e. more restrictive than the Management Plan). This language is superseded by Subsection 38.0060 – Agricultural Buffer Zones, which has already been found consistent with the Management Plan.

Conclusion

Staff recommends the Commission approve Multnomah County Ordinance No. 1242 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. 1242 and
 Multnomah County Ordinance No. 1242 (relevant pages only)