



**Department of Community Services**  
**MULTNOMAH COUNTY OREGON**

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**STAFF REPORT TO THE PLANNING COMMISSION**

**PROPOSED CODE AMENDMENTS TO IMPLEMENT THE HISTORIC PROPERTIES PLAN  
AMENDMENT IN THE NATIONAL SCENIC AREA.**

**APRIL 17, 2006 PUBLIC HEARING  
CASE FILE # PC 06-004**

**INTRODUCTION**

This staff report includes draft revisions to the Multnomah County Code that create a process and approval criteria for allowing certain commercial uses on historic properties in the National Scenic Area. These changes implement a Plan Amendment recently approved by the Gorge Commission. The Plan Amendment applies to all six counties in the National Scenic Area and is applicable to lands in the General Management Area that contain a building that is on or eligible for the National Register of Historic Places. The Plan Amendment does **not** apply in the Special Management Area (SMA). A copy of the Plan Amendment is included as Attachment 1.

In a cover letter attached to their January 25, 2006 transmittal of the Plan Amendment, Martha Bennett, the Executive Director for the Gorge Commission, advised the six gorge counties that they must incorporate the Plan Amendment language into their ordinances because it improves protection of cultural resources. On February 1, 2006, Chair Linn informed the Gorge Commission that Multnomah county intends to implement the Plan Amendment.

There has been a legal challenge to the Plan Amendment. The Multnomah County Board of Commissioners is aware of the litigation. The letter from the Executive Director advising that the code update is mandatory is also being challenged via an appeal to the Gorge Commission. The appeal of the letter has been withdrawn.

**OVERVIEW OF THE PLAN AMENDMENT**

The intent of the Plan Amendment is to further protect historic buildings as cultural resources by allowing owners to reestablish commercial uses historic to the site or establish new commercial uses as an economic incentive to preserve and maintain the structures and make them accessible to the public. Historic structures often need maintenance, repairs, or upgrades that have substantial costs that could be defrayed by generating income from the commercial use of the property. The Plan Amendment specifies which commercial uses can be allowed in historic properties and establishes two classes of historic properties. The plan amendment specified three uses which local jurisdictions **shall** allow in

properties already listed on the National Register of Historic Places. The pool of candidates for these uses could grow over time as the number of buildings listed on the National Register of Historic Places changes. The Plan Amendment then specifies ten commercial uses that local jurisdictions **may** allow on properties that are on or are eligible for listing on the National Register of Historic Places and which were at least 50 years of age on January 1, 2006. This means the pool of candidates for the expanded list of uses is restricted. The proposed code contains all of the uses the county may authorize under the plan amendment. The uses allowed by the plan amendment are the uses which the Gorge Commission determined are necessary to provide a meaningful economic incentive to protect historic properties.

The Plan Amendment requires all commercial uses on historic properties to be tied to a “Protection and Enhancement Plan.” This plan has to establish how the commercial use will significantly contribute to the enhancement of the historic resource. This must include specific actions that will be taken towards restoration, protection, enhancement, and/or maintenance of the historic resource as well as a schedule for completing the action. The Plan Amendment requires local jurisdictions to evaluate the owner’s progress on implementing the Protection and Enhancement Plan every five years. If the “Protection and Enhancement Plan” is not implemented, the approval for the commercial use must be revoked.

The Plan Amendment established specific regulations intended to protect cultural resources including historic preservation requirements. The county must review proposals for compliance with historic preservation standards but will do this in conjunction with the State Historic Preservation Office (SHPO). The Plan Amendment does specify that the county is the final approval authority and can disagree with the recommendations that SHPO makes. In such a case, the county must justify why the county disagrees with SHPO.

The Plan Amendment deferred to local jurisdictions to address health, safety, and potential impacts to neighboring properties such as noise, parking, traffic, lighting, and operating hours. This is the area where the county has the most discretion and is consequently the area where efforts at obtaining public input have been concentrated.

## **PUBLIC PROCESS TO DATE**

To kick-off the code update process, county staff held two noticed public workshops at the High School in Corbett. The first was held on March 2, 2006. At this workshop, county staff explained what is in the Plan Amendment and described what changes the county understands that it must make to its codes. Staff then outlined options for implementing discretionary parts of the amendment, namely how the county can address neighborhood impacts commonly associated with commercial uses. Feedback was received from local residents on the Plan Amendment and County implementation options.

The second workshop was held on March 16, 2006. At this workshop, county staff presented proposed code concepts for implementing the Plan Amendment focusing on neighborhood impacts. These concepts were developed considering public input received from the first workshop in Corbett. Staff solicited and obtained feedback from local residents regarding the proposed code concepts. A summary of all of the comments received as a result of both workshops is included as Attachment 2 to this staff report. The first draft of the proposed zoning code amendments were developed based on citizen input we received.

The first draft of the proposed zoning code amendments was presented to the Planning Commission at a work session on April 3, 2006. At that session, the Planning Commission requested staff make several changes to the proposed code for a variety of reasons. Notes have been made throughout Parts I, II and III of this staff report to point out each of these changes. For easier reference, a summary of these changes is included as Attachment 6 of this staff report.

With respect to off-site parking, scale of commercial uses, private services (septic systems), and hours of operation, the Planning Commission asked staff to explore alternative language for them to consider at the April 17<sup>th</sup> public hearing in Corbett. Each of these issues is discussed below.

## USE OF OFF SITE PARKING

Throughout the public process to date, some constituents expressed interest in the county limiting parking to the subject site while other constituents expressed an interest in the county allowing a landowner to share use of existing off-site parking in the area (e.g. Corbett High School) to fulfill the parking requirements for new commercial uses. The first draft of the code presented at the April 3, 2006 work session required parking occur on the subject site because (a) the majority of people who commented on parking asked that the county limit it to what can be provided on the property to ensure that the scale of the use fits the neighborhood and parking does not spill over onto side streets or otherwise impact surrounding properties and (b) it is not clear that use of existing off-site parking can be allowed given the text of the Plan Amendment which includes explicit language that new parking must be on the same site as the historic structure and contains no reference to the use of existing off site parking. A number of Planning Commission members expressed concerns with this approach, some thinking that this could lead to large new parking areas and others indicating that it would be nice for owners in the area to generate some revenue off their existing parking areas. The Commission asked the staff to further explore whether or not off-site parking can be allowed and, if so, to prepare an alternative that would allow the use of off site parking in conjunction with the commercial use of an historic property.

After discussing the issue with members of the Gorge Commission staff and reviewing the language with the Multnomah County Attorney's Office, staff was not able to develop a legally defensible way to approve the use of off site parking inside the NSA. An April 7, 2006 memo from Sandra Duffy, Assistant County Attorney (Attachment 5), explains the reasons for this, which include (a) the plain language of the text of the plan amendment requires on-site parking in conjunction with the commercial use of an historic property; (b) the context of the Management Plan and County code for the Scenic Area precludes a parking use other than one used in conjunction with the use of the subject property. The commercial events guidelines referenced in Ms. Duffy's memo are included with this report as Attachment 7.

The memo from the County Attorney's Office is directed at areas within Multnomah County's land use jurisdiction, namely the County's portion of the scenic area and other rural, unincorporated areas. Under this proposed code, a landowner could seek to shuttle clients to their property from areas outside of the County's jurisdiction, such as Portland or Gresham, provided they can substantiate in their conditional

use application that the shuttles and other vehicles associated with the commercial use will be parked on-site. This type of arrangement could be employed to address commercial events or other special events that exceed the day-to-day level of operation on the site without requiring the construction of large parking fields.

## LIMITATIONS ON SCALE OF COMMERCIAL USES

At the work session, the Planning Commission asked staff to explore alternatives for addressing the scale of commercial uses other than getting at the issue by limiting parking to the property. Specific mention was made of the City of Portland's code that allows commercial uses in historic buildings which are not in commercial zones. Staff contacted the City of Portland staff and received guidance on which City of Portland codes apply to these reviews. The Historic Incentive Review code applies and has two basic criteria. One is that the use be in compliance with the neighborhood plan. The second is that, if the use is not in a commercial zone, it must meet the City's conditional use permit criteria. The City's conditional use permit criteria are highly discretionary and extremely similar to the proposed criteria that require a use to be in character with the surrounding area, not require additional public services, and not create hazardous conditions. The City's neighborhood plans are the documents which contain detailed limits on the scale of uses. Staff reviewed two different neighborhood plans from the City of Portland. These plans specify Floor Area Ratios, required mixes of residential and commercial development, and other detailed property-by-property limits on the scale of uses. These types of plans are more detailed than the scope of the Historic Properties Plan Amendment allows staff to be able to consider.

However, staff does assert that several of the provisions in the revised code do work to effectively limit the scale of the commercial uses which can be approved in historic structures. First staff will discuss criteria that were taken directly from the management plan and will then discuss neighborhood impact criteria developed by Staff.

The first of the requirements taken from the management plan that limits scale is the requirement that any use must be proven to "significantly contribute to the protection and enhancement of the historic resource." (MCC 38.7380(F)(1)(b)) Secondly, the County must make a determination that the proposed use has, "no effect or no adverse effect on the historic character of the property, including features of the property contributing to its historic significance." (MCC 38.7380(F)(1)(e)) These two criteria work to limit the scale of commercial use to something which is in character with the historic property. Additionally, there is a criterion which applies to any property that is designated as agriculture or forestry land which states, "The proposed use will be sited to minimize the loss of land suitable for production of crops, livestock or forest products." (MCC 38.7380(F)(4)(b)) This criterion will apply to the majority of the large parcels in the NSA since most large parcels have been zoned for agriculture or forestry. This is one criterion which will address concerns that commercial uses may become quite large on larger properties.

Some of the criteria developed by Staff to address neighborhood impacts also address the issue of scale. First MCC 38.7380(G)(5) reads, "The use shall be compatible with the surrounding area. Review of compatibility shall include impacts associated with the scale of the use, effects of noise, traffic generation, and hours of operation." This type of case by case review will allow the county to apply scale limits that make sense for the specific property. Much of the public input on this topic heavily

favorable case by case review rather than the imposition of set limits that would apply to all uses such as a cap on the square footage of commercial uses allowed. The other neighborhood impact criteria which limit the scale of uses is the requirement that private services be adequate to serve the use. Staff has proposed a second option under MCC 38.7380(G)(8) which reads, "If private services will be used, the applicant shall demonstrate that the private service will be wholly contained on the subject property and that the private service is or can be made adequate to serve the use. If a substantiated reason based on the physical limitations of the subject property make it preferable to place the private services on a nearby or adjacent lot, this may be allowed only upon a showing that the capacity of the private service will not exceed the capacity which can be accommodated on the subject property." This would effectively limit the scale of the use to a scale that matches the carrying capacity of the subject site.

The Management Plan does provide limits on the scale of Commercial Events that are not associated with an historic property. When the Management Plan Update occurred to allow Commercial Events, a legal challenge was filed to these provisions. As a result, Multnomah County chose not to adopt the Commercial Events provisions into the county zoning code. The full text of the provisions as written in the Management Plan is included as Attachment 7. These provisions include specific caps on size and frequency of events that can occur on properties that do not contain historically significant buildings. The Planning Commission could choose to impose these same types of limitations to historic properties for purposes of addressing neighborhood impacts. Staff does not recommend this approach, because the limits are somewhat arbitrary and do not correlate well to the objectives of the plan amendment which is to provide landowners economic options for preserving historic buildings.

Lastly, requiring on-site adequate parking to serve the proposed use will effectively limit the scale of the use. (MCC 38.7380(G)(3)) Staff has proposed parking ratios for each of the newly allowed uses which are included in Part II of this staff report. This combination of requiring all private services and all parking areas to be in keeping with the carrying capacity of the subject property serves as an additional limit on the scale of the use.

## PRIVATE SERVICES

The Planning Commission asked staff to develop an alternative manner of regulating private services such as septic systems. This stemmed from a discussion amongst the Commission members about the capacity of properties to provide on-site services. Their discussion generally supported the idea that all private services should be limited to the subject site. However, they recognized that some properties may have limitations such as slopes that make it more attractive to provide the private service on a nearby lot that is not part of the subject property. Several of the Commissioners were concerned that allowing private services to be provided off-site could result in a scale of use that is out of character with the property. Staff developed an alternative that requires all private services to be provided on the subject lot or in an easement on a nearby or adjacent property provided that the capacity is the same as could be constructed on the subject site. This allows some flexibility for difficult properties but still requires the service to be in scale with the subject site. These two options are presented under MCC 38.7380(G)(8) on page 23 of the staff report.

## OUTDOOR HOURS OF OPERATION

The Planning Commission asked staff to develop an alternative manner of regulating hours of operation. The draft presented on 4-3-06 limited outdoor uses to the hours between sunrise and sunset. Several Commissioners were concerned that this standard would be difficult for an owner to meet and difficult for the county to enforce since it would change every day. The Commission asked staff to provide them an alternative that establishes set hours with extended hours allowed during the summer months. The option staff developed caps operating hours at 7:00 am to 7:00 pm. It then allows for extended hours to be approved between Memorial Day and Labor Day. The extended hours are not to exceed 7:00 am to 10:00 pm. These two options are presented under MCC 38.7380(G)(1) on page 20 of the staff report.

## **PROPOSED CODE AMENDMENTS**

Throughout the following sections, new text has been added to both the code language and the staff comments since the April 3, 2006 draft presented at the work session. When new language has been inserted, the staff comments column contains the words **NEW LANGUAGE SINCE 4-3-06**.

The balance of this staff report covers specific code amendments. It is divided into the following parts:

- Part I includes amendments to the Special Uses section of Chapter 38. These amendments add a new section that provides for the approval of Special Uses in Historic Buildings. This section is primarily taken directly from the Plan Amendment. Part (G) of this section includes provisions for regulating health, safety, and potential impacts to surrounding properties which are not included in the Plan Amendment.
- Part II includes amendments to the Off Street Parking and Loading section of Chapter 38. These amendments add parking ratios to cover the newly allowed uses. They also include a provision to allow an applicant to propose different amounts of parking than what is required by the code if a parking study is submitted to justify the difference.
- Part III includes an example of the needed amendment to each of the zones in Chapter 38 to which the Plan Amendment is applicable. These amendments establish Special Uses in Historic Buildings as a conditional use in each zone to which the Plan Amendment applies.

## **PART I. PROPOSED AMENDMENTS TO THE SPECIAL USES SECTION OF CHAPTER 38.**

A new section is proposed to be added to Section 7 of Chapter 38 to implement provisions that were added to the Management Plan through a Plan Amendment. The proposed code amendments are presented in a two column format. The code language is presented in the left-hand column. Notes explaining the reasoning behind code language are presented in the right-hand column.

The following changes would be made to Part 7 of the table of contents for Chapter 38.

<b><i>PART 7- SPECIAL USES</i></b>	<b>STAFF COMMENTS:</b>
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<b><i>APPROVAL CRITERIA AND SUBMITTAL REQUIREMENTS</i></b>	
§ 38.7300	Review and Conditional Uses
§ 38.7305	Fire Protection in Forest Zones
§ 38.7310	Specific Uses
§ 38.7315	Siting of Dwellings on Forest Land
§ 38.7320	Temporary Health Hardship Dwelling
§ 38.7325	Private Docks and Boathouses
§ 38.7330	Home Occupations and Cottage Industries
§ 38.7335	Bed and Breakfast Inns
§ 38.7340	Agricultural Buildings
§ 38.7345	Resource Enhancement Projects
§ 38.7350	Disposal Sites for Spoil Materials from Public Road Maintenance Activities
§ 38.7355	Life Estates
§ 38.7360	Cluster Development
§ 38.7365	Clearing of Trees for Agricultural Use in GSF
§ 38.7370	Forest Practices in the Special Management Area
§ 38.7375	Stewardship Plan Requirements
§ 38.7380	<u>Special Uses in Historic Buildings</u>
	Reflects the new chapter proposed for addition to implement the Plan Amendment.

The following text would be a new section of the code added at MCC 38.7380.

<p><b>§ 38.7300* PART 7 – SPECIAL USES – Approval Criteria and Submittal Requirements</b></p> <p>*****</p>	STAFF COMMENTS
<b><u>§ 38.7380 Special Uses in Historic Buildings</u></b>	
<u>(A) Definitions</u>	
<u>(1) For the purposes of this section,</u>	The definition of “historic building” is taken

<p><u>the term “historic buildings” refers to buildings either on or eligible for the National Register of Historic Places. Eligibility for the National Register shall be determined pursuant to MCC 38.7380(F)(1)(a).</u></p>	<p>directly from the Plan Amendment.</p>
<p><u>(2) For the purposes of this section, the term “subject property” refers to the parcel or group of parcels in common ownership that have been historically used in conjunction with an historic building.</u></p>	<p>The definition of “subject property” is intended to avoid confusion in implementing the ordinance. Several known historic sites have traditionally included multiple parcels. This definition would allow the owners of the historic site to use all of the land associated with the historic structure, not just the parcel which contains the structure itself.</p> <p><b>NEW LANGUAGE SINCE 4-3-06</b> The term “in common ownership” has been added to clarify that parcels which used to be associated with the historic structure but which are no longer under the same ownership as the historic structure do not count as part of the subject site.</p>
<p><u>(B) As established in each zone, the following uses shall be allowed on properties with buildings included on the National Register of Historic Places. All uses authorized under this section shall be subject to the provisions of MCC 38.7000-38.7085 and MCC 38.7300.</u></p>	<p>Please note that this section applies only to properties already <b>listed</b> on the National Register of Historic Place. Section (C) incorporates uses allowed on properties <b>on or eligible</b> for listing on the National Register of Historic Places. This list of uses is taken directly from the Plan Amendment. The list of criteria which apply to each use have also been taken directly from the Plan Amendment.</p>
<p><u>(1) The properties shall be permitted to be open for public viewing, interpretive displays, and an associated gift shop that is no larger than 100 square feet and incidental and subordinate to the primary use of the property, subject to compliance with 38.7380(G) and 38.7380(F) except 38.7380(F)(1)(a), 38.7380(F)(1)(b)(iii) and 38.7380(F)(1)(b)(iv). This use is</u></p>	<p>We received numerous comments regarding whether or not all of the uses allowed by the Plan Amendment are appropriate. Some citizens feel that the National Scenic Area (NSA) regulations are very restrictive and that the county should not be any more restrictive than the NSA standards. Other citizens question the appropriateness of some of the uses allowed by this Plan Amendment and have specifically asked the county to not</p>



<p><u>not subject to the parking limits and associated "Facility Design Guidelines" in MCC 38.7080.</u></p> <p><u>Voluntary donations and/or fees to support maintenance, preservation and enhancement of the cultural resource may be accepted by the landowner.</u></p>	<p>implement all of the uses.</p> <p>This proposal includes all of the uses allowed by the Plan Amendment. The uses allowed by the Plan Amendment are the uses which the Gorge Commission determined are necessary to provide a meaningful economic incentive to protect historic properties.</p>
<p><u>(2) Properties which were former restaurants and/or inns shall be permitted to re-establish these former uses, subject to compliance with MCC 38.7380(G) and 38.7380(F) except 38.7380(F)(1)(a), 38.7380(F)(1)(b)(iii) and 38.7380(F)(1)(b)(iv).</u></p> <p><u>The capacity of restaurant use and overnight accommodations shall be limited to that existing in the former use, and the former use shall be contained within the limits of the building as of January 1, 2006. The capacity of the use may include any decks, terraces, or patios that were used as part of the former use and that existed on January 1, 2006. Banquets, private parties and other special events that take place entirely within an approved restaurant facility shall be considered a restaurant use allowed under this section.</u></p>	<p><b>NEW LANGUAGE SINCE 4-3-06</b></p> <p>Staff inserted the language allowing the use of decks, terraces, and patios which were part of the former use to make this section consistent with MCC 38.7380(C)(1), both of which were copied directly from the Plan Amendment. Staff discussed this inconsistency with Gorge Commission staff to determine if this was an intentional inconsistency or an oversight. Gorge Commission staff verbally indicated that the omission of the language referring to decks, terraces, and patios was not intentional. They further elaborated that, as related to this provision, the use of decks, terraces, and patios may only be allowed if they were part of the former use.</p>
<p><u>(3) Properties shall be permitted to hold commercial events, subject to compliance with MCC 38.7380(G) and MCC 38.7380(F) except 38.7380(F)(1)(a).</u></p>	
<p><u>(C) The following uses may be allowed as established in each zone on a property with a building either on or eligible for the National Register of Historic Places and that was 50 years old or older as of January 1, 2006 subject to compliance with the standards of</u></p>	<p>This list of uses differs from that in part (B) in two ways. First, an application may be made for these uses in a property that is <b>on or eligible</b> for listing on the National Register. Secondly, the building had to be at least 50 years of age on January 1, 2006. This limits</p>

<p><u>MCC 38.7000-38.7085, MCC 38.7300 and parts (D), (E), (F), and (G) of this section.</u></p>	<p>the pool of potential candidate buildings and does not allow the pool to expand over time. This list of uses is taken directly from the Plan Amendment as is the list of criteria which apply to each use.</p>
<p><u>(1) Establishment selling food and/or beverages, limited to historic buildings that originally had kitchen facilities. The seating capacity of such an establishment shall be limited to the building, as the building existed as of January 1, 2006, including any decks, terraces or patios also existing as of that date. Banquets, private parties and other special events that take place entirely within an approved establishment selling food and/or beverages shall be considered a part of the approved use.</u></p>	<p><b>NEW LANGUAGE SINCE 4-3-06</b> This language has been modified to reflect the singular usage of “establishment.” This in intended to clarify that only one establishment is allowed an historic property.</p>
<p><u>(2) Overnight accommodations. The room capacity of such accommodations shall be limited to the total number of lawfully existing rooms in the historic building as of January 1, 2006.</u></p>	<p><b>NEW LANGUAGE SINCE 4-3-06</b> The word “lawfully” has been added to this section as a clarification.</p>
<p><u>(3) Commercial events in the building or on the subject property, incidental and subordinate to the primary use of the property.</u></p>	
<p><u>(4) A winery upon a showing that processing of wine is from grapes grown on the subject parcel or the local region, within a historic building, as the building existed as of January 1, 2006. For the purposes of this section, “local region” shall use the same definition as “local agricultural area” in OAR 660 Division 33.</u></p>	<p><b>NEW LANGUAGE SINCE 4-3-06</b> This language has been modified to reflect the singular usage of “winery.” This in intended to clarify that only one winery is allowed an historic property.  The question of how “local region” is defined has been raised. Staff proposes to rely on the state definition as applied to farm stands in OAR 660 Division 33, the text of which is</p>

	<p>included below. Staff also recommends referencing the OAR rather than copying the text since the OAR does change from time to time. Using this language ensures that we view what constitutes the “local region” consistently throughout the County.</p> <p><b>660-033-0120</b></p> <p><b>Uses Authorized on Agricultural Lands</b></p> <p>(23)(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.</p>
<p><u>(5) Sales/tasting rooms in conjunction with an on-site winery, within a historic building, as the building existed as of January 1, 2006.</u></p>	
<p><u>(6) A conference and/or retreat facility within a historic building, as the building existed as of January 1, 2006.</u></p>	<p><b>NEW LANGUAGE SINCE 4-3-06</b></p> <p>This language has been modified to reflect the singular usage of “facility.” This in intended to clarify that only one facility is allowed an historic property.</p>
<p><u>(7) Artist studios and galleries within a historic building, as the building existed as of January 1, 2006.</u></p>	
<p><u>(8) A gift shop within a historic building, as the building existed as of January 1, 2006 that are:</u></p> <p><u>(a) Incidental and subordinate to another approved use included in MCC 38.7380(C), and</u></p> <p><u>(b) No larger than 100 square feet in area.</u></p>	<p><b>NEW LANGUAGE SINCE 4-3-06</b></p> <p>This language has been modified to reflect the singular usage of “gift shop.” This in intended to clarify that only one gift shop is allowed an historic property.</p> <p>Reference to Guideline 1 has been replaced with the appropriate cite in our code. Gorge Commission staff has advised that the tie to Guideline 1 is a typographical error in the amendment and that it should be Guideline 4. The code cite we have added corresponds with</p>

	Guideline 4 of the amendment.
<p><u>(9) Interpretive displays, picnic areas or other resource-based recreational day use activities on the subject property. This use is not subject to the parking limits and associated “Facility Design Guidelines” in MCC 38.7080.</u></p>	<p><b>NEW LANGUAGE SINCE 4-3-06</b>  Staff discussed the intention of the “recreational day use activities” provision with Gorge Commission Staff. The term “resource-based” has been inserted to limit the scale of recreational day use activities to be consistent with the intent of the Plan Amendment. Gorge Commission staff verbally indicated that the intent was to allow small scale, resource based recreation such as walking paths and scenic viewpoints. Their verbal guidance was that activities which are resource based and open to the general public fit under this use. Activities which require prior arrangement and/or significant compensation to the land owner for purposes of profit (versus nominal use fee), such as family reunions or sports tournaments are commercial events.</p> <p>Resource based recreation is defined in MCC 38.0015 as, “Those recreation uses which are essentially dependent upon, and do not adversely affect, the natural, scenic or cultural resources of the Scenic Area.” This would allow scenic viewpoints but would not allow commercial events.</p>
<p><u>(10) Parking areas on the subject property to support any of the above uses.</u></p>	
<p><u>(D) Uses allowed by parts (B)(3) and (C)(3) of this section shall include all information required for the “Operational Plan for Commercial Events” as specified in MCC 38.7380(F)(1)(b)(iv). The following apply to commercial events at historic properties:</u></p>	<p>The provisions of Part D are taken directly from the Plan Amendment. They apply only to proposals for commercial events. Please note that these are in addition to the requirements for Protection and Enhancement Plans incorporated under Section (F)(1).</p>
<p><u>(1) Commercial events include weddings, receptions, parties and other</u></p>	

<u>gatherings that are incidental and subordinate to the primary use on a parcel.</u>	
<u>(2) The owner of the subject property shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject property of each event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.</u>	
<u>(E) Land use approvals for Special Uses in Historic Buildings shall be subject to review every five years from the date the original approval was issued. This review shall follow the Type II procedure established in MCC 38.0530(B). This review shall not be processed using Revocation of Decisions provisions of MCC 38.7060.</u>	<p>The provisions in Part (E) are taken directly from the Plan Amendment. Public comments were divided on this topic. Some citizens felt the Plan Amendment is sufficient. Others felt that it will be very difficult to ensure compliance with the Protection and Enhancement Plans if the review only happens once every five years.</p> <p>Staff asserts the risk of a permit being revoked is sufficient incentive to ensure the owners implement their Protection and Enhancement Plans. While the county could require a review that is more frequent, the Plan Amendment does not give the county the authority to revoke the permit until the fifth year. Requiring an owner to submit for a review before year five would serve as a simple “check in” with no additional enforcement authority.</p>
<u>(1) As part of this review, the applicant shall submit documentation on the progress made in implementing the “Protection and Enhancement Plan” required by MCC 38.7380(F)(1)(b).</u>	
<u>(2) The County shall submit a copy of the applicant’s documentation to the State Historic Preservation Office (SHPO). The SHPO shall have 30 calendar days from the date this information is mailed to submit written</u>	<p>The Plan Amendment requires the county to coordinate the review with SHPO but is clear that the county is the final decision maker. The requirement that the county justify any conclusions that contradict SHPO’s comments comes directly from the Plan Amendment.</p>

<u>comments. If the County's determination contradicts comments from the SHPO, the County shall justify how it reached an opposing conclusion.</u>	
<p><u>(3) The County shall revoke the land use approval if the owner has failed to substantially implement the actions described in the "Protection and Enhancement Plan" according to the schedule for completing such actions in this plan. The County may, however, allow such a use to continue for up to one additional year from the date the County determines the applicant has failed to implement the actions if the applicant submits a written statement describing:</u></p> <p><u>(a) Unforeseen circumstances that prevented the applicants from completing the specified actions according to the approved schedule;</u></p> <p><u>(b) What progress the applicants have made towards completing such actions; and</u></p> <p><u>(c) A proposed revised schedule for completing such actions.</u></p>	<p><b>NEW LANGUAGE SINCE 4-3-06</b></p> <p>The word "substantially" has been added to this section as a clarification. This is intended to ensure that a permit is not subject to revocation if there are minor discrepancies between the Protection and Enhancement Plan and the work which was actually completed. The revocation is only intended when there are substantial differences between the proposed work and the completed work.</p>
<u>(F) The following guidelines apply to proposed Special Uses for Historic Buildings in addition to the Site Review Criteria of MCC 38.7000-38.7085.</u>	The provisions throughout Part (F) are taken directly from the Plan Amendment.
<u>(1) Cultural Resources</u>	The only public comments received regarding the provisions for the protection of cultural resources were supportive of adopting the standards as written in the Plan Amendment.
<u>(a) All applications for uses listed in MCC 38.7380(C) shall include a historic survey and evaluation of eligibility for the National Register of</u>	

<p><u>Historic Places, to be prepared by a qualified professional hired by the applicant. The evaluation of eligibility shall not be required for buildings previously determined to be eligible. For such properties, documentation of a prior eligibility determination shall be included in the application. The historic survey shall meet the requirements specified in MCC 38.7045(D)(3). The evaluation of eligibility shall follow the process and include all information specified in the National Register Bulletin “How to Apply the National Register Criteria for Evaluation” [National Park Service, National Register Bulletin #15].</u></p> <p><u>Eligibility determinations shall be made by the County, based on input from the State Historic Preservation Office (SHPO). The local government shall submit a copy of any historic survey and evaluation of eligibility to the SHPO. The SHPO shall have 30 calendar days from the date this information is mailed to submit written comments on the eligibility of the property to the local government. If the County’s determination contradicts comments from the SHPO, the County shall justify how it reached an opposing conclusion.</u></p>	
<p><u>(b) Applications for Special Uses in Historic Buildings shall include a “Protection and Enhancement Plan” which shall include the following:</u></p>	
<p><u>(i) A description of how the proposed use will significantly contribute to the protection and enhancement of the historic resource, including specific</u></p>	

<p><u>actions that will be taken towards restoration, protection and enhancement, and adequate maintenance of the historic resource, and a proposed schedule for completion of such actions.</u></p>	
<p><u>(ii) A statement addressing consistency of the proposed use with the Secretary of the Interior’s Standards for Rehabilitation of Historic Properties and the Secretary of the Interior’s Standards for Preservation of Historic Properties.</u></p>	
<p><u>(iii) Detailed architectural drawings and building plans that clearly illustrate all proposed exterior alterations to the building associated with the proposed use. Any exterior additions to the building or outdoor components of the proposed use (e.g. parking areas, site for temporary structures, interpretive displays) shall be shown on the site plan.</u></p>	
<p><u>(iv) Any proposal for commercial events at a historic property shall include an Operation Plan for Commercial Events, to be incorporated into the “Protection and Enhancement Plan”. The Operational Plan shall include sufficient information to demonstrate how the commercial events will remain incidental and subordinate to the primary use of the property,</u></p>	



<p><u>and shall, at minimum, address:</u></p> <ul style="list-style-type: none"> <li>- <u>Number of events to be held annually.</u></li> <li>- <u>Maximum size of events, including number of guests and vehicles at proposed parking area.</u></li> <li>- <u>Provision for temporary structures, including location and type of structures anticipated.</u></li> <li>- <u>How the proposed commercial events will contribute to protection and enhancement of the historic resource.</u></li> </ul>	
<p><u>(c) The local government shall submit a copy of the “Protection and Enhancement Plan” to the State Historic Preservation Office (SHPO). The SHPO shall have 30 calendar days from the date this information is mailed to submit written comments to the local governments. The SHPO comments shall address consistency of the proposed use with the Secretary of the Interior’s Standards for Rehabilitation of Historic Properties and the Secretary of the Interior’s Standards for Preservation of Historic Properties, and the effect of the proposed use on the historic resource.</u></p>	
<p><u>(d) Any alterations to the building or surrounding area associated with the proposed use must be determined by the local government to be consistent with the Secretary of the Interior’s Standards for Rehabilitation of</u></p>	

<u>Historic Properties and the Secretary of the Interior's Standards for Preservation of Historic Properties. If the County's final decision contradicts the comments submitted by the State Historic Preservation Office, the County shall justify how it reached an opposing conclusion.</u>	
<u>(e) The proposed use must be determined by the County to have no effect or no adverse effect on the historic character of the property, including features of the property contributing to its historic significance. If the County's final decision contradicts the comments submitted by the State Historic Preservation Office, the County shall justify how it reached an opposing conclusion.</u>	
<u>(2) Scenic Resources</u>	All of the existing standards regarding scenic resources will also continue to apply. This section is taken directly from the Plan Amendment.
<u>(a) New parking areas associated with the proposed use shall be located on the subject property as it existed as of January 1, 2006. Such parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other impervious materials are prohibited.</u>	
<u>(b) New parking areas associated with the proposed use shall be visually subordinate from Key Viewing Areas, and shall to the maximum extent practicable, use existing topography and existing vegetation to achieve visual subordination. New screening vegetation may be used if existing topography and vegetation are insufficient to help make the parking</u>	

<u>area visually subordinate from Key Viewing Areas, if such vegetation would not adversely affect the historic character of the building's setting.</u>	
<u>(c) Temporary structures associated with a commercial event (e.g. tents, canopies, portable restrooms) shall be placed on the subject property no sooner than two days before the event and removed within two days after the event. Alternatively, temporary structures may remain in place for up to 90 days in one calendar year after the event if the County determines that they will be visually subordinate from Key Viewing Areas.</u>	<b>NEW LANGUAGE SINCE 4-3-06</b> The words, "after the event" are replaced with the words, "in one calendar year" to clarify that a temporary structure may remain in place for only a total of 90 days each year.
<u>(3) Recreation Resources</u>	All of the existing standards regarding recreation resources will also continue to apply. This section is taken directly from the Plan Amendment.
<u>The proposed use shall not detract from the use and enjoyment of existing recreation resources on nearby lands.</u>	
<u>(4) Agricultural and Forest Lands</u>	This section is taken directly from the Plan Amendment..
<u>(a) The proposed use shall be compatible with and will not interfere with accepted forest or agricultural practices on nearby lands devoted to such uses.</u>	
<u>(b) The proposed use will be sited to minimize the loss of land suitable for production of crops, livestock or forest products.</u>	
<u>(c) A declaration has been signed by the landowner and recorded into County deeds and records specifying that the owners, successors, heirs and</u>	

<p><u>assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on nearby lands.</u></p>	
<p><del>(d) All owners of land in areas designated GGA 20, GGA 40, GGF 20, or GGA 40 that are within 500 feet of the perimeter of the subject property on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision on an application for a Special Use for a Historic Building.</del></p>	<p><b>NEW LANGUAGE SINCE 4-3-06</b> This section is proposed for deletion. The County's existing notice requirements in MCC 38.0620 and 38.0630 exceed the requirements of this section. This section would be repetitious and potentially confusing.</p>
<p><u>(G) The following standards address health, safety, and potential impacts to surrounding properties and apply to all proposed Special Uses in Historic Buildings.</u></p>	<p>Part G has been written to address health, safety, and potential impacts to surrounding properties. These provisions were drafted based on input from the public. Part 8 of the "Additional Review Uses for Historic Buildings" section of the Plan Amendment contains the following language which authorizes this section, "<i>Counties may impose additional requirements to address health, safety, and potential impacts to surrounding properties. For example, they may limit noise, parking, traffic, lighting and operating hours.</i>"</p>
<p><u>Option One</u> (1) <u>Outdoor uses shall be limited to daylight hours</u> between sunrise and sunset.</p> <p>Option two (1) Outdoor uses shall be limited to the hours of 7:00 am to 7:00 pm, except that between Memorial Day and Labor Day afternoon activities may extend to as late as 10:00 pm.</p>	<p>Historic properties are located primarily in rural residential areas where more people will be at home during evening hours and the level of activity and ambient noise is less than in most commercially zoned areas. Lighting and noise attributed to outdoor activities could be a significant disruption to established residential uses in evening hours.</p> <p>A substantial number of the comments we received expressed concerns about the potential for outdoor uses to negatively impact Gorge properties. This limitation is responsive to these concerns while providing a meaningful timeframe for outdoor activities associated with the commercial use of an historic</p>

	<p>property.</p> <p>Option One would limit the use to daylight operations. This may be difficult since it would present a different time limit each day depending on the time of sunrise and sunset. For context, a chart is included as an attachment to this staff report showing sun rise and sunset times as calculated by the US Naval Observatory.</p> <p><b>NEW LANGUAGE SINCE 4-3-06</b></p> <p>Option Two would allow for set hours with the potential for extended hours between Memorial Day and Labor Day. Memorial Day is the last Monday in May. Labor Day is the first Monday in September. Option Two would allow the conditional use review to result in operating hours that are longer during the months between Labor Day and Memorial Day, but in no case could an approval extend past 10:00pm. As established in MCC 15.269, the hours of 7:00 am to 10:00 pm are the hours currently codified for noise enforcement by the Sheriff's office.</p>
<p><u>(2) The use of outdoor amplified music in conjunction with a use authorized under this section is prohibited. All amplified music must be contained within the historic building associated with the use."</u></p>	<p>Not allowing amplified music reduces the probability that an outdoor use would have noise impacts on neighbors while not prohibiting outdoor music all together. Live acoustic music would still be allowed.</p> <p>We received a great deal of feedback regarding the potential negative impacts of noise on neighboring properties.</p>
<p><u>(3) Parking shall be provided in accordance with the Off Street Parking and Loading standards of MCC 38.4100 through 38.4215. MCC 38.4130(B) and (C) shall not apply to Special Uses in Historic Buildings. All parking associated with the use shall be provided on the subject property. Additionally, the surfacing</u></p>	<p>Existing county rules for other uses in the Gorge provide for parking on the subject parcel or a parcel within 350 feet of the site. Staff proposes to limit parking to the subject parcel to ensure the scale of use can be managed on-site without parking spilling over onto side streets or otherwise impacting surrounding properties. The majority of citizens who commented on parking were</p>

<p><u>requirements of MCC 38.4810(A) shall not apply. Instead, the surfacing requirements of MCC 38.7380(F)(2)(a) shall be employed.</u></p>	<p>strongly supportive of requiring all parking associated with the use to be contained on the subject property.</p> <p>Additional changes to the parking code to adopt parking ratios for the newly allowed uses are proposed in Section 38.4205. (Part III of the staff report) These changes respond to citizen concerns that adequate on-site parking be provided.</p> <p><b>NEW LANGUAGE SINCE 4-3-06</b> The Plan Amendment specifically prohibits the use of paving in parking areas and establishes what kinds of surfaces can be used. The County's parking code requires gravel, asphalt, or concrete. The language not applying the surfacing requirements of the County's Parking Code is intended to clarify that the surfacing requirements of the Plan Amendment are the ones to be employed.</p>
<p><u>(4) Business identification or facility entry signs located on the premises may be allowed, subject to the provisions of MCC 38.0080.</u></p>	<p>Public comments regarding signage focused on the sentiment that the existing sign code is sufficient.</p>
<p><u>(5) The proposed use shall be compatible with the surrounding area. Review of compatibility shall include impacts associated with the scale of the use, effects of noise, traffic generation, and hours of operation.</u></p>	<p>Many of the comments we received expressed a preference for a case by case review as opposed to "one-size-fits all" specific standards such as a set noise limit. Several people indicated that they did not want to see fixed standards that are unreasonable for a landowner to meet. This approach responds to this concern.</p> <p>This criterion is consistent with how the county presently evaluates similar type uses and provides flexibility for addressing the applicant's needs and neighborhood concerns.</p>
<p><u>(6) The proposed use shall not create hazardous conditions.</u></p>	<p>The county currently uses standards similar to (6), (7), and (8) to review conditional uses throughout the county. These standards usually relate to an analysis of emergency</p>

	vehicle access, traffic conditions resulting from the use, and the availability of water and septic capacity.
<u>(7) The proposed use shall not require public services other than those existing or approved in the area.</u>	
<p><u>Option One:</u>  <u>(8) If private services will be used (e.g. septic system, well, etc.), the applicant shall demonstrate the private service is or can be made adequate to serve the use.</u></p> <p><u>Option Two:</u>  <u>(8) If private services will be used (e.g. septic system, well, etc.), the applicant shall demonstrate that the private service can be wholly contained on the subject property and that the private service is or can be made adequate to serve the use. A private service may be authorized off-site, within an easement area, provided the capacity of the service does not exceed what can otherwise be accommodated on the subject property.</u></p>	<p><b>NEW LANGUAGE SINCE 4-3-06</b>  Option One requires the applicant to show that private services are adequate to serve the use.</p> <p>Option Two also requires the applicant to show the private services are adequate to serve the use and require evidence that all private services could be located on the subject property. There is a provision for allowing a private service to be located on a neighboring property within an easement area. The use of a neighboring property cannot be used to increase the capacity of the private service. This is intended to ensure the scale of the use does not exceed the carrying capacity of the subject property.</p>

## **PART II. PROPOSED AMENDMENTS TO THE OFF STREET PARKING AND LOADING SECTION OF CHAPTER 38.**

New parking ratios are proposed to give guidance regarding the amount of parking needed for the newly allowed uses. No other changes to the Off Street Parking and Loading Section are proposed. The proposed code amendments are presented in a two column format. The code language is presented in the left-hand column. Notes explaining the reasoning behind code language is presented in the right-hand column.

<p><b>PART 5 - SPECIAL DISTRICTS - OFF-STREET PARKING; PLANNED DEVELOPMENT; HILLSIDE DEVELOPMENT</b></p> <p><b>OFF-STREET PARKING AND LOADING</b></p>	<p>STAFF COMMENTS</p>
<p><b>§ 38.4205 MINIMUM REQUIRED OFF-STREET PARKING SPACES</b></p>	
<p>(A) Residential Uses</p>	
<p>(1) Single Family Dwelling – Two spaces for each dwelling unit.</p>	
<p>(2) Two Family Dwelling – Two spaces for each dwelling unit.</p>	
<p>(3) Recreational Vehicle Park – One space for each vehicle site.</p>	
<p>(B) Public and Semi-Public Buildings and Uses</p>	
<p>(1) Auditorium or Meeting Room (except schools) – One space for each 60 square feet of floor area in the auditorium or, where seating is fixed to the floor, one space for each four seats or eight feet of bench length.</p>	
<p>(2) Church – One space for each 80 square feet of floor area in the main auditorium or, where seating is fixed to the floor, one space for each four seats or eight feet of bench length.</p>	
<p>(3) Church Accessory Use – In addition to spaces required for the church, one space for each ten persons residing in such building.</p>	
<p>(4) Club or Association – These shall be treated as combinations of uses such as <del>hotel</del>, <u>overnight accommodations</u>,</p>	<p>This is an edit that is proposed to make the code internally consistent. We do not have any parking provisions for the use “hotel” but we</p>



restaurant, auditorium etc., and the required spaces for each separate use shall be provided.	are proposing provisions for the use “overnight accommodations.”
(5) Library – One space for each 100 square feet of reading room.	
(6) Senior High School and Equivalent Private and Parochial School – One space for each 56 square feet of floor area in the auditorium or, where seating is fixed to the floor, one space for each eight seats or 16 feet of bench length, or one space for each ten seats in classrooms, whichever is greater.	
(7) Primary, Elementary, or Junior High and Equivalent Private or Parochial School – One space for 84 square feet of floor area in the auditorium, or one space for each 12 seats or 24 feet of bench length, whichever is greater.	
(8) Kindergarten, Day Nursery, or Equivalent Private or Parochial School – One driveway, designed for continuous flow of passenger vehicles for the purpose of loading and unloading children plus one parking space for each two employees.	
(C) Retail <del>and</del> Office <u>and Commercial</u> Uses	This edit is intended to reflect the expanded range of uses.
(1) Store, and Personal Service Shop – One space for each 400 square feet of gross floor area.	The newly allowed uses of Art Gallery and Winery Sales/Tasting Room would be covered by this existing provision.
(2) Service and Repair Shop – One space for each 600 square feet of gross floor area.	
(3) Bank or Office, including Medical	

and Dental – One space for each 300 square feet of gross floor area.	
(4) Restaurant, Coffee Shop, Tavern or Bar – One space for each 100 square feet of gross floor area.	Newly allowed restaurants and establishments selling food/beverages would be covered by this existing provision.
(5) Mortuary – One space for each four chapel seats or eight feet of bench length.	
<u>(6) Overnight Accommodations- One space per guest room or suite plus extra spaces for dining rooms, ballrooms or meeting rooms as required by this section where the capacity of such areas exceeds the capacity of the guest rooms or suites.</u>	<p>Washington County, Hood River County, Yamhill County, and Jackson County all require one parking space per guest room.</p> <p>The language regarding extra spaces is intended to clarify that these spaces are only required when the special purpose rooms exceed the capacity of the overnight accommodations. For instance, a bed and breakfast establishment which contains a dining room that only serves the overnight guests would not need to provide additional parking for the dining room. However, if the dining room is used as a restaurant serving the general public, then the restaurant portion would be subject to the parking standards for restaurants.</p>
<u>(7) Commercial Events- One space for every three guests allowed within the maximum event size plus one space for each two employees.</u>	<p>It is possible the size of a commercial event would be dictated by the size of the indoor seating capacity but could include the use of land outdoors as well. Staff asserts that a square footage based requirement would not be appropriate since commercial events may involve land used for outdoor activities such as dancing or wedding ceremonies and parking how much of the outdoor land affects the capacity of the event site could be problematic. Outdoor activities would add to the square footage of the use but would not necessarily add to the overall capacity for guests. Linking the parking requirement to the attendance at the event seems most appropriate.</p>

	Staff surveyed the zoning ordinances of eight counties in Oregon. Hood River County was the only one with provisions for commercial events in their zoning code. The Hood River County parking code requires one space per three guests for weddings and related events. Other parking standards in the current parking code, such as the provisions for Kindergartens, require parking for employees as well as visitors. The provision requiring one space per two employees is the same as the existing parking requirements for Kindergartens under (B)(8) of this section.
<u>(8) Conference or Retreat Facilities- These shall be treated as combinations of uses such as-overnight accommodations, restaurant, auditorium etc., and the required spaces for each separate use shall be provided.</u>	Conference and retreat facilities may be used for daytime only activities or may be used for overnight activities. It is difficult to predict what uses may be involved with these facilities. The proposed language is the same as the existing language for “Club or Association” and anticipates that multiple activities will take place on the site.
(D) Recreation Uses	
(1) Gymnasium (except Schools) – One space for each 100 square feet of floor area.	
(2) Moorage (Boat) – One space for each two boat berths.	
(3) Stadium – One space for each eight seats or 16 feet of bench length.	
(4) Swimming Pool – One space for each 100 square feet of water surface.	
(5) Tennis Court or Racquet Club – One space for each court.	
(E) Storage	
(1) Storage – One space for each 5,000	

square feet of storage area for the first 20,000 square feet, plus one additional space for each additional 50,000 square feet.	
(F) Unspecified Uses	
Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director. <u>Alternatively, where a mixture of uses is proposed or where the applicant asserts a different amount of parking is warranted than what is required above, the applicant may submit a parking and loading study. Such a study will include estimates of parking and off-street loading demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates, and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. The study shall document the source of data used to develop the recommendations.</u>	<b>NEW LANGUAGE SINCE 4-3-06</b> The alternative parking standards have been deleted from this section and broken out into their own section. This is intended to avoid confusion. The alternative parking standards may be applied to any use, not just unspecified uses.
(G) Alternative Parking Standards	
<u>Where a mixture of uses is proposed or where the applicant asserts a different amount of parking is warranted than what is required above, the applicant may submit a parking and loading study. Such a study will include estimates of parking and off-street loading demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates, and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. The study shall document the source of data used to develop the recommendations.</u>	<b>NEW LANGUAGE SINCE 4-3-06</b> This provision is intended to allow flexibility when a proposed use does not fit neatly into any of the parking ratios established in this section. The requirement for hard data to substantiate the actual need for parking is critical to ensure that adequate on-site parking is assured.  This provision responds to many public comments we received which were in favor of a case-by-case review of all proposals rather than specific standards.

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### **PART III. PROPOSED AMENDMENTS TO THE ZONES IN WHICH THE PLAN AMENDMENT APPLIES.**

The Plan Amendment applies to all general management area zones except GGO. The following is an example of how this provision would be incorporated into one of the zones. The same change would be made to the GGF, GGA, GGRC, GG-PR, GG-CR, GGR, and GGC zones to add “Special Uses in Historic Buildings” as the last entry under the Conditional Uses section of each zone.

### **PART 4 – ZONING DISTRICTS**

#### ***FOREST DISTRICTS - GGF and GSF***

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#### **§ 38.2030 CONDITIONAL USES**

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

- (1) Structures associated with hunting and fishing operations.
- (2) Towers and fire stations for forest fire protection.
- (3) On parcels 40 acres in size or larger in a GGF– 20 or 80 acres in size or larger in a GGF– 40, a land division creating parcels smaller than the designated minimum parcel size, subject to the provisions of MCC 38.7360.
- (4) Life Estates on lands designated GGF– 20, pursuant to MCC 38.7355.
- (5) The following uses when found to comply with MCC 38.7310:
  - (a) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to MCC 38.7330.
  - (b) Bed and breakfast inns in single-family dwellings, pursuant to MCC 38.7335, and provided that the residence:
    1. Is included in the National Register of Historic Places; or
    2. Is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(6) Expansion of existing non-profit group camps, retreat or conference center.

(7) Non-profit, environmental learning or research facilities.

(8) Disposal sites managed and operated by the Oregon Department of Transportation or the Multnomah County Public Works Department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with MCC 38.7350.

(9) Exploration, development, and production of mineral and geothermal resources, subject to MCC 38.7035.

(10) Special Uses in Historic Buildings, subject to MCC 38.7380.

**Attachments:**

1. Full text of the Plan Amendment
2. Summary of Public Comments Received to Date
3. Sun Rise and Sun Set Times for 2006
4. Columbia River Gorge Commission Decision in Case COA-S-95-01 establishing the precedent that if a use is not listed in the zone, it is not allowed in the zone
5. Memo from Sandra Duffy, Assistant County Attorney, regarding off-site parking
6. Summary of changes to proposed code since the 4-3-06 work session.
7. Limits on Commercial Events established in Management Plan. These limits apply to uses other than Commercial Uses in Historic Properties.

## **SUBSTANTIVE MODIFICATION TO AMENDMENT PA-05-02 (adopted 11/15/05)**

### **NEW CULTURAL RESOURCES POLICY (Part I, Chapter 2 of Management Plan)**

Provide incentives to protect and enhance historically significant buildings by allowing uses of such buildings that are compatible with their historic character and that provide public appreciation and enjoyment of them as cultural resources.

### **SPECIAL USES IN HISTORIC BUILDINGS (Part II, Chapter 7 of Management Plan)**

#### **Additional Review Uses for Historic Buildings**

1. Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places shall be permitted to be open for public viewing, interpretive displays, and an associated gift shop that is no larger than 100 square feet and incidental and subordinate to the primary use of the property, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and the following sections of the "Additional Resource Protection Guidelines for Uses in Historic Buildings": Cultural Resources Guidelines 2.A and B, 3, 4 and 5; and all Scenic, Recreation, Agriculture and Forest Lands Guidelines. Voluntary donations and/or fees to support maintenance, preservation and enhancement of the cultural resource may be accepted by the landowner.
2. Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places, and which were former restaurants and/or inns shall be permitted to re-establish these former uses, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and the following sections of the "Additional Resource Protection Guidelines for Uses in Historic Buildings": Cultural Resources Guidelines 2.A and B, 3, 4 and 5; and all Scenic, Recreation, Agriculture and Forest Lands Guidelines. The capacity of restaurant use and overnight accommodations shall be limited to that existing in the former use, and the former use shall be contained within the limits of the building as of January 1, 2006. Banquets, private parties and other special events that take place entirely within an approved restaurant facility shall be considered a restaurant use allowed under this section.
3. Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places shall be permitted to hold commercial events, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and the following sections of the "Additional Resource Protection Guidelines for Uses in Historic Buildings": Cultural Resources Guidelines 2 through 5; and all Scenic, Recreation, Agriculture and Forest Lands Guidelines.
4. The following additional review uses may be allowed in all GMA land use designations except Open Space and Agriculture-Special on a property with a building either on or

eligible for the National Register for Historic Places and that was 50 years old or older as of January 1, 2006, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and "Additional Resource Protection Guidelines for Uses in Historic Buildings":

- A. Establishments selling food and/or beverages, limited to historic buildings that originally had kitchen facilities. The seating capacity of such establishments shall be limited to the building, as the building existed as of January 1, 2006, including any decks, terraces or patios also existing as of that date. Banquets, private parties and other special events that take place entirely within approved establishments selling food and/or beverages shall be considered a part of the approved use.
- B. Overnight accommodations. The room capacity of such accommodations shall be limited to the total number of existing rooms in the historic building as of January 1, 2006.
- C. Commercial events in the building or on the subject property, incidental and subordinate to the primary use of the property
- D. Wineries upon a showing that processing of wine is from grapes grown on the subject parcel or the local region, within a historic building, as the building existed as of January 1, 2006.
- E. Sales/tasting rooms in conjunction with an on-site winery, within a historic building, as the building existed as of January 1, 2006.
- F. Conference and/or retreat facilities within a historic building, as the building existed as of January 1, 2006.
- G. Artist studios and galleries within a historic building, as the building existed as of January 1, 2006.
- H. Gift shops within a historic building, as the building existed as of January 1, 2006 that are:
  - (1) incidental and subordinate to another approved use included in Guideline 1 of "Additional Review Uses for Historic Buildings"; and
  - (2) no larger than 100 square feet in area.
- I. Interpretive displays, picnic areas or other recreational day use activities on the subject property.
- J. Parking areas on the subject property to support any of the above uses.



5. For the purposes of the guidelines in this section, the term “historic buildings” refers to buildings either on or eligible for the National Register of Historic Places. Eligibility for the National Register shall be determined pursuant to Cultural Resources Guideline 1 of “Additional Resource Protection Guidelines for Uses in Historic Buildings.”
6. Uses 3 and 4.C are not subject to the “Commercial Events” provisions in Part II, Chapter 7 of the Management Plan. Commercial events at historic properties will be regulated by the guidelines contained in this section. Applications for commercial events shall include all information in the “Operational Plan for Commercial Events” as specified in Guideline 2.D of “Additional Resource Protection Guidelines for Historic Buildings”. The following apply to commercial events at historic properties:
  - A. Commercial events include weddings, receptions, parties and other gatherings that are incidental and subordinate to the primary use on a parcel.
  - B. The owner of the subject property shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject property of each event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.
7. Uses 1 and 4.I are not subject to the parking limits and associated “Facility Design Guidelines” in the Recreation Intensity Classes.
8. Counties may impose additional requirements to address health, safety, and potential impacts to surrounding properties. For example, they may limit noise, parking, traffic, lighting and operating hours.
9. Land use approvals for special uses in historic buildings shall be subject to review by the local government every five years from the date the original approval was issued. As part of this review, the applicant shall submit documentation to the local government on the progress made in implementing the “Protection and Enhancement Plan” required in Cultural Resources Guideline 2 of “Additional Resource Protection Guidelines for Uses in Historic Buildings”. The local government shall submit a copy of the applicant’s documentation to the State Historic Preservation Agency (SHPA). The SHPA shall have 30 calendar days from the date this information is mailed to submit written comments to the local government. If the local government’s determination contradicts comments from the SHPA, the local government shall justify how it reached an opposing conclusion. The local government shall revoke the land use approval if the owner has failed to implement the actions described in the “Protection and Enhancement Plan” according to the schedule for completing such actions in this plan. The local government may, however, allow such a use to continue for up to one additional year from the date a local government determines the applicant has failed to implement the actions if the applicant submits a written statement describing unforeseen circumstances that prevented the applicants from completing the specified actions according to the approved schedule, what progress the applicants have made towards completing such actions, and a proposed revised schedule for completing such actions.

10. In the event a court enters a judgment that one or more of the use authorizations provided for in paragraphs one through four of this section are invalid, the authorizations for other uses in this section are severed and will remain in effect.

**Additional Resource Protection Guidelines for Uses in Historic Buildings (Part II, Chapter 7 of Management Plan)**

The following guidelines apply to proposed uses listed under "Special Uses for Historic Buildings" in addition to all other relevant guidelines for protection of scenic, cultural, natural and recreation resources:

*Cultural Resources*

1. All applications for uses listed in Guideline 4 of "Additional Review Uses for Historic Buildings" shall include a historic survey and evaluation of eligibility for the National Register of Historic Places, to be prepared by a qualified professional hired by the applicant. The evaluation of eligibility shall not be required for buildings previously determined to be eligible. For such properties, documentation of a prior eligibility determination shall be included in the application. The historic survey shall meet the requirements specified in "Historic Surveys and Reports" [Management Plan, page I-58]. The evaluation of eligibility shall follow the process and include all information specified in the National Register Bulletin "How to Apply the National Register Criteria for Evaluation" [National Park Service, National Register Bulletin #15].

Eligibility determinations shall be made by the local government, based on input from the state historic preservation Agency (SHPA). The local government shall submit a copy of any historic survey and evaluation of eligibility to the SHPA. The SHPA shall have 30 calendar days from the date this information is mailed to submit written comments on the eligibility of the property to the local government. If the local government's determination contradicts comments from the SHPA, the local government shall justify how it reached an opposing conclusion.

2. Applications for Special Uses for Historic Buildings shall include a "Protection and Enhancement Plan" which shall include the following:
  - A. A description of how the proposed use will significantly contribute to the protection and enhancement of the historic resource, including specific actions that will be taken towards restoration, protection and enhancement, and adequate maintenance of the historic resource, and a proposed schedule for completion of such actions.
  - B. A statement addressing consistency of the proposed use with the *Secretary of the Interior's Standards for Rehabilitation of Historic Properties* and the *Secretary of the Interior's Standards for Preservation of Historic Properties*.

- C. Detailed architectural drawings and building plans that clearly illustrate all proposed exterior alterations to the building associated with the proposed use. Any exterior additions to the building or outdoor components of the proposed use (e.g. parking areas, site for temporary structures, interpretive displays) shall be shown on the site plan.
- D. Any proposal for commercial events at a historic property shall include an Operation Plan for Commercial Events, to be incorporated into the "Protection and Enhancement Plan". The Operational Plan shall include sufficient information to demonstrate how the commercial events will remain incidental and subordinate to the primary use of the property, and shall, at minimum, address:
- (1) Number of events to be held annually.
  - (2) Maximum size of events, including number of guests and vehicles at proposed parking area.
  - (3) Provision for temporary structures, including location and type of structures anticipated.
  - (4) How the proposed commercial events will contribute to protection and enhancement of the historic resource.
3. The local government shall submit a copy of the "Protection and Enhancement Plan" to the State Historic Preservation Agency (SHPA). The SHPA shall have 30 calendar days from the date this information is mailed to submit written comments to the local governments. The SHPA comments shall address consistency of the proposed use with the *Secretary of the Interior's Standards for Rehabilitation of Historic Properties* and the *Secretary of the Interior's Standards for Preservation of Historic Properties*, and the effect of the proposed use on the historic resource.
4. Any alterations to the building or surrounding area associated with the proposed use have been determined by the local government to be consistent with the *Secretary of the Interior's Standards for Rehabilitation of Historic Properties* and the *Secretary of the Interior's Standards for Preservation of Historic Properties*. If the local government's final decision contradicts the comments submitted by the State Historic Preservation Agency, the local government shall justify how it reached an opposing conclusion.
5. The proposed use has been determined by the local government to have no effect or no adverse effect on the historic character of the property, including features of the property contributing to its historic significance. If the local government's final decision contradicts the comments submitted by the State Historic Preservation Agency, the local government shall justify how it reached an opposing conclusion.

### *Scenic Resources*

1. New parking areas associated with the proposed use shall be located on the subject property as it existed as of January 1, 2006. Such parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other impervious materials shall be prohibited.
2. New parking areas associated with the proposed use shall be visually subordinate from Key Viewing Areas, and shall to the maximum extent practicable, use existing topography and existing vegetation to achieve visual subordination. New screening vegetation may be used if existing topography and vegetation are insufficient to help make the parking area visually subordinate from Key Viewing Areas, if such vegetation would not adversely affect the historic character of the building's setting.
3. Temporary structures associated with a commercial event (e.g. tents, canopies, portable restrooms) shall be placed on the subject property no sooner than two days before the event and removed within two days after the event. Alternatively, temporary structures may remain in place for up to 90 days after the event if the local government determines that they will be visually subordinate from Key Viewing Areas.

### *Recreation Resources*

1. The proposed use shall not detract from the use and enjoyment of existing recreation resources on nearby lands.

### *Agricultural and Forest Lands*

1. The proposed use is compatible with and will not interfere with accepted forest or agricultural practices on nearby lands devoted to such uses.
2. The proposed use will be sited to minimize the loss of land suitable for production of crops, livestock or forest products.
3. A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Agriculture-Special, Commercial Forest Land, or Large or Small Woodland.
4. All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Agriculture-Special, Commercial Forest Land, or Large or Small Woodland that are within 500 feet of the perimeter of the subject property on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision on an application for a Special Use for a Historic Building.

## **NEW GMA REVIEW USE GUIDELINE (Part II, Chapters 1, 2, 4, 5, and 6)**

1. The following uses may be allowed on lands designated Large-Scale or Small Scale Agriculture, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources:
  - A. Special uses in historic buildings, subject to the guidelines in “Special Uses in Historic Buildings” (Part II, Chapter 7).

*Note: The same language is to be inserted in the following chapters for the following GMA designations: Chapter 2 for lands designated Small Woodland, Large Woodland, and Commercial Forest; Chapter 4 for lands designated Residential; Chapter 5 for lands designated Commercial and Rural Center; and Chapter 6 for lands designated Public Recreation and Commercial Recreation. The numbering of the item may change if it is inserted at the end of the lists of review uses, instead of the beginning; the text remains exactly as shown above.*

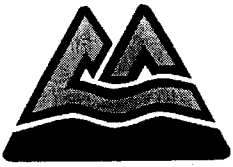
## **REVISED GMA GUIDELINE 2. A FOR COMMERCIAL EVENTS (Part II, Chapter 7)**

2. Commercial events may be allowed in the GMA except on lands designated Open Space and Commercial Forest, subject to compliance with the following conditions and the scenic, cultural, natural and recreation resources guidelines:
  - A. The use must be in conjunction with a lawful winery, wine sales / tasting room, bed and breakfast inn, or commercial use, or dwelling listed in the National Register of Historic Places. If the use is proposed on a property with a building on or eligible for the National Register of Historic Places, it shall be subject to the guidelines in “Special Uses in Historic Buildings” (Part II, Chapter 7), and not the guidelines of this section.

## **NEW CULTURAL RESOURCES ENHANCEMENT STRATEGY OBJECTIVE (Part III, Chapter 3 of Management Plan)**

### *GMA/SMA Objectives*

- 3.D. Encourage local governments to expand existing incentives for the protection of historic buildings, including adopting resolutions or ordinances that facilitate landowner access to federal and state programs providing such incentives.



**Public Affairs Office**

**MULTNOMAH COUNTY OREGON**

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March 23, 2006

The following is a summary of public comments received by the Multnomah County Public Affairs Office (PAO) regarding the proposed code amendment allowing commercial uses in historic properties in the Columbia River Gorge National Scenic Area.

Two public workshops were sponsored by Multnomah County's Land Use Planning Division, on March 2 and March 16, 2006, in Corbett. Invitations were mailed in mid-February advertising both dates and *The Oregonian* and *Gresham Outlook* newspapers ran meeting announcements. Workshop participants were encouraged to provide feedback and ask questions through a variety of venues:

- Question and answer session at the March 2, 2006 workshop
- Comment cards collected at both workshops or mailed to the PAO
- Emails, phone calls and fax
- Discussion opportunities at the March 16, 2006 workshop

The March 2 workshop consisted of a presentation on the county's proposed implementation of the Plan Amendment, as transmitted by the Columbia River Gorge Commission. Participants were asked to provide specific input on areas in which the county has discretion regulating, specifically, impacts to the neighborhood (hours of operation, traffic, parking, lighting, signage, noise and temporary structures). Twenty-eight people filled out the sign-in sheet for the meeting.

A summary of questions and comments raised at the March 2 workshop is below:  
Questions:

- How does a property owner find out if they are eligible to apply for a commercial use?
- What is GMA vs. SMA?
- How many other properties not known, "need research" to determine if eligible?
- Where did the 50-year threshold come from?
- Will the public be able to comment case by case?
- Can the property owner only do what the building was historically used for?
- Do people have to apply for a commercial use?
- Could the winery provision be extended to other agricultural activities historic to Multnomah County to make those uses viable?
- The Donovan Report was mentioned. How many properties are eligible for commercial use?
- How loud is 50 decibels?
- The county is offering options on the ways to regulate the neighborhood impacts. Do we have to choose one of the options or could we choose a combination?
- Could the operational plan deal with noise on a case-by-case basis?

**ATTACHMENT  
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PC-06-004**

Questions (continued):

- Why regulate noise of commercial activities at all? We all hear the loud train.
- Why should I be uncomfortable if someone else wants to make money?
- Who pays the fees and costs of operating the commercial uses?
- Why aren't there allowances for parking on other properties?
- Will proposed commercial use affect my quality of life?
- Will use affect my property value?
- How do we ensure there will be adequate enforcement?
- Does the county's code enforcement officer enforce other rules and laws outside land use?
- What is the cost for appeals?
- What is the total cost for fees and permits in pursuing a commercial use?
- Does the 5-year evaluation language for Enhancement/Protection plans mean an applicant doesn't have to do anything for 5 years?
- Regarding temporary structures, make sure the code language is doable. For example, are green tents even available?
- Will people have to pay for a separate review for the County to evaluate implementation of the Enhancement/Protection Plan?

Comments:

- The permit fee should be determined on a case-by-case basis.
- There should be a tax break for historic properties.
- Noise is very subjective.
- The county should give equal treatment to fund and enforce livability as it does to develop codes.
- Noise should be measured another way, ie, by hours of operation, etc. on a case-by-case basis.
- Regulating on a case-by-case basis should include specific conditions, with neighbor notice.
- It is very quiet out in the gorge. I am concerned about the potential for loud noises associated with commercial uses.
- The sheriff's office should police traffic in the gorge. We need a full-time sheriff.
- Truck limits are imposed only on the applicant.
- County's current traffic rules seem sufficient.
- Lighting regulations should accommodate for security and safety needs.
- Hours of operations regulations should not be one size fits all.
- The Viewpoint Inn owners encourage neighbors and residents to talk to them. They want to be good neighbors.
- There should be a timeframe on temporary structures.
- Operations will have to be maintained in the historical style and character.

In addition, feedback was submitted to the PAO via email, comment card and fax. Below is a summary.

Date Received	Comments (emails summarized, comment cards reflected verbatim)
3-2-06 Email	<p>Thank you for holding workshop and allowing those affected to provide feedback. Thrilled to see an interest in preserving historic structures in the NSA. Concerned about the 17 historic properties identified between Lewis &amp; Clark State Park and Wahkeena Falls because of proximity to residential areas. Recommend the county:</p> <ul style="list-style-type: none"> <li>• Not allow outdoor commercial events in residential neighborhoods</li> <li>• Limit the size of events allowed in residential neighborhoods</li> <li>• Not allow amplified music in residential neighborhoods</li> <li>• Not allow outdoor event lighting in residential neighborhoods</li> <li>• Limit parking to the site only – no parking on side streets</li> <li>• Provide the human, material and financial resources to enforce the rules</li> </ul>
3-2-06 Email to Land Use  3-8-06 Email to PAO	<p>Concerned that the county is acting too quickly and rashly with decisions. Hopes the buffer requirement for commercial properties be expanded past the current 30 foot residential buffer. Please limit the number of patrons and parking. Supports B&amp;Bs, but not restaurants, wedding facilities and hotels. Understands that the county has the right to enact stricter provisions for regulation than what the Gorge Commission transmitted. Recommends police presence in Corbett for the two public workshops due to the controversy and high emotion of this issue. Fears attending meetings because of past threats and damage done to property.</p>
3-2-06 Comment card	<p>Please do not allow commercial activities in residential neighborhoods. Living next to a house who had unpermitted commercial events has ruined the very reason we moved to rural Corbett. The Gorge Commission has not protected the Scenic Act and I ask the county to uphold the intent of the Act which states such business should be kept in established urban areas.</p>
3-2-06 Comment card	<p>When do complaints from the same people become harassment? And does the county even follow up on the complaint or do they willy nilly believe the complainer. I have observed this happening time after time – If you tell a lie enough times, when does it become the truth?</p>
3-2-06 Comment card	<p>Noise: How will the county monitor and enforce 50 decibel levels? How many complaints will be required before the county takes action? Can noise be limited to indoors only? What is “consistent character” of noise in the area? Traffic: Require traffic management plan for commercial events. Signage: Require that all signs posted on trees, street signs, etc. such as “Susie &amp; Jim Wedding” be taken down immediately after event.</p>
3-2-06 Comment card	<p>1) Case by case review of candidate properties needs public input. 2) Property owners of properties in Donovan Report should be notified so that they know about this opportunity. 3) Seems to me that existing standards for lighting, traffic, parking, noise, signage, etc., are sufficient, ie, no additional restrictions are necessary.</p>
3-2-06 Comment card	<p>Including a specific requirement that any outdoor music be non-amplified. And all outdoor activities be ended at 6 pm (or dusk).</p>
3-2-06 Comment cards (3)	<p>Card 1: Enforcement can be articulated but its costly to carry out. Does the county have an enforcement program? Multnomah County – East needs an enforcement program! Use proactive approaches too – like good neighbor agreements. Card 2: Ensure that locally relevant agri-tourism (farm stands, etc.) are not blocked out of “may allow” uses. Card 3: Protection and enforcement plan should be publicly beyond 750 ft. prior to LU approach – protection and enhancement plans should include incremental points and check-ins. Don’t let five years of adverse impact of non-compliance persist.</p>
3-2-06 Comment card	<p>Great idea!</p>
3-2-06 Comment card	<p>The City of Gresham is outside the Gorge scenic area. Why is the City of Gresham designated to review and issue building permits in the gorge? No good.</p>
3-2-06 Comment card	<p>Restoration ok – commercial use only if continuation of original purpose. Stick with 50 decibels.</p>
3-5-06	<p>Considers noise the greatest concern to neighbors because of its impact to quality of life and property values.</p>



Email	<p>Particularly concerned about outdoor events and bands – the fact that noise carries great distances, randomly. Offers two suggestions: prohibit amplified music outdoors or allow noise no more than 50 decibels measured at – or beyond – the property line. Also states that case by case standards could create endless controversy over both permitting and enforcement.</p>
3-7-06 Comment cards (2)	<p>Card 1: Other counties obviously had some influence regarding their agricultural interest, i.e., grape growing, wine-making, tasting rooms, etc. Please extend that thinking to include the agricultural interests of East Multnomah County. Before pollution from the Troutdale aluminum plant destroyed the industry, East County had a thriving agricultural business growing daffodils, gladiolas, tulips and other floral crops. With the aluminum plant closed, this industry might be revived. The nucleus of the world renowned daffodil hybridizing business developed by Murray Evans still exists. Some encouragement by Multnomah County might result in a revival of this business. Reference: Mereshon, Clarence “Murray W. Evans,” <u>Living East of the Sandy</u>, Volume I, 1999.</p> <p>Card 2: With regard to “noise levels,” the more practical alternative is to require the use to be consistent with the character of the area. Do not make the plan so restrictive with respect to parking and hours of operation that an owner cannot operate profitably. In this regard, make the owner spell out conditions on his/her application, then hold them to it. With respect to the View Point Inn – expedite the process. This historic inn should not have been subjected to the process undergone because of an initial mistake by the survey classing it as a residence. It would be a tragedy should a wealthy individual acquire the inn and make it a residence not open to the public.</p>
3-8-06 Faxed to Land Use	<p>County should consider first and foremost the goal of historic preservation for a significant cultural resource. Cites the cost of repair, restoration and regular maintenance as concomitant with the ability to generate revenue to continue care of the structure. States that the View Point Inn is in a more exacting and demanding arena, being on the National Register, than an old barn. The county needs to be certain not to impose any arbitrary restrictions or across the board quotas that could potentially harm or create an adverse effect in the property owner achieving the Gorge Commission’s mandate to ensure historic preservation of these “significant cultural resources.” Urges the county to strike an appropriate balance that ensures these “resources” (View Point Inn) can operate and generate sufficient revenue to be restored and saved for future generations to come. Noise, parking, traffic, hours of operation, signage, lighting and temporary structures will differ in each case. <u>Hours of operation</u>: Thinks Hood River’s hours of operation rule of 7 am to 10 pm weekdays and 7 am to midnight weekends is reasonable.</p> <p><u>Noise</u>: Noise is subjective. The location of the structure should be taken into consideration. All of View Point Inn’s immediate neighbors are supportive and have reasonable expectations of what noise could be created by its operation.</p> <p><u>Parking</u>: County parking code already requires parking based on the type and size of the use, which makes sense. Asks for clarification of what adopting alternative standards would be. <u>Traffic</u>: Traffic requires an impact study already. Not clear on the “limit the size of truck” thing. Don’t semis already deliver to places like Menucha, Crestview and Multnomah Falls Lodge? A restaurant will require a large delivery. Limiting these deliveries will be overly restrictive, given the Forest Service runs huge logging trucks along Larch Mountain and the Scenic Highway. Needs more information on county’s “traffic management plan” before commenting on it.</p> <p><u>Signage</u>: Signage already has standards, don’t add more.</p> <p><u>Lighting</u>: Lighting also has current requirements and must be done case by case. Safety needs to be considered in lighting rules.</p> <p><u>Temporary structures</u>: It could be difficult to require temporary structures to be dark earth-tone colors and also difficult to set a maximum square footage on tents. The timeframe for when they should go up and down is fine.</p>
3-8-06 Email and fax	<p>Allowing outdoor parties in historic buildings creates more negative impacts than it fixes.</p> <p><u>Noise</u>: Do not allow outdoor music, amplified or not, if a property has neighbors within 750 feet on any side.</p> <p><u>Lighting</u>: Do not allow artificial lighting.</p> <p><u>Parking</u>: Event operators will use buses to get around parking restriction. This already happens and people allow buses to run for hours.</p> <p><u>Traffic</u>: Traffic is already crowded during the peak summer months. Concerned about the combination of the code amendment and a new casino in the gorge.</p> <p><u>Temporary structures</u>: Structures should be visually subordinate from key viewing areas. They should also not impact neighborhood views in any way.</p> <p>Input on other parameters:</p> <ul style="list-style-type: none"> <li>• Limit the number of events and hours of operation – similar to other Gorge Commission policy of 18 events per year</li> </ul>

	<ul style="list-style-type: none"> <li>• Take into account the location of the event site – particularly if close to other properties</li> <li>• Strengthen the language “eligible for historic registrar” – make sure professionals in historic preservation are making the determination</li> <li>• Start with a temporary commercial use license including an option to work out problems if they arise and the ability to revoke the license if there is a pattern of problems</li> </ul>
3-9-06 Email	<p>The policy of allowing commercial uses of historic properties – with the intent that the owners will invest and restore the properties – sounds good in theory. It does pose problems for those people who live next to these places. Requests that the county delay implementation of the new uses until:</p> <ul style="list-style-type: none"> <li>• Adjacent property owners can testify at each individual owner’s application</li> <li>• Any possible appeal or litigation about this is settled.</li> </ul>
3-14-06 Email	<p><u>Lighting and noise:</u> Concerned about the impact of lighting and noise from commercial events because they are difficult to enforce and have the most long-term effect on neighbor relations and quality of life. Supports the restriction of commercial events taking place indoors only and supports requiring that the commercial use be consistent with the character of the area.</p> <p><u>Traffic and parking:</u> Traffic and parking are secondary concerns. In addition to the road rules, supports the county requiring all parking to be on the property of the historic structure, with the possibility of exceptions granted on a case-by-case basis. Supports limits on the size of trucks visiting sites and limits to the number of trips per week.</p> <p><u>Hours of operation:</u> Supports hours of operation being limited to only daylight hours and supports occasional use of temporary structures as long as they are subjected to current NSA rules.</p> <p><u>Signage and lighting:</u> Signage and lighting have the potential to greatly impact the character of the area. Restrictions should be as stringent as allowed. These are difficult to enforce. Supports restrictions on height and square footage of signs and the rule that signs be limited to only on the actual historic property or private properties adjacent to it. One-time signs are not a problem if removed immediately.</p>

Twenty-seven people filled out the sign-in sheet for the March 16 workshop, in which Land Use Planning staff presented draft language for the county code amendment, based on the public feedback received. Below is a summary of feedback submitted to the PAO via email, comment card and fax.

Date Received	Comments (emails summarized, comment cards reflected verbatim)
3-16-06 Comment Card	The general “feeling” I get is this: the county will be flexible in its application of standards, which I support. I also sense a greater appreciation of the need to save the Gorge’s historic cultural resources such as the View Point Inn. I reiterate: for a wealthy individual to buy the inn and convert it to a residence, closed to the public would be a tragedy!
3-16-06 Comment card	I think “no amplified music” is a reasonable compromise for dealing with the outdoor event issue.
3-16-06 Comment Card	Under range of uses: 100 sq. ft. gift shop is not big enough. That would be 10 ft. x 10 ft. It should be at least 20 ft x 20 ft.
3-16-06 Comment card	Enforcement of traffic and parking generation is critical to adjacent property owners and neighbors! Please convey the importance of augmenting the county’s existing code compliance program!! If East county is to grow gracefully this program must also.
3-16-06 Comment card	The problem with opening up more development in the gorge with restrictions to lessen the impact of the operation is compliance. Any rules or guidelines will be ignored by some folks and then neighbors are the only eyes to make sure rules are followed. Not good for neighbor relations.
3-16-06 Comment card	My husband and I have a small berry farm with a u-pick operation that operates mid-July through mid-September (heavy traffic or congestion on Larch Mt. Rd. or Salzman) in the vicinity of the View Point Inn would prove disruptive to the access our customers would have to our farm. Noise issues could also detract from the “country” experience our customers are seeking.
3-16-06 Comment card	Card 1: I think that the hours of operation needs to be limited a bit in summer given how late “daylight” is. Perhaps until 7 pm would be clearer and less intrusive on the neighborhood. Card 2: Concerned about the parking plan (on historic property) and the limited resources identified. Parking rules mean little if county intends to enforce them after the event. Recommend that permit application provide

	<p>money for police to enforce parking rule.</p> <p>Card 3: I think that a 5<sup>th</sup> yr. review for implementation is insufficient to protect and ensure the properties. I suggest that an annual review be made and the commercial use permit be made dependent on progress on protection and enhancement plan. Otherwise a permit holder could simply use, abuse then discard a property, damaging a historic property.</p>
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Astronomica  
U. S. Naval  
Washington,

PORTLAND, OREGON  
Rise and Set for the Sun for 2006

Pacific Standard Time

Location: W122 39, N45 31

Day	Jan.		Feb.		Mar.		Apr.		May		June		July		Aug.		Sept.		Oct.	
	Rise	Set	Rise	Set	Rise	Set	Rise	Set	Rise	Set	Rise	Set	Rise	Set	Rise	Set	Rise	Set	Rise	Set
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01	0751	1638	0732	1717	0649	1758	0551	1839	0459	1918	0425	1952	0426	2003	0455	1939	0532	1848	0609	1751
02	0751	1639	0730	1719	0647	1759	0549	1840	0457	1919	0425	1953	0426	2003	0456	1937	0533	1846	0610	1749
03	0751	1640	0729	1720	0645	1800	0547	1841	0456	1920	0424	1954	0427	2003	0457	1936	0534	1844	0611	1747
04	0751	1641	0728	1722	0644	1802	0545	1843	0454	1921	0424	1955	0428	2002	0458	1935	0536	1843	0613	1745
05	0751	1642	0727	1723	0642	1803	0543	1844	0453	1923	0423	1955	0428	2002	0459	1933	0537	1841	0614	1743
06	0750	1643	0725	1725	0640	1805	0541	1845	0451	1924	0423	1956	0429	2001	0500	1932	0538	1839	0615	1741
07	0750	1644	0724	1726	0638	1806	0540	1847	0450	1925	0422	1957	0430	2001	0502	1930	0539	1837	0617	1739
08	0750	1645	0723	1728	0636	1807	0538	1848	0449	1926	0422	1957	0430	2001	0503	1929	0541	1835	0618	1738
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13	0748	1651	0715	1735	0627	1814	0529	1854	0442	1932	0421	2000	0435	1958	0509	1921	0547	1825	0624	1729
14	0748	1652	0714	1736	0625	1815	0527	1856	0441	1934	0421	2001	0436	1957	0510	1920	0548	1823	0626	1727
15	0747	1654	0712	1738	0623	1817	0525	1857	0440	1935	0421	2001	0436	1956	0511	1918	0549	1822	0627	1725
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17	0746	1656	0709	1741	0619	1819	0522	1900	0438	1937	0421	2002	0438	1955	0514	1915	0552	1818	0630	1721
18	0745	1658	0708	1742	0617	1821	0520	1901	0437	1938	0421	2002	0439	1954	0515	1913	0553	1816	0631	1720
19	0744	1659	0706	1744	0616	1822	0518	1902	0436	1939	0421	2003	0440	1953	0516	1911	0554	1814	0632	1718
20	0744	1700	0704	1745	0614	1823	0516	1903	0435	1940	0422	2003	0441	1952	0517	1910	0555	1812	0634	1716
21	0743	1702	0703	1746	0612	1825	0515	1905	0434	1941	0422	2003	0442	1951	0519	1908	0556	1810	0635	1715
22	0742	1703	0701	1748	0610	1826	0513	1906	0433	1943	0422	2003	0443	1950	0520	1906	0558	1808	0636	1713
23	0741	1704	0659	1749	0608	1827	0511	1907	0432	1944	0422	2003	0444	1949	0521	1904	0559	1806	0638	1711
24	0740	1706	0658	1751	0606	1828	0510	1909	0431	1945	0423	2003	0446	1948	0522	1903	0600	1804	0639	1710
25	0739	1707	0656	1752	0604	1830	0508	1910	0430	1946	0423	2004	0447	1947	0523	1901	0601	1802	0641	1708
26	0738	1709	0654	1753	0602	1831	0506	1911	0429	1947	0423	2004	0448	1946	0525	1859	0603	1800	0642	1707
27	0737	1710	0652	1755	0600	1832	0505	1912	0428	1948	0424	2004	0449	1945	0526	1857	0604	1758	0643	1705
28	0736	1712	0651	1756	0558	1834	0503	1914	0428	1949	0424	2003	0450	1944	0527	1856	0605	1756	0645	1703
29	0735	1713			0556	1835	0502	1915	0427	1950	0425	2003	0451	1942	0528	1854	0606	1755	0646	1702
30	0734	1714			0555	1836	0500	1916	0426	1950	0425	2003	0452	1941	0530	1852	0608	1753	0647	1700
	0733	1716			0553	1838			0426	1951			0453	1940	0531	1850			0649	1659

Add one hour for daylight time, if and when in use.

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

FRIENDS OF THE COLUMBIA GORGE,	)	
INC. and MARILYN KELLY,	)	
	)	
Petitioners,	)	
	)	CRGC No. COA-S-95-01
v.	)	
	)	
SKAMANIA COUNTY,	)	
	)	DECISION
Respondent,	)	
	)	
and	)	
	)	
NATURE FRIENDS NORTHWEST,	)	
	)	
Respondent-Intervenor.)	)	

This case is an appeal by Friends of the Columbia Gorge ("Friends") and Marilyn Kelly<sup>1</sup> from a decision of Skamania County upholding the planning director's approval of the conversion of a single-family residence to a clubhouse in the Columbia River Gorge National Scenic Area. We reverse.

The applicant, Nature Friends Northwest ("NFW"), owns a two-acre parcel of property in Skamania County. The property is located in a general management area designated commercial forest. NFW previously obtained a permit to construct a single-family residence at the site. On June 28, 1994, NFW submitted an application to the County for a permit to rebuild an existing structure on the property for use as a clubhouse. The planning director approved the request and the Friends, as petitioner, appealed the decision to the Board of Adjustment. The Board conducted a hearing and upheld

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<sup>1</sup>At oral argument, the Friends indicated Marilyn Kelly is no longer participating in the appeal.

the director's approval of the clubhouse. The petitioner then filed this appeal with the Gorge Commission.

We address the standard of review first. The Commission shall reverse or remand a land use decision when:

- (a) the governing body exceeded its jurisdiction;
- (b) the decision is unconstitutional;
- (c) the decision violates a provision of applicable law and is prohibited as a matter of law;
- (d) the decision was clearly erroneous or arbitrary and capricious;
- (e) the findings are insufficient to support the decision;
- (f) the decision is not supported by substantial evidence in the whole record;
- (g) the decision is flawed by procedural errors that prejudice the substantial rights of the petitioner;
- (h) the decision improperly construes the applicable law; or,
- (i) a remand is required pursuant to section (d).

Rule 350-60-220

Since the issues raised by petitioner are essentially legal in nature, our inquiry focuses on whether the decision violates a provision of applicable law and is prohibited as a matter of law, based on the record below.

Petitioner contends the county erred by approving the clubhouse because it is not an allowed use in the ordinance and the management plan which lists the uses for each zone. Under this view, any use not listed is prohibited.

The respondent and intervenor (the applicant) argue that if a specific use is not allowed in the ordinance or the management plan, the governing body may authorize it if the use fits the "general framework" of the ordinance and "furtheres the purposes of the land use designation." The governing body, according to this

position, has the discretion to decide what use best protects and enhances the resources in the National Scenic Area.

In order to determine what uses are allowed on the property, we turn to the management plan. The introduction contains a detailed guide which lays out each step for determining how a parcel of land may be used. Plan, 13 It begins with the statement that the objective of the management plan "is to ensure that land in the Scenic Area is used consistently with the purposes and standards of the Scenic Area Act." Plan, 13

The first step is to consult the land use designation map. The designation provides initial information about how a parcel may be developed. This reflects the primary use for which the property is suited. In this case, the property is designated commercial forest.

The second step is to identify the uses allowed in each land use designation. "The policies and guidelines in Part II of the Management Plan specify the uses allowed within each land use designation..." Plan, 14 The applicable policies specify the criteria used and the guidelines list the uses allowed within a land use designation.

Two categories of uses are generally allowed. The first consists of uses that do not require review by the governing body's county planning department. These uses are allowed outright. The second is made up of uses that may be allowed after review and approval by the planning department.

We then turn to examine the governing body's ordinance. The provisions in the plan are reflected in the ordinance implementing

the National Scenic Area Act.<sup>2</sup> Section 22.08.070 provides the allowable uses in a commercial forest zone in the general management areas. Section C provides the uses for commercial forest zones. The first paragraph lists the uses allowed without review.<sup>3</sup> The second paragraph lists the uses subject to review by the

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<sup>2</sup>The County's ordinance was reviewed by the Gorge Commission and the Secretary of Agriculture to determine if it was consistent with the Plan as required by the National Scenic Area Act. 16 USC 544e, f The Commission determined it was consistent on September 28, 1993, and the Secretary of Agriculture concurred on December 21, 1993.

<sup>3</sup>The uses are as follows:

- a. Agricultural use, except new cultivation.
- b. Forest practices that do not violate conditions of approval for other approved uses.
- c. Repair, maintenance and operation of existing structures, trails, roads, railroads and utility facilities.
- d. Construction of roads in conjunction with agricultural and forest uses or practices.
- e. Buildings less than 60 square feet in floor area and not exceeding 18 feet in height, measured at the roof peak, which are accessory to a dwelling.

Section 22.08.070, C., 1



planning director which may be allowed.<sup>4</sup> A clubhouse does not fall

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<sup>4</sup>The uses are as follows:

- a) New cultivation.
  - b) New agricultural structures in conjunction with agricultural use, subject to the standards set forth in Subsection B.1, above.
  - c) Buildings greater than 60 square feet in area and/or 18 feet in height as measured at the roof peak, which are accessory to a dwelling, subject to the standards set forth in Subsection B.1 and B.2, above.
  - d) The temporary use of a mobile home in the case of a family hardship, subject to the standards set forth in Subsections B.1 and B.2, above. See also Section 22.08.040(A).
  - e) Construction, reconstruction or modifications of roads, not in conjunction with forest use or forest practices.
  - f) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.
  - g) Structures associated with hunting and fishing operations.
  - h) Towers and fire stations for forest fire protection.
  - i) Life estates. A landowner who sells or otherwise transfers real property may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined herein. A second dwelling in conjunction with agricultural use may be allowed if:
    - i) The proposed dwelling is in conjunction with agricultural use as set out in Section 22.08.050.B.3)a), above; and
    - ii) Upon termination of the life estate, the original or second dwelling shall be removed.
  - j) Temporary onsite structures which are auxiliary to and used during the term of a particular forest practice. "Auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located onsite, is temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.
  - k) Temporary portable facility for the primary processing of forest products grown on a parcel of land or contiguous land in the same ownership where
- (continued...)

within either of these categories of uses.

The ordinance provides for a third category of uses subject to review by the planning director which may also be allowed.<sup>5</sup> This

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(...continued)

the facility is to be located. The facility shall be removed upon completion of the harvest operation.

- l) Private roads serving a residence, subject to Subsections B.1 and B.2, above.
- m) A temporary mobile home in conjunction with a timber operation, upon a finding that security personnel are required to protect equipment associated with harvest operation or the subject forest land from fire. The mobile home must be removed upon completion of the subject harvest operation or the end of the fire season.
- n) Land divisions to facilitate forest management. No resulting parcel may be less than 80 acres in size.

Section 22.08.070, C., 2

<sup>5</sup>The uses are as follows:

- a) Utility facilities and railroads necessary for public service upon a showing that
    - i) There is no practicable alternative location with less adverse effect on agriculture and forest lands and on scenic, cultural, natural and recreation resources and
    - ii) The size is the minimum necessary to provide the service.
  - b) Home occupations or cottage industries in existing residential or accessory structures. See also Section 22.08.040(B).
  - c) Wineries in conjunction with on-site viticulture, upon a showing that processing and sales of wine is from grapes grown on the subject farm or in the local region.
  - d) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.
  - e) The stabling, feeding and grooming for a fee, or the renting of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals and exercise tracks.
  - f) Bed and breakfast inns in single-family dwellings (See also Section 22.08.040(C)), provided that the
- (continued...)

list does not include a clubhouse. Nor does any portion of the ordinance allow for approval of a use that is not specified in it or in the management plan. In contrast, the management plan provides that the policies and guidelines "specify the uses allowed within each land use designation..." Plan, 14

Based on the explicit language of the ordinance and the management plan, a clubhouse is not a use that is allowed outright or through review.<sup>6</sup> Since the ordinance and the management plan do not provide for a clubhouse, it is not permitted.

Our analysis, however, does not end there. The respondent and intervenor argue the governing body has discretion to allow a clubhouse as "nonprofit, environmental, forestry or agricultural

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(...continued)

residence:

- i) Is included in the National Register of Historic Places; or
- ii) Is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation.
- g) Non-profit, environmental, forestry or agricultural learning or research facilities.
- h) Temporary portable asphalt/batch plants related to public road projects, not to exceed six months.
- i) Expansion of existing non-profit group camps, retreat or conference center.
- j) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.
- k) Exploration, development and production of mineral and geothermal resources.
- l) Aquaculture.

Section 22.08.070, C., 3

<sup>6</sup>The county planning directors' report recognized this in concluding: "The use does not appear to be one that is allowed under Section 22.08.070, C. governing the Commercial Forest Land zone." (Rec. 147-148)

DECISION

Page 7

learning or research facilities" under the ordinance. Section 22.08.070 In order to consider this position, we examine how the applicant characterized the proposed use. While the documents in the record describe the clubhouse in various ways<sup>7</sup>, the dominant use is for recreational and social purposes.<sup>8</sup> Learning and research facilities, however, are used to pursue knowledge in a formal or academic manner.<sup>9</sup> By linking "facilities" with "environmental, forestry or agricultural learning", the context of the use denotes an emphasis on science and formal study.

Under these circumstances, we hold the proposed use does not come within the plain meaning of the term "learning and research facility" in the ordinance. In light of the text of the ordinance, as well as the requirements of the management plan discussed above,

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<sup>7</sup>"Hiking club" Rec. 33; "environmental club" Rec. 33; "hostel" Rec. 53; "educational center" Rec. 54; "teaching facility" Rec. 55; "association of hikers" Rec. 91; "shelter, house or place of recreation" Rec. 91; "private membership club" Rec. 108; "environmental group" Rec. 109.

<sup>8</sup>The ordinary definition of the term "clubhouse" contained in the dictionary is instructive. Webster's states as follows:

Clubhouse 1. A building occupied by a club. 2. The locker room for an athletic team.

WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY, 274 (1984)

<sup>9</sup>"Learning" is defined as:

1. Education : instruction. 2. Acquired wisdom, knowledge or skill.

Id. 683

"Research" is defined as:

1. Scientific or scholarly investigation. 2. Close careful study.

Id. 999

the governing body is not free to permit a use that is not allowed. See also Mandelker, LAND USE LAW, 3 (Second Edition). The fidelity to the precise provisions of the National Scenic Area Act and the legislative history revealed in prior decisions of the courts of Washington and Oregon in interpreting the law underscore the standard we must adhere to in this appeal. See Broughton Lumber Company v. Columbia River Gorge Commission 975 F.2d 616 (9th Cir. 1992), cert. denied, 114 S. Ct. 60 (1993); Klickitat County v. Columbia River Gorge Commission, 770 F. Supp. 1419 (E.D. Wash. 1991); Klickitat County v. State of Washington, 71 Wash. App. 760, 862 P.2d 629 (1993).

Moreover, by relying on the precise language of the ordinance and the management plan, we advance the purposes of the National Scenic Area Act. 16 USC 544a, d In the passage of the Act, Congress provided a uniform set of legal standards for the management of the Gorge as one region<sup>10</sup>. This uniformity, which is critical to protecting national and interstate interests, is implemented through the management plan and county ordinances. The requirements apply to all levels of government. The Ninth Circuit Court of Appeals expressed this principle in upholding the constitutionality of the Act:

Under the Act, and the resulting Compact, all land use within the Columbia River Gorge Scenic Area, whether private, federal, or local, will be consistent with the management plan developed by the Commission.

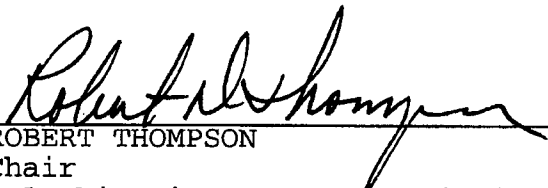
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<sup>10</sup>Senator Hatfield, one of the chief sponsors of the legislation, stated at the time of its enactment that "The Columbia Gorge will be managed as a single geographical unit...". Cong. Rec. S15636 (October 8, 1986)

Columbia Gorge United v. Columbia River Gorge Commission, 960 F.2d 110, 112 (9th Cir. 1992), cert. denied 113 S.Ct. 184 (1993)

For these reasons, consistency is the crucible of the National Scenic Area Act and the Columbia River Gorge Compact. RCW 43.97 et seq.; ORS 196.160 et seq. We are required to carry out the intent of Congress and ensure consistency is achieved throughout the Gorge in county, state and federal actions.

Dated this 16 day of November, 1995.

  
ROBERT THOMPSON  
Chair  
Columbia River Gorge Commission

Multnomah County Attorney's Office  
501 S.E. Hawthorne Blvd., Suite 500  
Portland, Oregon 97214  
PHONE: (503) 988-3138  
FAX: (503) 988-3377



## MEMORANDUM

To: Tammy Boren-King  
Multnomah County Planner

cc: Karen Schilling, Planning Director  
Derrick Tokos, Principal Planner

From: Sandy Duffy  
Assistant County Attorney  
Multnomah County Attorney's Office

Date: April 7, 2006

Re: Interpretation of Management Plan Amendment – Off Site Parking

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**Question:** Is there legal authority which authorizes the county to adopt land use code provisions for off site parking in conjunction with a commercial use of an historic property in the National Scenic Area?

**Short Answer:** No, the plain language of the text of the plan amendment requires on site parking in conjunction with the commercial use of an historic property and limits all parking uses to support on site uses only. The context of the Management Plan, the May 10, 2004, amendments to the Management Plan (GMA Guidelines)<sup>1</sup> and Chapter 38 of Multnomah County's Columbia River Gorge National Scenic Area land use code precludes a parking use other than one used in conjunction with the use of the subject property. Use of a property for parking in conjunction with a use on another property would require amendments of the Management Plan and County's Chapter 38.

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<sup>1</sup> These Guidelines are on appeal to the Court of Appeals and have not been implemented by Multnomah County. However, they demonstrate a treatment of parking by the Gorge Commission which is consistent with the Management Plan and the Historic Properties amendment to the Management Plan.

**Discussion:** The parking requirement for the Historic Properties Plan Amendment states in relevant part:

“New parking areas associated with the proposed use shall be located on the subject property as it existed as of January 1, 2006...”

In interpreting a statute, "words of common usage typically should be given their plain, natural, and ordinary meaning." *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993). The “plain meaning” of “new parking” is a parking area which is added to the parking which existed on the subject property as of January 1, 2006, and was associated with the use of the property on that date. Thus, the parking which existed on or prior to January 1, 2006, on a subject property, can be referred to as “old parking” or “existing parking.”

It has been suggested that this Plan Amendment language authorizes off site parking where there is old or existing parking, which will be used in conjunction with a separate historic property, because the Plan Amendment does not prohibit it. This turns on its head a foundational tenet of land use law in Multnomah County: all uses are prohibited unless specifically listed in the county land use code and approved. (See, for example, MCC Section 38.0010, which codifies this tenet and specifically applies in the National Scenic Area. This code provision was acknowledged by the Gorge Commission.) Additionally, Columbia River Gorge Commission Decision COA-S-95-01 established the precedent that if a use is not listed in the zone, it is not allowed in the zone.

Parking is treated as a separate and distinct use in the county land use code. The Plan Amendment also proposes parking as a separate use. It provides:

“The following uses may be allowed as established in each zone on a property with a building either on or eligible for the National Register of Historic Places and that was 50 years old or older as of January 1, 2006 .....(10) Parking areas on the subject property to support any of the above [nine] uses.”

County land use staff, in compliance with the Plan Amendment, proposes that this provision be codified as an allowed use in the county code at MCC 38.7380(C)(10). Thus, parking will be an allowed use which will have to have a specific land use approval on each historic property. This language also limits parking to on-site parking which supports the use of the historic property. Again, the plan amendment is silent about off site parking and is therefore prohibited.

General Management Area (GMA) Guidelines which were adopted by the Gorge Commission as part of its Management Plan Amendments of May 10, 2004, are on appeal to the Court of Appeals and have not been implemented by the County. However, they give more context to the on site parking limitation. Guideline 2.D(2) limits parking for commercial events in the General Management Area to “parking ... on the subject parcel.” The historic properties Plan Amendment is consistent in requiring that a use on a property provide parking on site to support the use.



All parking in the NSA is on site parking in conjunction with the use on the property. As a practical matter, that means that the entire land use scheme for the NSA does not contemplate off site parking to be used in conjunction with a use on *another* property.<sup>2</sup> No code provision allows parking as a use when used in conjunction with a use on another property.<sup>3</sup>

To interpret the plan amendment to allow use of off site parking in conjunction with a use on an historic property would mean that the least protection is provided to historic properties in the Gorge through removal of the inherent limitation on scale of use provided by parking limitations. No language in the Plan Amendment indicates an intent to do that.

While urban areas often authorize and even encourage off site parking uses to minimize parking facilities, there are no Management Plan provisions or county code provisions authorizing such uses in the NSA.

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<sup>2</sup> It is irrelevant whether the off site parking is a commercial or non-commercial enterprise or whether it supports a commercial or non-commercial use on another property.

<sup>3</sup> *Id.*

**Summary of changes made to the proposed code that was presented  
at the 4-3-06 Planning Commission work session.**

Section I of this document contains an overview of all the changes to the proposed code that was presented at the 4-3-06 planning commission work session. For a discussion of the rational behind the changes, please refer to the main text of the staff report.

Section II contains the code language presented at the 4-3-06 work session next to the revised code language prepared for the 4-17-06 public hearing.

**Section I**

The definition of “subject parcel” has been amended to require the land to be in the same ownership. (MCC 38.7380(A)(2) on page 8 of the staff report.)

Language has been added to MCC 38.7380(B)(2) to clarify that decks, patios, and terraces may be used when re-establishing a former inn or restaurant use as long as they were part of the former use and existed on January 1, 2006. (Page 9 of the staff report.)

Many of the uses under MCC 38.7380(C) contained plural language. This was not intended to allow the establishment of multiple uses on each site. The following uses allowed under part (C) were modified to a singular usage to clarify: Establishment selling food and/or beverages, winery, conference and/or retreat facility, gift shop. The plural language was retained in the rest of the uses since there may be situations in which multiples are appropriate. An example of this would be commercial events. We would not want to restrict a property to only one commercial event per year. These changes are through MCC 38.7380(C) on pages 10 through 12 of the staff report.

The limits on overnight accommodations were clarified. The use must be limited to the total number of rooms that were *legally* existing as of 1-1-06. (MCC 38.7380(C)(2) on page 10 of the staff report.)

The term “local region” has been defined in relationship to wineries. (MCC 38.7380(C)(4) on pages 10-11 of the staff report.) Additionally a reference to the Plan Amendment was replaced with the appropriate reference to the corresponding portion of the county’s code.

The use “interpretive displays, picnic areas or other recreational day use activities” has been clarified by the addition of the term “resource based recreational activities.” (MCC 38.7380(C)(9) on page 12 of the staff report).

Language was added into MCC 38.7380(E)(3) that clarifies we are looking for *substantial implementation* of the Protection and Enhancement Plan. (Page 14 of the staff report.)

MCC 38.7380(F)(2)(c) was clarified to state that temporary structures can only be up for a total of 90 days in any calendar year. (Page 19 of the staff report.)

MCC 38.7380(F)(2)(d) was deleted since we already have notice requirements that exceed this standard.

An option for establishing set hours of outdoor uses was introduced into MCC 38.7380(G)(1) on page 20 of the staff report.

MCC 38.7380(G)(3) was modified so that the surfacing requirements of the County's parking code do not apply. (Pages 21-22 of the staff report.)

An option for restricting private services to the subject property or the capacity that can be provided on the subject property was added into MCC 38.7380(G)(8) on page 23 of the staff report.

MCC 38.4205 (F) Unspecified Uses was split into (F) Unspecified Uses and (G) Alternative Standards. (page 28 of the staff report.)

## Section II

Language as proposed 4-3-06	Language as proposed 4-17-06. New text is bold.
<p><b>§ 38.7300* PART 7 – SPECIAL USES – Approval Criteria and Submittal Requirements</b></p> <p style="text-align: center;">*****</p>	<p><b>§ 38.7300* PART 7 – SPECIAL USES – Approval Criteria and Submittal Requirements</b></p> <p style="text-align: center;">*****</p>
<p><b><u>§ 38.7380 Special Uses in Historic Buildings</u></b></p>	<p><b><u>§ 38.7380 Special Uses in Historic Buildings</u></b></p>
<p><u>(A) Definitions</u></p> <p>(2) For the purposes of this section, the term “subject property” refers to the parcel or group of parcels that have been historically used in conjunction with an historic building.</p>	<p><u>(A) Definitions</u></p> <p>(2) For the purposes of this section, the term “subject property” refers to the parcel or group of parcels <b>in common ownership</b> that have been historically used in conjunction with an historic building.</p>
<p><u>(B) As established in each zone, the following uses shall be allowed on properties</u></p>	<p><u>(B) As established in each zone, the following uses shall be allowed on properties</u></p>

<p><u>with buildings included on the National Register of Historic Places. All uses authorized under this section shall be subject to the provisions of MCC 38.7000-38.7085 and MCC 38.7300.</u></p>	<p><u>with buildings included on the National Register of Historic Places. All uses authorized under this section shall be subject to the provisions of MCC 38.7000-38.7085 and MCC 38.7300.</u></p>
<p><u>(2) Properties which were former restaurants and/or inns shall be permitted to re-establish these former uses, subject to compliance with MCC 38.7380(G) and 38.7380(F) except 38.7380(F)(1)(a), 38.7380(F)(1)(b)(iii) and 38.7380(F)(1)(b)(iv).</u></p> <p><u>The capacity of restaurant use and overnight accommodations shall be limited to that existing in the former use, and the former use shall be contained within the limits of the building as of January 1, 2006. Banquets, private parties and other special events that take place entirely within an approved restaurant facility shall be considered a restaurant use allowed under this section.</u></p>	<p><u>(2) Properties which were former restaurants and/or inns shall be permitted to re-establish these former uses, subject to compliance with MCC 38.7380(G) and 38.7380(F) except 38.7380(F)(1)(a), 38.7380(F)(1)(b)(iii) and 38.7380(F)(1)(b)(iv).</u></p> <p><u>The capacity of restaurant use and overnight accommodations shall be limited to that existing in the former use, and the former use shall be contained within the limits of the building as of January 1, 2006. <b>The capacity of the use may include any decks, terraces, or patios that were used as part of the former use and that existed on January 1, 2006.</b> Banquets, private parties and other special events that take place entirely within an approved restaurant facility shall be considered a restaurant use allowed under this section.</u></p>
<p><u>(C) The following uses may be allowed as established in each zone on a property with a building either on or eligible for the National Register of Historic Places and that was 50 years old or older as of January 1, 2006 subject to compliance with the standards of MCC 38.7000-38.7085, MCC 38.7300 and parts (D), (E), (F), and (G) of this section.</u></p>	<p><u>(C) The following uses may be allowed as established in each zone on a property with a building either on or eligible for the National Register of Historic Places and that was 50 years old or older as of January 1, 2006 subject to compliance with the standards of MCC 38.7000-38.7085, MCC 38.7300 and parts (D), (E), (F), and (G) of this section.</u></p>
<p><u>(1) Establishments selling food and/or beverages, limited to historic buildings that originally had kitchen facilities. The seating capacity of such an establishment shall be limited to the building, as the building existed as of January 1, 2006, including any decks,</u></p>	<p><u>(1) <b>Establishment</b> selling food and/or beverages, limited to historic buildings that originally had kitchen facilities. The seating capacity of such an establishment shall be limited to the building, as the building existed as of January 1, 2006, including any decks,</u></p>

<u>terraces or patios also existing as of that date. Banquets, private parties and other special events that take place entirely within an approved establishment selling food and/or beverages shall be considered a part of the approved use.</u>	<u>terraces or patios also existing as of that date. Banquets, private parties and other special events that take place entirely within an approved establishment selling food and/or beverages shall be considered a part of the approved use.</u>
<u>(2) Overnight accommodations. The room capacity of such accommodations shall be limited to the total number of existing rooms in the historic building as of January 1, 2006.</u>	<u>(2) Overnight accommodations. The room capacity of such accommodations shall be limited to the total number of <b>lawfully</b> existing rooms in the historic building as of January 1, 2006.</u>
<u>(4) Wineries upon a showing that processing of wine is from grapes grown on the subject parcel or the local region, within a historic building, as the building existed as of January 1, 2006. For the purposes of this section, "local region" shall use the same definition as "local agricultural area" in OAR 660 Division 33.</u>	<u>(4) <b>A winery</b> upon a showing that processing of wine is from grapes grown on the subject parcel or the local region, within a historic building, as the building existed as of January 1, 2006. <b>For the purposes of this section, "local region" shall use the same definition as "local agricultural area" in OAR 660 Division 33.</b></u>
<u>(6) Conference and/or retreat facilities within a historic building, as the building existed as of January 1, 2006.</u>	<u>(6) <b>A conference and/or retreat facility</b> within a historic building, as the building existed as of January 1, 2006.</u>
<u>(8) Gift shops within a historic building, as the building existed as of January 1, 2006 that are:</u>  <u>(a) Incidental and subordinate to another approved use included in Guideline 1 of "Additional Review Uses for Historic Buildings"; and</u>  <u>(b) No larger than 100 square feet in area.</u>	<u>(8) <b>A gift shop</b> within a historic building, as the building existed as of January 1, 2006 that are:</u>  <u>(a) Incidental and subordinate to another approved use included in <b>MCC 38.7380(C)</b>; and</u>  <u>(b) No larger than 100 square feet in area.</u>
<u>(9) Interpretive displays, picnic areas or other resource-based recreational</u>	<u>(9) Interpretive displays, picnic areas or other <b>resource-based</b> recreational</u>

<u>day use activities on the subject property. This use is not subject to the parking limits and associated “Facility Design Guidelines” in MCC 38.7080.</u>	<u>day use activities on the subject property. This use is not subject to the parking limits and associated “Facility Design Guidelines” in MCC 38.7080.</u>
<u>(E) Land use approvals for Special Uses in Historic Buildings shall be subject to review every five years from the date the original approval was issued. This review shall follow the Type II procedure established in MCC 38.0530(B). This review shall not be processed using Revocation of Decisions provisions of MCC 38.7060.</u>	<u>(E) Land use approvals for Special Uses in Historic Buildings shall be subject to review every five years from the date the original approval was issued. This review shall follow the Type II procedure established in MCC 38.0530(B). This review shall not be processed using Revocation of Decisions provisions of MCC 38.7060.</u>
<u>(3) The County shall revoke the land use approval if the owner has failed to implement the actions described in the “Protection and Enhancement Plan” according to the schedule for completing such actions in this plan. The County may, however, allow such a use to continue for up to one additional year from the date the County determines the applicant has failed to implement the actions if the applicant submits a written statement describing:</u> <u>(a) Unforeseen circumstances that prevented the applicants from completing the specified actions according to the approved schedule;</u> <u>(b) What progress the applicants have made towards completing such actions; and</u> <u>(c) A proposed revised schedule for completing such actions.</u>	<u>(3) The County shall revoke the land use approval if the owner has failed to <b>substantially</b> implement the actions described in the “Protection and Enhancement Plan” according to the schedule for completing such actions in this plan. The County may, however, allow such a use to continue for up to one additional year from the date the County determines the applicant has failed to implement the actions if the applicant submits a written statement describing:</u> <u>(a) Unforeseen circumstances that prevented the applicants from completing the specified actions according to the approved schedule;</u> <u>(b) What progress the applicants have made towards completing such actions; and</u> <u>(c) A proposed revised schedule for completing such actions.</u>
<u>(F) The following guidelines apply to proposed Special Uses for Historic Buildings in addition to the Site Review Criteria of MCC 38.7000-38.7085.</u>	<u>(F) The following guidelines apply to proposed Special Uses for Historic Buildings in addition to the Site Review Criteria of MCC 38.7000-38.7085.</u>
<u>(2) Scenic Resources</u>	<u>(2) Scenic Resources</u>

<p><u>(c) Temporary structures associated with a commercial event (e.g. tents, canopies, portable restrooms) shall be placed on the subject property no sooner than two days before the event and removed within two days after the event. Alternatively, temporary structures may remain in place for up to 90 days after the event if the County determines that they will be visually subordinate from Key Viewing Areas.</u></p>	<p><u>(c) Temporary structures associated with a commercial event (e.g. tents, canopies, portable restrooms) shall be placed on the subject property no sooner than two days before the event and removed within two days after the event. Alternatively, temporary structures may remain in place for up to <b>90 days in one calendar year</b> if the County determines that they will be visually subordinate from Key Viewing Areas.</u></p>
<p><u>(4) Agricultural and Forest Lands</u></p>	<p><u>(4) Agricultural and Forest Lands</u></p>
<p><u>(d) All owners of land in areas designated GGA-20, GGA-40, GGF-20, or GGA-40 that are within 500 feet of the perimeter of the subject property on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision on an application for a Special Use for a Historic Building.</u></p>	<p><u><del>(d) All owners of land in areas designated GGA-20, GGA-40, GGF-20, or GGA-40 that are within 500 feet of the perimeter of the subject property on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision on an application for a</del> <b>Special Use for a Historic Building.</b></u></p>
<p><u>(G) The following standards address health, safety, and potential impacts to surrounding properties and apply to all proposed Special Uses in Historic Buildings.</u></p>	<p><u>(G) The following standards address health, safety, and potential impacts to surrounding properties and apply to all proposed Special Uses in Historic Buildings.</u></p>
<p><u>(1) Outdoor uses shall be limited to daylight hours between sunrise and sunset.</u></p>	<p><b><u>Option One</u></b>  <u>(1) Outdoor uses shall be limited to daylight hours between sunrise and sunset.</u></p> <p><b><u>Option two</u></b>  <b><u>(1) Outdoor uses shall be limited to the hours of 7:00 am to 7:00 pm, except that between Memorial Day and Labor Day afternoon activities may extend to as late as 10:00 pm.</u></b></p>
<p><u>(3) Parking shall be provided in accordance with the Off Street Parking and Loading standards of MCC 38.4100 through 38.4215. MCC</u></p>	<p><u>(3) Parking shall be provided in accordance with the Off Street Parking and Loading standards of MCC 38.4100 through 38.4215. MCC</u></p>

<p><u>38.4130(B) and (C) shall not apply to Special Uses in Historic Buildings. All parking associated with the use shall be provided on the subject property.</u></p>	<p><u>38.4130(B) and (C) shall not apply to Special Uses in Historic Buildings. All parking associated with the use shall be provided on the subject property.</u>  <u><b>Additionally, the surfacing requirements of MCC 38.4810(A) shall not apply. Instead, the surfacing requirements of MCC 38.7380(F)(2)(a) shall be employed.</b></u></p>
<p><u>(8) If private services will be used, the applicant shall demonstrate the private service is or can be made adequate to serve the use.</u></p>	<p><u>Option One:</u>  <u>(8) If private services will be used (e.g. septic system, well, etc.), the applicant shall demonstrate the private service is or can be made adequate to serve the use.</u></p> <p><u><b>Option Two:</b></u>  <u><b>(8) If private services will be used (e.g. septic system, well, etc.), the applicant shall demonstrate that the private service can be wholly contained on the subject property and that the private service is or can be made adequate to serve the use. A private service may be authorized off-site, within an easement area, provided the capacity of the service does not exceed what can otherwise be accommodated on the subject property.</b></u></p>



achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

- C. Reclamation plans shall restore the site to a natural appearance that blends with and emulates surrounding landforms and vegetation patterns to the maximum extent practicable.

## COMMERCIAL EVENTS

### GMA Guidelines

1. Commercial events include weddings, receptions, parties and other small-scale gatherings that are incidental and subordinate to the primary use on a parcel.
2. Commercial events may be allowed in the GMA except on lands designated Open Space or Commercial Forest, subject to compliance with the following conditions and the scenic, cultural, natural and recreation resources guidelines:
  - A. The use must be in conjunction with a lawful winery, wine sales/tasting room, bed and breakfast inn, commercial use, or dwelling listed in the National Register of Historic Places.
  - B. The owner of the subject parcel shall live on the parcel and shall operate and manage the use.
  - C. A single commercial event shall host no more than 100 guests.
  - D. The use shall comply with the following parking requirements:
    - (1) A single commercial event shall include no more than 50 vehicles for guests.
    - (2) All parking shall occur on the subject parcel.
    - (3) At least 200 square feet of parking space shall be required for each vehicle.
    - (4) Parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other imperious materials shall be prohibited.
    - (5) All parking areas shall be fully screened from key viewing areas.
  - E. The owner of the subject parcel may conduct 18 single events up to one day in length per year.

- F. The owner of the subject parcel shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject parcel of each planned event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.
- G. Tents, canopies, portable restrooms and other similar temporary structures necessary for a commercial event may be allowed, provided all such structures are erected or placed on the subject parcel no more than two days before the event and removed no more than two days after the event. Alternatively, temporary structures may remain in place for up to 90 days if they are fully screened from key viewing areas.
- H. The use may be allowed upon demonstration that the following conditions exist to protect any nearby agricultural and forest operations:
- (1) The use would not force a change in or increase the cost of accepted agricultural practices on surrounding lands. [GMA Guideline 1.Q(1), page II-9]
  - (2) The use would be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required in "Agricultural Buffer Zones," or designated Commercial Forest Land or Large or Small Woodland, as required in the "Siting of Dwellings on Forest Land." [GMA Guideline 1.Q(3), page II-9]
  - (3) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland. [GMA Guideline 1.Q(4), page II-9]
  - (4) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision. [GMA Guideline 1.Q(5), page II-9]
- I. Counties may impose additional requirements to address potential impacts to surrounding neighbors. For example, they may limit noise, lighting and operating hours.
- I. Land use approvals for commercial events shall not be valid for more than two years. Landowners must reapply for the use after a land use approval expires.