

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

ORDINANCE NO. _____

Amending MCC Chapter 38 Relating to Mandated Revisions to Columbia River Gorge Management Plan Area Guidelines and Declaring an Emergency.

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

The Multnomah County Board of Commissioners Finds:

- a. Periodically, there is a need to amend County land use policies or regulations to address a change in law or circumstance; to implement elements of the Multnomah County Comprehensive Plan; or to make technical corrections for, among other things, clarification and consistency (commonly referred to as “housekeeping amendments”). Having identified such need, the Multnomah County Planning Commission recommended the adoption of this ordinance to the Board of County Commissioners. The Planning Commission made such recommendation through adoption of the resolution described below and pursuant to its authority in 38.0340 and in ORS 215.110.
- b. Multnomah County is one of six Oregon and Washington counties located in the Columbia River Gorge National Scenic Area. The Columbia River Gorge Commission is charged with developing and maintaining a Management Plan to provide the vision and guidance for land use regulation in the National Scenic Area. Multnomah County implements the Management Plan through its land use ordinances.
- c. On February 9, 2016, the Columbia River Gorge Commission adopted revisions to the Management Plan for the Columbia River Gorge National Scenic Area in response to the Oregon Court of Appeals’ decision in *Friends of the Columbia River Gorge v. Columbia River Gorge Commission*, 248 Or App 301, 273 P3d 267 (2012). The Gorge Commission notified Multnomah County on July 20, 2017 that updates to the National Scenic Area chapter of the County Land Use Code (Chapter 38) consistent with revisions to the Management Plan must be completed by April 16, 2018.
- d. Planning Commission Resolution No. PC 2013-3021 relates to revisions to Multnomah County Code Chapter 38 consistent with the Gorge Commission’s updates to the Management Plan. In compliance with the Gorge Commission’s direction, the ordinance: (1) clarifies that cumulative effects to natural resources are a type of adverse effect prohibited by the Management Plan; (2) adds definitions of “Adversely Affect” and “Air” found in the Management Plan; (3) adopts into code the existing practice of requiring a cultural resources reconnaissance survey if any element of a land use application requires such a survey; (4) provides that the Gorge Commission may require a cultural resources reconnaissance survey for uses otherwise excepted from the survey requirement if necessary to ensure protection of cultural resources and (5) clarifies that uses allowed in streams, ponds, lakes and riparian areas are also allowed in natural resource buffer zones subject to compliance with guidelines for the protection of identified resources.

- e. The Planning Commission held a public hearing on February 5, 2018 during which all interested persons were given the opportunity to appear and be heard. The Planning Commission recommended adoption of this ordinance. Notice of the Planning Commission hearing was published in the Oregonian newspaper and on the website of the Multnomah County Land Use Planning Program. In addition, prior to the Planning Commission hearing on this ordinance, the County mailed notices to individual property owners as required by ORS 215.203 (commonly known as Ballot Measure 56 notice).
- f. The Planning Commission's recommendation is sound and derives from the proper execution of its duties and authority.

Multnomah County Ordains as Follows:

Section 1. MCC 38.0015 is amended as follows:

§ 38.0015 DEFINITIONS.

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

* * *

Adversely Affect or Adversely Affecting: A reasonable likelihood of more than moderate adverse consequences for the scenic, cultural, recreation or natural resources of the scenic area, the determination of which is based on:

(a) The context of a proposed action;

(b) The intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence;

(c) The relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts; and

(d) Proved mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant effects to an insignificant level.

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Air: The mixture of gases comprising the Earth's atmosphere.

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Section 2. MCC 38.7045 is amended as follows:

§ 38.7045 GMA CULTURAL RESOURCE REVIEW CRITERIA.

(A) Cultural Resource Reconnaissance Surveys

Each proposed use or element of a proposed use within an application shall be evaluated independently to determine whether a reconnaissance survey is required; for example, an application that proposes a land division and a new dwelling would require a reconnaissance survey if a survey would be required for the dwelling.

(1) A cultural reconnaissance survey shall be required for all proposed uses, except:

* * *

(3) The Gorge Commission may choose to conduct a reconnaissance survey for proposed uses listed in the exceptions if, in its professional judgment, a reconnaissance survey may be necessary to ensure protection of cultural resources.

(4)(3) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or compromise features of the surrounding area that are important in defining the historic or architectural character of the buildings or structures that are 50 years old or older.

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Section 3. MCC 38.7055 is amended as follows:

§ 38.7055 GMA WETLAND REVIEW CRITERIA.

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(F) Applications for all other Review and Conditional Uses in wetlands shall be processed pursuant to the provisions of MCC 38.0045 and shall demonstrate that:

(1) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:

* * *

(9) Proposed uses in wetlands and wetland buffer zones shall be evaluated for adverse effects, including cumulative effects. Adverse effects shall be prohibited.

(G) Wetlands Buffer Zones

(1) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

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(5) Proposed uses in wetlands and wetland buffer zones shall be evaluated for adverse effects, including cumulative effects. Adverse effects shall be prohibited.

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Section 4. MCC 38.7060 is amended as follows:

§ 38.7060 GMA STREAM, LAKE AND RIPARIAN AREA REVIEW CRITERIA.

(A) The following uses may be allowed in streams, ponds, lakes and riparian areas, and their buffer zones, when approved pursuant to the provisions of MCC 38.0045, MCC 38.7060(C), and reviewed under the applicable provisions of MCC 38.7035 through 38.7085:

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(D) Applications for all other Review and Conditional Uses in wetlands shall be processed pursuant to the provisions of MCC 38.0045 and shall demonstrate that:

(1) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by MCC 38.7055(F)(1), substituting the term stream, pond, lake, or riparian area as appropriate.

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(8) Proposed uses in streams, ponds, lakes, and riparian areas and their buffer zones shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

(E) Stream, Pond, and Lake Buffer Zones

(1) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

* * *

(4) Proposed uses in streams, ponds, lakes, and riparian areas and their buffer zones shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

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Section 5. MCC 38.7065 is amended as follows:

§ 38.7065 GMA WILDLIFE REVIEW CRITERIA.

Wildlife Habitat Site Review shall be required for any project within 1,000 feet of sensitive wildlife areas and sensitive wildlife sites (i.e., sites used by sensitive wildlife species).

(A) Field Survey

* * *

(C) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

(1) Site plans shall be submitted to Oregon Department of Fish and Wildlife by the Planning Director. State wildlife biologists will review the site plan and their field survey records. They will:

* * *

(7) Proposed uses within 1,000 feet of a sensitive wildlife area or site shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

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Section 6. MCC 38.7070 is amended as follows:

§ 38.7070 GMA RARE PLANT REVIEW CRITERIA.

Rare Plant Site Review shall be required for any project within 1,000 feet of endemic plants and sensitive plant species.

(A) Field Survey

* * *

(C) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:

(1) Site plans shall be submitted to the Oregon Natural Heritage Program by the Planning Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200 foot buffer area on the project applicant's site plan.

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(6) Proposed uses within 1,000 feet of a sensitive plant shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

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Section 7. MCC 38.7075 is amended as follows:

§ 38.7075 SMA NATURAL RESOURCE REVIEW CRITERIA.

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

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

* * *

(I) The local government shall submit sites plans (of proposed uses or development ~~that are~~ proposed within 1,000 feet of sensitive wildlife and/or plant area or site) for review to the U.S. Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife for wildlife issues and by the Oregon Natural Heritage Program for plant issues).

(J) The U.S. Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:

(1) Identify/verify the precise location of the wildlife and/or plant area or site.

* * *

(3) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering seasons. Cumulative effects that are adverse shall be prohibited.

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Section 8. This ordinance being necessary for the health, safety, and general welfare of the people of Multnomah County, an emergency is declared and the ordinance takes effect immediately upon its signature by the County Chair pursuant to Section 5.50 of the Multnomah County Home Rule Charter.

FIRST READING AND ADOPTION: _____

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury, Chair

REVIEWED:

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

By _____
Katherine Thomas, Assistant County Attorney

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