



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

(revised 08/02/10)

Board Clerk Use Only

Meeting Date: 4/21/11
Agenda Item #: R.3
Est. Start Time: 9:50 am
Date Submitted: 3/29/11

**Agenda
Title:**

Public Hearing and 2nd Reading of an Ordinance Amending MCC Chapters 33-38 Relating to Commercial Forest Use, Conflict of Interest and Legislative Hearing Procedures, and Changes to the Columbia River Gorge National Scenic Area Management Plan Related to Fish Processing, Industrial Uses, and to Amend Legislative Procedures

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date:	<u>April 14, 2011</u>	Amount of Time Needed:	<u>5 min</u>
Department:	<u>Department of Community Services</u>	Division:	<u>Land Use Planning</u>
Contact(s):	<u>Chuck Beasley</u>		
Phone:	<u>988-3043</u>	Ext.	<u>22610</u>
Presenter Name(s) & Title(s):	<u>I/O Address: 455/116</u>		
	<u>Chuck Beasley, Senior Planner</u>		

General Information

1. What action are you requesting from the Board?

Conduct a public hearing and first reading, and approve the proposed amendments to the Multnomah County Code Amending MCC Chapters 33-38 Relating to Commercial Forest Use, Conflict of Interest and Legislative Hearing Procedures, and Changes to the Columbia River Gorge National Scenic Area Management Plan Related to Fish Processing, Industrial Uses, and to Amend Legislative Procedures.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

This proposed ordinance amends zoning regulations in the Multnomah County Code to incorporate technical corrections and improve clarity of regulations in a continuing effort to improve zoning code administration. The proposed ordinance also amends county land use regulations that apply to the Columbia River Gorge National Scenic Area (NSA) in response to recent court rulings. These NSA related amendments include provisions to allow a new use, small-scale fish processing in certain areas of the Gorge. These amendments have been recommended to the Board for approval by the Planning Commission. The Planning Commission Resolutions recommending these zoning code amendments are attached here.

Part I of the proposed ordinance amends the Commercial Forest Use (CFU) zone districts in Chapters 33, West Hills, 35, East of Sandy River, and 36, West of Sandy River. These amendments are in Sections 1 through 6 of the proposed ordinance. The amendment in Section 7 adds a definition for “access easement” to all zone districts. Below is a summary of the main changes proposed in Part I.

1. Simplifies the circumstances in which standards intended to protect forest values apply to new or replacement structures. Replacement structures located within 100 feet of an existing dwelling are processed as Type I reviews, and replacement structures located further than 100 feet are processed as Type II reviews. A Type I review can be processed as part of the building permit, whereas a Type II review is a land use decision requiring the county to adopt findings of compliance with standards, and to provide public notice of the decision and opportunity for appeal.
2. Related to the amendments above, the proposed ordinance changes the Forest Development Standards to require a Type II review for all replacement dwellings greater than 100 feet from the existing dwelling. The existing code contains both simplified standards and more rigorous standards, providing alternate approaches for applicants to seek approval of a dwelling site. The result of the amendment is that restoration or replacement dwellings more than 100 feet from the existing dwelling will be able to apply under a less rigorous, less discretionary review or a more discretionary review demonstrating the proposed building location minimizes impacts on forest and farming practices. While the standards are unchanged, staff believes that the county is making a land use decision when applying the simplified standards, therefore land use review should be required.
3. Clarifies that additions to existing structures which are less than 30’ to a property line can maintain the existing setback, and must establish a primary fire break to the extent possible. The amendments also clarify that accessory structures further than 100 feet from a dwelling must meet the primary and secondary fire safety zones. These changes to Table 1: Forest Setbacks and Fire Safety Zones, will help staff and property owners to properly manage the fire risks associated with structures generally and improve implementation by clarifying unaddressed situations.
4. Adds a Lot of Exception option to the CFU-3 zone district to Chapter 35, East of Sandy River to make that Chapter consistent with the other CFU districts. The Lot of Exception option allows a property owner that has more than one lawfully established habitable dwelling to divide the property, with a dwelling on each lot.
5. Adds a definition of “access easement” to all zoning code chapters. Recent amendments to transportation related definitions did not define access easements. We have found that because easements are a common type of access to properties, they should be defined in the code as are private roads and driveways.

Part II of the proposed ordinance amends legislative procedures to simplify the legislative hearings process, render the code more consistent both internally and with state law, and fill procedural gaps recently identified by counsel. They clarify which actions by the Planning Commission and Board are subject to conflict of interest rules, and incorporate revised statutory provisions into MCC Chapter 37, Administration and Procedures. The recommended amendments clarify that disclosure of potential bias is only relevant to quasi-judicial matters, and that disclosure of potential or actual conflicts of interest by Planning Commissioners and Board members is required in both legislative and quasi-judicial matters pursuant to state statutes. The amendments also clarify code provisions related to objections to Planning Commission and Board hearing procedures. The amendments bring

the county code into conformance with state law, but don't impose additional requirements.

Part III amends the zoning code provisions applicable to the Columbia River Gorge National Scenic Area (NSA) in response to court rulings, and renders the legislative procedures in Chapter 38 consistent with the procedures for the other areas of the county in Part II of the proposed ordinance.

In July 2010, the Gorge Commission adopted amendments to the Columbia River Gorge National Scenic Area Management Plan in response to rulings by the Oregon Supreme Court and Oregon Court of Appeals regarding plan revisions. The proposed ordinance incorporates the opinion of the courts that provisions to allow expansion of existing industrial uses is not consistent with the Columbia River Gorge Scenic Area Act by deleting that provision from Chapter 38.

In addition to amendments associated with the action taken by the Gorge Commission in July of 2010, the Planning Commission recommends adding a new land use authorized by Management Plan amendments that were upheld in related litigation. Those amendments allow counties to include provisions for fish processing related uses in their plans. The proposed ordinance allows small-scale fishing support and fish processing operations on property in the General Management Area Residential Zone that have access to the Columbia River. Requests to establish this use are processed as conditional uses subject to approval criteria. Staff estimates that roughly 30 properties are situated in areas where these regulations will apply.

3. Explain the fiscal impact (current year and ongoing).

None

4. Explain any legal and/or policy issues involved.

The legislative procedures amendments to MCC Chapters 37 and 38 include revisions that conform to State conflict of interest rules.

Amending Chapter 38 to incorporate zoning code provisions that can allow fish processing in the NSA is a policy choice by the county that is provided for in the Gorge Management Plan. This use was authorized by NSA plan amendments in 2004, however the county decided at that time to not propose incorporating them into Chapter 38 pending resolution of appeals.

5. Explain any citizen and/or other government participation that has or will take place.

The Planning Commission conducted a work session and a public hearing on each of the ordinance amendments. Public notice of these proceedings, and of the Board hearings, has been and will be provided as required in the Multnomah County Code.

Required Signature

**Elected Official or
Department/
Agency Director:**



Date: 4/13/11