Proposed Amendments to the Draft Multnomah County Ordinance
Special Uses in Historic Buildings in the National Scenic Area

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Multnomah County Board of County Commissioners
April 27, 2006 Public Hearing, Item #R-11

Proposal #1: Delay adoption until the legal challenge to the plan amendment is resolved.

Multnomah County has discretion whether and how to implement the Gorge Commission's plan amendment. The Executive Director of the Gorge Commission is no longer ordering the counties to implement the plan amendment. On March 23, 2005, she clarified that her statement about the counties having to implement the amendment "is my opinion, not official direction from the Commission."

In 2004, as part of plan review, the Gorge Commission adopted a similar revision to the Management Plan that authorized commercial events on properties with dwellings listed on the National Register of Historic Places. Several parties appealed that plan revision in both state and federal court. Multnomah County chose to delay implementation of the plan revision, stating that "we do not believe it is a wise use of resources or fair to our citizens to initiate a legislative process over land use matters that might be overturned or amended as a result of this litigation." The Gorge Commission accepted the County's decision to delay implementation pending the outcome of the appeals.

The County should take a similar approach here. In addition to the potential for the plan amendment to be overturned through litigation, new commercial uses would pose significant administrative and enforcement burdens on Multnomah County. Because commercial events would occur frequently and usually only on evenings and weekends, they would require additional County enforcement resources at a time when those resources are already stretched very thin.

If the County does adopt the plan amendment, it needs to provide additional protections within the ordinance. The current draft fails to protect and enhance Gorge resources and preserve Gorge residents' rural way of life and property values.

The County has the opportunity to create a model ordinance that would actually protect and enhance historic buildings without adversely affecting Gorge resources or harming neighbors. The following proposals are suggestions for how the County could modify its proposed ordinance to address many of the concerns raised by the public.

§ 38.7380(C)(3). Indoor commercial ~~Commercial~~ events **that take place with**in the building ~~or on the subject property,~~ and that are incidental and subordinate to the primary use of the property.	**Proposal #2: Require commercial events to be indoor events that take place within the historic building.** The majority of the objections to the plan amendment involve outdoor commercial events. Multnomah County should limit commercial events to those that take place entirely within historic buildings. This would better protect scenic, natural, cultural, and recreational resources; would reduce conflicts involving traffic, safety, and noise; and would allow the events to be more connected to the historic buildings and therefore better provide for their appreciation, protection, and enhancement.
§ 38.7380(A)(1). The term "historic buildings" refers to buildings **included on** ~~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)(l)(a).~~ **§ 38.7380(C).** The following uses may be allowed as established in each zone on a property with a building **included on** ~~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. **§ 38.7380(F)(1)(a).** All applications for uses listed in MCC 38.3780(C) 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 MCC 38.7045(D)(3). ~~The evaluation of~~	**Proposal #3: Limit the scope of the ordinance to buildings actually listed on the National Register of Historic Places.** The original plan amendment as proposed by the owners of the Viewpoint Inn would have applied to properties with buildings listed on the National Register of Historic Places. Despite widespread support for this component, the Gorge Commission greatly expanded the scope of the plan amendment to apply not only to National Register buildings, but all old buildings "eligible" for listing on the National Register. Multnomah County should limit the scope of the amendment to buildings actually listed on the National Register of Historic Places. This would increase protection and enhancement of historic buildings because it would require landowners to take the extra step of achieving National Register status prior to applying for new commercial uses. National Register status carries with it additional, protections, guidelines, and rewards for the buildings under federal and local law. For example, National Register properties are (1) eligible for favorable tax treatment under federal law to facilitate historic rehabilitation, (2) eligible for federal grants-in-aid for historic preservation, (3) must be considered in a federal decisionmaking process when any federal planning decision may adversely affect the property. 36 C.F.R. 60.2. In

~~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 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.~~	addition, last summer, the Oregon legislature extended its special assessment "property tax freeze" program to 30 years for residential properties on the National Register if the program is endorsed by the local government. Oregon House Bill 2776 (2005) (Oregon Laws 2005, ch. 2776, § 2.) Apparently, neither the Gorge Commission nor Multnomah County have a complete list of exactly which properties are "eligible" for listing on the National Register or could become "eligible" in the future. Given the uncertainty involving the scope of the proposal and its impacts, and given the additional safeguards that come with National Register status, the County should take the important step of limiting the ordinance to properties that are actually listed on the National Register.
§ 38.7380(G)(2). The use of outdoor amplification **and outdoor music** in conjunction with a use authorized under this section is prohibited. All amplification **and music** must be contained within the historic building associated with the use.	**Proposal #4: If the County chooses to allow outdoor events, prohibit outdoor music.** Sound travels very easily in residential and rural parts of the Gorge, especially in summer months when Gorge landowners are likely to be outside and likely to keep their windows open to enjoy summer breezes. In order to minimize impacts to neighboring landowners and recreational uses, the County should prohibit all outdoor music.
§ 38.7380(G)(1). Outdoor uses shall be limited to the hours of 7:00 a.m. to ~~7:00 p.m.or sunset, whichever is later, except that between Memorial Day and Labor Day afternoon activities may extend to as late as 10:00 p.m.~~ **9:00 p.m. Indoor uses except for overnight lodging shall be limited to the hours of 7:00 a.m. to 10:00 p.m.**	**Proposal #5: Require a year-round cutoff time of 9:00 p.m. for outdoor uses and 10:00 p.m. for indoor uses.** The draft language would allow outdoor uses to continue until as late as 10:00 p.m.. This is unacceptable, because outdoor parties may continue past the cutoff time as the parties wind down. In addition, the cutoff times in the draft ordinance would change depending on the time of year, and can be any of three possibilities (7:00, 10:00, or sunset). This is unnecessarily confusing. The draft language would also allow indoor commercial events to continue 24 hours per day. Even indoor events have the potential to cause

	disruption as party guests exit the building and congregate on decks and parking areas. The County should apply a cutoff time of 9:00 p.m. year-round to all outdoor uses and 10:00 p.m. for all indoor uses. This will reduce noise impacts and conflicts with surrounding properties.
§ 38.7380(D)(4). A maximum of 18 events may be held on the property during each calendar year.	**Proposal #6: Limit the number of allowed events to 18 events per year.** As it stands, the draft ordinance language contains no limitation on the number of events per year. This gap in the ordinance is very likely to cause commercial events to exceed the requirement to be incidental and subordinate to the primary use of the property and to harm resources and uses on adjacent properties. Limiting the number of events per year would better protect surrounding uses and resources, would apply uniformly and fairly to all applicants, and would provide applicants and neighboring landowners with more certainty. This would also be consistent with the plan amendment, which expressly provides the County with the authority to address potential impacts to surrounding properties.
§ 38.7380(D)(5). Each event shall host no more than 100 guests per event if the subject subject property is 50 acres or more and no more than 80 guests per event if the subject property is less than 50 acres.	**Proposal #7: Provide a uniform limit on the size, scope, and impact of events by limiting the number of guests per event based on the size of the property, with a maximum limit of 100 guests per event.** As it stands, the draft ordinance language contains no limitation on the size of each event. This gap in the ordinance is very likely to cause commercial events to exceed the requirement to be incidental and subordinate to the primary use of the property and to harm resources and uses on adjacent properties. Limiting the size of events would better protect surrounding uses and resources, would apply uniformly and fairly to all applicants, and would provide applicants and neighboring landowners with more certainty. This would also be consistent

	with the plan amendment, which expressly provides the County with the authority to address potential impacts to surrounding properties.
§ 38.7380(D)(6). Each event shall host no more than 50 vehicles parked at any one time on the subject property if the subject property is 50 acres or more and no more than 30 vehicles if the subject property is less than 50 acres.	**Proposal #8: Provide a uniform limit on the size, scope, and impact of events by limiting the number of vehicles per event based on the size of the property, with a maximum limit of 50 vehicles per event.** As it stands, the draft ordinance language contains no limitation on the number of vehicles for each event. This gap in the ordinance is very likely to cause commercial events to exceed the requirement to be incidental and subordinate to the primary use of the property and to harm resources and uses on adjacent properties. This threat is especially significant for small properties. Limiting the number of vehicles per event would better protect surrounding uses and resources, would apply uniformly and fairly to all applicants, and would provide applicants and neighboring landowners with more certainty. This would also be consistent with the plan amendment, which expressly provides the County with the authority to address potential impacts to surrounding properties.
§ 38.7380(F)(2)(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 subordinance. 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.~~ **All parking areas associated with the proposed use shall be fully screened from key viewing areas.**	**Proposal #9: Require all parking areas associated with commercial uses to be fully screened from key viewing areas.** All of the types of uses authorized by the plan amendment have the potential to generate great amounts of traffic. Regardless of whether commercial events are indoor or outdoor and regardless of whether shuttle buses or individual vehicles are used, the potential for adverse scenic impacts is very high. The draft ordinance language fails to protect scenic resources. Although the draft language purportedly would require "new" parking areas to be "visually subordinate [as viewed] from Key Viewing Areas," it contains exceptions that swallow the rule (*e.g.*, the screening requirements do not apply "if such vegetation would . . . adversely affect the

	historic character of the building's setting"). In 2004, when the Gorge Commission adopted provisions authorizing commercial events on historic properties, the Commission required all parking areas to be fully screened from key viewing areas. This helped ensure that allowing commercial events would not adversely affect scenic resources in violation of the Scenic Area Act. The County should follow that precedent and simply require all parking areas associated with special uses authorized by these amendments to be fully screened from key viewing areas.
§ 38.7380(G)(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 areas associated with the use shall be provided on the subject property **and shall be located at least 60 feet from the outer boundary of the subject property**. 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.	**Proposal #10: Require all parking areas associated with commercial uses to be located at least 60 feet from the outer boundary of the subject property.** In order to protect conflicts with neighboring properties, a buffer for all parking areas should be provided in order to protect neighboring property owners. The county should require a buffer of 60 feet from all lot lines for all parking areas associated with the use.
§ 38.7380(D)(7). Use of the subject property by buses, vans, shuttles, and similar vehicles for shuttling passengers to and from an event shall be limited to pickup and drop off only, with a maximum of 20 minutes per visit.	**Proposal #11: Limit the impacts of shuttle vehicles by limiting their use to pickup and drop off only.** The County Staff Report to the Planning Commission states at pages 3 through 4 that "[u]nder 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 onsite." The parking of shuttle vehicles on the property during commercial events could cause significant impacts to scenic, natural, and recreational resources. In the recent past, a Corbett resident who held commercial events without a valid land

	use permit allowed large tour buses to be parked on the property for hours at a time immediately adjacent to neighboring residences and fully visible from key viewing areas. The County should ensure against this kind of disruption by limiting shuttle vehicle use to pickup and drop off only.
§ 38.7380(G)(9). All sanitary facilities associated with a use allowed under MCC 38.7380 shall be located within permanent buildings on the subject property.	**Proposal #12: Require sanitary facilities to be located within permanent buildings on the subject property.** Allowing the use of portable restroom facilities would likely increase the scope, size, and impacts of individual events and has the potential to adversely affect scenic, natural, recreational, and cultural resources. The County should address these concerns by requiring all sanitary facilities to be located within permanent buildings on the subject property.
MCC § 38.7380(E). Land use approvals for Special Uses in Historic Buildings shall be subject to review every ~~five~~ **two** years from the date the original approval was issued.	**Proposal #13: Require review of special use approvals every two years rather than every five years.** The draft ordinance language would require the County to review special use approvals only once every five years. Because the plan amendment is extremely controversial and, if adopted, would likely be newly tested for the first time in Multnomah County, approvals should be reviewed more frequently than every five years. A review requirement of once every two years would provide better County oversight, allow for more citizen input, result in more applicant accountability, and more effectively protect and enhance historic resources.
§ 38.7380(G)(10). The owner of the subject property shall live on the property and shall operate and manage the use.	**Proposal #14: Require the owner of the subject property to live on the property and to operate and manage the use.** County rules for bed and breakfast inns in the National Scenic Area require the owner/manager to live on site. The County should require the same for Special Uses in Historic Buildings. Requiring the owner/manager to live on site has the potential to better ensure compliance with applicable rules and conditions of approval, and in many cases

	could ensure that commercial events remain incidental and subordinate to residential use. In addition, requiring the owner/operator to live on site could ensure that such persons are more available and responsive to addressing neighbors' concerns about traffic, noise, safety, and related issues.
MCC § 38.7380(C)(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.~~	**Proposal #15: Do not define "local region" with regard to wineries in this ordinance.** The draft ordinance would define "local region" with regard to wineries in historic buildings by looking solely to state law, thereby ignoring established precedent on this topic involving the interstate National Scenic Area. The proposed interpretation for "local region" would be inconsistent with the Scenic Area Act and interpretations by the Gorge Commission and other counties and should not be adopted within this narrow context pertaining only to historic properties. The phrase "local region" is used throughout the Multnomah County Scenic Area ordinance with regard to wineries and fruit and produce stands. *See, e.g.*, MCC §§ 38.2025(A)(17)(b), 38.2025(A)(17)(c), 38.2225(B)(10), 38.2230(A)(1), 38.2230(A)(2), 38.3030(A)(13). Adopting the proposed language would create confusion over whether the language applies in those other instances. The draft ordinance would greatly expand the meaning of "local region" beyond the interpretations of other counties and the Gorge Commission, and could lead to wineries processing grapes from well beyond the Columbia River Gorge region. In recent Scenic Area decisions, other agencies and counties have interpreted the phrase "local region" much more narrowly than Multnomah County is proposing to do here. For example, a recent Skamania County approval for a fruit stand was limited to fruits grown in the Underwood Mountain region in Skamania County. (Skamania County File No. NSA-05-63.) Other decisions have limited wineries to grapes grown

	within the Columbia River Gorge National Scenic Area. It is unnecessary to define “local region” in this narrow context. Moreover, the proposed definition is inconsistent with established Scenic Area precedent. The County should simply delete the proposed definition of “local region” in this ordinance.