

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 994

Amending MCC Chapter 38, Land Use Code Columbia River Gorge National Scenic Area to Make Technical Corrections

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

Multnomah County Ordains as follows:

Section 1. § 38.0005 is amended to read as follows

38.0005 Area Affected

MCC ~~38.0000 through 38.0110, 38.2000 through 38.3295, and 38.7000 through 38.7085~~ Chapter 38 shall apply to all lands within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act.

Section 2. § 38.0015 is amended to read as follows

38.0015 Definitions

As used in MCC ~~38.0000 through 38.0110, 38.2000 through 38.3295, and 38.7000 through 38.7085~~, Chapter 38, unless otherwise noted, the following words and their derivations shall have the following meanings:

Section 3. § 38.0020 is amended to read as follows

38.0020 Exempt Land Uses and Activities

MCC ~~38.0000 through 38.0110, 38.2000 through 38.3295, and 38.7000 through 38.7085~~ Chapter 38 shall not apply to:

Section 4. § 38.0110 is amended to read as follows

38.0110 Indian Tribal Treaty Rights and Consultation

(A) If comment regarding tribal rights is received during the comment period provided in MCC ~~38.7025 (B)~~ 38.0530 (B) or (C) from an Indian tribal government, the applicant shall offer to meet with the affected tribal government within 10 calendar days. The 10 day consultation period may be extended upon agreement between the project applicant and the tribal government.

(B) The Planning Director shall deem the Treaty Rights Protection Plan process complete if no substantiated comment is received during the 30 day comment period and the Treaty Rights

Protection Plan and/or site plan indicate that the proposed uses would not affect or modify treaty or other rights of any Indian tribe.

(1) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC ~~38.7025 (B)~~38.0530 (B) or (C) within 25 days of the expiration of the 30 day comment period.

(2) The decision of the Planning Director regarding treaty or other rights of any Indian tribe shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC ~~38.0780~~38.0530 (B) or (C).

Section 5. § 38.0530 is amended to read as follows

38.0530 Summary of decision making processes.

The following decision making processes chart shall control the County' s review of the indicated permits:

APPROVAL PROCESS				
Permit Type	I	II	III	PC
Initial Approval Body	(Not a "land use decision")	(Planning Director)	(Hearings Officer)	(Legislative)
Allowed Uses	X			
Review Uses		X		
Conditional Uses			X	
Zone Code Text Changes (Initiated by County only)				X
Variance		X	X	
Extension of Decision		X		
Property Line Adjustments		X		
Planned Unit Developments			X	
Land Divisions <ul style="list-style-type: none"> • Subdivision • Major Partition • Minor Partition 		X X	X	
Revocation of Decisions			X	
Zoning Code Interpretations		X		
<u>Hillside Development Permit</u>	X			
<u>Floodplain Development</u>	X			

<u>Grading and Erosion Control</u>	<u>X</u>			
<u>Street and Property Addressing</u>	<u>X</u>			

Permit Types

(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are typically assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses, and it's relationship to scenic, natural, cultural and recreational resources of the area. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the Gorge Commission; the U.S. Forest Service; the Indian tribal governments; the State Historic Preservation Office; the Cultural Advisory Committee; and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 30~~14~~ days after the notice of application is mailed. The Planning Directors decision is appealable to the Hearings Officer. If no appeal is filed the Planning Directors decision shall become final at the close of business on the 14th day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to the Columbia River Gorge Commission within 30 days after the decision is ~~signed~~. final. The decision is final the day the decision is signed by the Hearings Officer.

(C) Type III decisions involve the greatest amount of discretion and evaluation of subjective approval criteria, yet are not required to be heard by the Board. Applications evaluated through this process primarily involve conditional uses and some land divisions applications. ~~The process for these decisions is controlled by ORS 197.763.~~ Notice of the application and Hearings Officer hearing is published and mailed to the applicant, recognized neighborhood association and property owners 750 feet of the subject tract. Notice must be issued at least 20 days pre-hearing, and the staff report must be available at least 7 days pre-hearing. The Hearings Officer shall accept into the record all testimony and evidence relevant to the matter, prior to the close of the hearing. The Hearings Officer decision is the County's final decision and is appealable to the Columbia River Gorge Commission within 30 days after the decision is ~~signed~~. final. The decision is final the day the decision is signed by the Hearings Officer.

(D) PC review's are limited to legislative actions which involve the adoption or amendment of textual language to the County's National Scenic Area (NSA) land use regulations. Within the NSA the Columbia River Gorge Commission has the authority to adopt amendments to the Management Plan and Land Use Designations Maps that are directly applicable to County actions. For this reason, PC reviews only involve limited discretion and evaluation of new or revised subjective approval criteria and revised maps, and must be referred by majority vote of the entire Planning Commission onto the Board for final action prior to adoption by the County. ~~The Board of Commissioner's decision is the~~ Upon adoption by the Board of County County's final decision and is ~~appealable~~ Commissioners, the ordinance shall be promptly submitted to the Columbia River Gorge Commission within 30 days after the signing of a Board order or ordinance as applicable for their review and approval.

Section 6. § 38.0540 is amended to read as follows

38.0540 Assignment of decision makers.

The following County entity or official shall decide the following types of applications:

(D) PC Actions. The Planning Commission shall review all PC actions. If the Planning Commission adopts by majority vote of the entire Planning Commission a resolution to recommend an action, the Planning Commission refers the resolution to the Board for final action. ~~The Board's decision is the County's final decision on a PC application and is appealable to~~ordinance becomes effective after approval by the Columbia River Gorge Commission.
Commission and, if necessary, concurrence by the Secretary of Agriculture.

Section 7. § 38.0600 is amended to read as follows

38.0600 Completeness review.

(C) An applicant shall file within 30 days of the mailing of the initial completeness letter, a statement accepting the 180 day time period to complete the application. Failure of an applicant to accept the 180 day time period to complete the application within 30 days of the mailing of the completeness letter will constitute a refusal to complete the application. Where an applicant refuses to complete an application the County will take no action, reject the application and return all materials to the applicant.

Section 8. § 38.0620 is amended to read as follows

38.0620 Hearings Notice - Type II appeals or Type III applications.

Notice for all public hearings for Type III application or an appeal of a Type II application shall conform to the requirements of this section. At least 20 days prior to the hearing, the County shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to the Gorge Commission, the US Forest Service, the Indian tribal governments, the State Historic Preservation Office, and the Cultural Advisory Committee. The County shall further provide notice at least 20 days prior to a hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The County shall also publish the notice in a newspaper of general circulation within the County at least 20 days prior to the hearing. Notice of the hearing shall include the following information:

Section 9. § 38.0640 is amended to read as follows

38.0640 Appeals.

Appeals of any decisions of the County must comply with the requirements of this section.

(E) The Land Use Planning Division shall issue notice of the appeal hearing to all parties entitled to notice had the initial decision been subject to a hearing under MCC ~~38.0710~~38.0620. Notice of the appeal hearing shall contain the following information:

Section 10. § 38.0650 is amended to read as follows

38.0650 Reapplication limited.

If an application is denied, or withdrawn following the close of the public hearing or the end of the appeal period, no reapplication for the same or substantially similar proposal may be made for one year following the date of final decision denying the permit or the date of withdrawal.

Section 11. § 38.0710 is amended to read as follows

38.0710 (PC) Legislative hearing process.

(B) Planning Commission Review:

(4) Planning Commission recommendation. At the conclusion of the initial hearing or a continued hearing under MCC ~~38.0710~~38.0730, the Planning Commission shall adopt a recommendation on the proposal to the Board of Commissioners. If the Planning Commission decides that no action is appropriate, the matter is terminated and may not be appealed unless otherwise provided by law. If the Board of Commissioners has initiated the legislative proposal, the Planning Commission shall submit to the Board of Commissioners a report and recommendation not to act. If the Planning Commission recommends adoption of some form of the proposal, the Planning Commission shall prepare and forward to the Board of Commissioner' s a report and recommendation to that effect.

(C) Board of Commissioners review:

(1) Board of Commissioners action. Upon a recommendation from the Planning Commission on a legislative action, the Board of Commissioners shall hold at least one public hearing on the ~~proposal-a proposed action to amend the County's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents.~~ Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the Board of Commissioners may adopt, modify or reject the legislative proposal, or it may remand the matter to the Planning Commission for further consideration. If the Board of Commissioners ~~decision is to adopt~~adopts at least some form of the proposal, ~~and thereby amend the County's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents, the Board of Commissioners decision shall be enacted as an ordinance and final upon signing. The Board of Commissioner's decision is appealable to the Gorge Commission within 30 days after the signing of the Board Order.~~

(2) Notice of final decision. ~~Not later than 5 days following the Board of Commissioner's final decision, the Planning Director shall mail notice of the decision to the Columbia River Gorge Commission.~~

Section 12. § 38.0750 is amended to read as follows

38.0750 Expiration of prior land use decisions.

All land use decisions authorized prior to ~~(enactment date of this Ordinance)~~ March 19, 2001 (Ord. No. 953) shall expire on ~~(two years from the date of enactment of this ordinance)~~ March 19, 2003, unless a different timeframe was specifically included in the decision.

Section 13. § 38.2020 is amended to read as follows

38.2020 Allowed Uses

(A) The following uses are allowed on land designated GGF without review:

(5) Actions taken in response to an emergency/disaster event as defined in MCC 38.0015 (E) pursuant to the provisions of MCC 38.7090.

(B) The following uses are allowed on land designated GSF without review:

(1) New agricultural uses as defined in MCC 38.0015 (A) and the open space uses allowed under MCC 38.2625 (C), except where there would be potential impact to cultural or natural resources.

Section 14. § 38.2025 is amended to read as follows

38.2025 Review Uses

(A) The following uses may be allowed on lands designated GGF, pursuant to MCC ~~38.0035-38.0530~~ (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

(B) The following uses may be allowed on lands designated GSF pursuant to MCC ~~38.0035-38.0530~~ (B) when the use or development will be sited to minimize the loss of land suitable for the production of forest products and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

(1) Any use listed in MCC 38.2225 (B).

(2) Forest practices in accordance with a site plan for forest practices approved by the Oregon Department of Forestry, or other designated forest practices review agency, including the following:

(a) The following information, in addition to the site plan requirements of MCC ~~38.0035~~ (C), 38.0045(A)(2), shall be included on the site plan:

Section 15. § 38.2225 is amended to read as follows

38.2225 Review Uses

(A) The following uses may be allowed on lands designated GGA pursuant to the provisions of MCC ~~38.0040;38.0530~~ (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

(B) The following uses may be allowed on lands designated GSA– 40 pursuant to MCC ~~38.0035;38.0530~~ (B), provided that the use or development will be sited to minimize the loss of land suitable for the production of agricultural crops or livestock and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

Section 16. § 38.2425 is amended to read as follows

38.2425 Review Uses

The following uses may be allowed on lands designated GGRC, pursuant to MCC ~~38.0035;38.0530~~ (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

Section 17. § 38.2625 is amended to read as follows

38.2625 Review Uses

(A) The following uses may be allowed on lands designated GGO, pursuant to MCC ~~38.0035;38.0530~~ (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

(B) The following uses are allowed on land designated GGO-GW, pursuant to MCC ~~38.0035;38.0530~~ (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

(C) The following uses are allowed on land designated GGO-SP, pursuant to MCC ~~38.0035;38.0530~~ (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

(D) The following uses may be allowed on lands designated GGO– GW:

(1) Existing quarries may continue operation if they are determined to be consistent with standards to protect scenic, cultural, natural and recreation resources pursuant to MCC ~~38.0035;38.0530~~ (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied.

(E) The following uses may be allowed on lands designated GSO, pursuant to MCC ~~38.0035;38.0530~~ (B), when consistent with an open space plan approved by the U.S. Forest Service and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

Section 18. § 38.2825 is amended to read as follows

38.2825 Review Uses

(A) The following uses are allowed on all lands designated GG– PR pursuant to MCC 38.0035:38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

(B) The following uses are allowed on all lands designated GG– CR pursuant to MCC 38.0035:38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

(C) The following uses are allowed on all lands designated GS– PR pursuant to MCC 38.0035:38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

Section 19. § 38.3025 is amended to read as follows

38.3025 Review Uses

(A) The following uses may be allowed on lands designated GGR, pursuant to MCC 38.0035:38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

(B) The following uses may be allowed on lands designated GSR, pursuant to MCC 38.0035:38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied:

Section 20. § 38.3225 is amended to read as follows

38.3225 Review Uses

(A) A single-family dwelling on a legally created parcel, pursuant to MCC 38.0035:38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7090 have been satisfied.

Section 21. § 38.4135 is amended to read as follows

38.4135 Improvements Required

(A) Required parking and loading areas shall be improved and placed in condition for use before the grant of a Certificate of Occupancy ~~under MCC 38.0515,~~ or a Performance Bond in favor of Multnomah County equivalent to the cost of completing such improvements shall be filed with the Planning Director.

Section 22. § 38.4155 is amended to read as follows

38.4155 Interpretation

Off-street parking or loading requirements for structures or uses not specifically listed in MCC 38.4205 and 38.4210 shall be determined by written decision of the Planning Director. The Director shall base such requirements on the standards for parking or loading of similar uses.

Section 23. § 38.5500- is amended to read as follows

38.5500- Purposes

The purposes of the Hillside Development and Erosion Control subdistrict are to promote the public health, safety and general welfare, and minimize public and private losses due to earth movement hazards in specified areas and minimize erosion and related environmental damage in unincorporated Multnomah County, all in accordance with ORS 215, LCDC Statewide Planning Goal No. 7 and OAR 340-41-455 for the Tualatin River Basin, and the Multnomah County Comprehensive Framework Plan Policy No. 14, County. This subdistrict is intended to:

(E) Regulate land development actions including excavation and fills, drainage controls and protect exposed soil surfaces from erosive ~~forces~~; and forces.

Section 24. § 38.7010 is amended to read as follows

38.7010 Applicability

With the exception of Primary Uses, no building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in the Columbia River Gorge National Scenic Area except when approved pursuant to MCC 38.7025 or 38.7030 38.0530 (B) or (C) or 38.7090.

Section 25. § 38.7045 is amended to read as follows

38.7045 GMA Cultural Resource Review Criteria

(B) The cultural resource review criteria shall be deemed satisfied, except MCC 38.7045 (L) and (M), if:

(1) The project is exempted by MCC 38.7045 (A) (1), no cultural resources are known to exist in the project area, and no substantiated comment is received during the comment period provided in MCC 38.7025 38.0530 (B).

(C) If comment is received during the comment period provided in MCC 38.7025 38.0530 (B), the applicant shall offer to meet with the interested persons within 10 calendar days. The 10 day consultation period may be extended upon agreement between the project applicant and the interested persons.

(E) The Planning Director shall submit a copy of all cultural resource survey reports to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC ~~38.7025~~38.0530 (B). Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer area.

(4) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC ~~38.18(E)-38.7025~~38.0530 (B) within 10 days of the expiration of the 30 day comment period.

(5) The decision of the Planning Director on an application for cultural resource review shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC ~~38.0785-~~38.0530 (B).

(G) If the Evaluation of Significance demonstrates that the affected cultural resources are not significant, the Planning Director shall submit a copy of all cultural resource survey reports to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC 38.7045 (E) (1).

(5) The decision of the Planning Director on an application for cultural resource review shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC ~~38.0785-~~38.0530 (B).

(I) If the Assessment of Effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Planning Director shall submit a copy of the assessment to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC 38.7045 (E) (1).

(5) The decision of the Planning Director on an application for cultural resource review shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC ~~38.0785-~~38.0530 (B).

(K) The Planning Director shall submit a copy of the Mitigation Plan to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC 38.7045 (E) (1).

(3) The Planning Director shall deem the cultural resource review process complete if the Mitigation Plan indicates that the impact of the proposed use is reduced to no effect or no adverse effect and no substantiated comment is received during the 30 day comment period.

(a) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC 38.7045 (E) within 10 days of the expiration of the 30 day comment period.

(b) The decision of the Planning Director on an application for cultural resource review shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC ~~38.0785-~~38.0530 (B).

(4) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

(L) Cultural Resources Discovered After Construction Begins

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

(3) Survey and Evaluation – The Gorge Commission will survey the cultural resources after obtaining written permission from the landowner and appropriate permits from SHPO (*see* ORS 273.705 and ORS 358.905 to 358.955). It will gather enough information to evaluate the significance of the cultural resources. The survey and evaluation will be documented in a report that generally follows the standards in MCC 38.7045 (C) (2) and MCC 38.7045 (E).

(c) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC ~~38.7025~~38.0530 (B).

(d) The decision of the Planning Director shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC ~~38.0785~~38.0530 (B). Construction activities may recommence if no appeal is filed.

Section 26. § 38.7055 is amended to read as follows

38.7055 GMA Wetland Review Criteria

(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:

(c) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan revision pursuant to MCC ~~38.0100~~38.0710 to demonstrate that practicable alternatives do not exist.

Section 27. § 38.7090 is amended to read as follows

38.7090 Responses to an Emergency/Disaster Event

(D) Post-Emergency/Disaster Response Site Review

All applications for post-emergency/disaster response Site Review shall be processed pursuant to the procedural provisions of MCC ~~38.7025~~38.0530 (B) and evaluated for compliance with the standards of MCC 38.7090 (E).

Section 27. The effective date of the amendments to Chapter 38 Columbia River Gorge National Scenic Area, General Management Areas shall be the date of adoption by the Bi-State Gorge Commission. Amendments to Special Management Areas shall be effective upon acknowledgement by the United States Secretary of Agriculture.

FIRST READING:

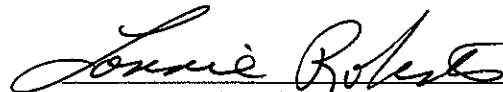
September 19, 2002

SECOND READING AND ADOPTION:

September 26, 2002



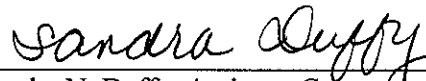
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Lonnie Roberts, Vice-Chair

REVIEWED:

THOMAS SPONSLER, COUNTY ATTORNEY
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By 

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