

1600 SE 190th Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

**STAFF REPORT FOR THE PLANNING COMMISSION HEARING
January 7, 2019**

**HOUSEKEEPING AMENDMENTS
(PC-2018-11006)**

Staff Contact:
Kevin Cook, Senior Planner
kevin.c.cook@multco.us (503) 988-0188

1.0 INTRODUCTION

This proposal, PC-2018-11006, relates to a range of housekeeping amendments to zoning codes which have been combined for efficiency into one proposal. These amendments generally make corrections to the zoning code, such as spelling errors, incorrect cross references, outdated ORS citations, and clarifications of existing code. The scope of the project is limited to ‘housekeeping items’ in the general category of minor code fixes. Explanations of the changes are included in the staff notes below where necessary.

2.0 SECTION 2.0 PROPOSED CODE AMENDMENTS – CHAPTER 38 - COLUMBIA RIVER GORGE NATIONAL SCENIC AREA

The following text is used within the proposed amendments:

Double Underline = Proposed new language
~~Strikethrough~~ = Language proposed for removal

* * * Indicates a minor gap in code for brevity, typically within the same section

2.1 – Rectifying An Absent Code Reference and Changing Term “Non-conforming” to “Existing”

Staff Note: The National Scenic Area Code (Chapter 38) does not use the term “non-conforming uses.” Instead, the concept of Existing Uses and Discontinued Uses (see MCC 38.0030) is used.

§ 38.0080 Signs

* * *

(F) Any sign in the General Management Area which does not conform with subsections (A) and (D) and has existed prior to adoption of the Management Plan shall be considered ~~non-conforming~~ existing and subject to the following:

- (1) Alteration of existing ~~non-conforming~~ signs shall comply with MCC 38.0080 (A) and (D).
- (2) Any ~~non-conforming~~ existing sign used by a business must be brought into conformance concurrent with any expansion or change in use which requires a development permit.

2.2 – Correcting a Code Citation Error

§ 38.7090 Responses to an Emergency/Disaster Event

Responses to an emergency/disaster event are allowed in all zoning districts within the Columbia River Gorge National Scenic Area when in compliance with the following standards:

* * *

(E)(1)(f) 4. Disposal sites created according to MCC 38.~~070~~ 7090(E)(1)(f)1.b. shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from routine road maintenance activities shall not be deposited at these sites.

2.3 – Correcting Error in Identified Process for Type II or III Decision Extension

Staff Note: The 2004 Columbia River Gorge Management Plan states “Approval or denial of a request for extension shall be considered an administrative decision” – Chapter 7, GMA/SMA Guidelines, Subsection 6.D. ‘Expiration of Approvals,’ page II-7-4. This change is also consistent with MCC 38.0700 (Extension of Type II or Type III Decisions), which provides, “Any request for an extension shall be reviewed and decided upon by the Planning Director as a Type I decision.”

§ 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	II Expedited	III	PC
Initial Approval Body:	(Not a "land use decision")	(Planning Director)	(Planning Director)	(Hearings Officer)	(Legislative)
Allowed Uses ¹	X				
Expedited Uses			X		
Review Uses		X			
Conditional Uses				X	
Zone Code Text Changes (Initiated by County only)					X
Variance		X		X	
Extension of Decision	X	X			
Property Line Adjustments		X			
Planned Unit Developments				X	
Land Divisions					
Subdivision				X	
Major Partition		X			
Minor Partition		X			
Lot Consolidation	X				
Replat		X			
Revocation of Decisions				X	
Zoning Code Interpretations		X			
Temporary Health Hardship Permit Extension	X				
Hillside Development Permit		X			
Floodplain Development	X				
Grading and Erosion Control	X				

2.4 - Correcting a Code Citation Error

Staff Note: Ordinance 1064 (2005) deleted MCC 38.0040 (Section 8 of Ordinance 1064), and moved the standards from MCC 38.0040(E) to MCC 38.7335 (Section 86 of Ordinance 1064). However, the cross-reference to MCC 38.0040(E) in MCC 38.0050 was not updated at that time.

§ 38.0050 Conditional Uses

The following Conditional Uses may be permitted when allowed by the district and found by the Approval Authority, pursuant to the provisions of MCC 38.0045, to satisfy MCC 38.7000 through 38.7085:

* * *

(C) Home Occupations and Cottage Industries

Home occupations and cottage industries may be established as authorized in various districts consistent with the following:

* * *

(10) A bed and breakfast lodging establishment which is two bedrooms or less is considered a home occupation and shall meet the standards of MCC 38.0040(E) 7335.

2.5 - Correcting a Code Citation Error

Staff Note: Section 80 of Ordinance 1064 (2005) renumbered MCC 38.0085 to MCC 38.7305, but the cross-reference in MCC 38.7300 was not updated at that time.

§ 38.7300- REVIEW AND CONDITIONAL USES

(B) Forestry

(4) The use will not significantly increase fire hazard, fire suppression costs or risks to fire suppression personnel and will comply with MCC ~~38.0085~~. 38.7305.

2.6 - Correcting a Code Citation Error

§ 38.7350 DISPOSAL SITES FOR SPOIL MATERIALS FROM PUBLIC ROAD MAINTENANCE ACTIVITIES

(C) Scenic Resource Standards. Disposal sites shall comply with the same scenic resources protection standards as expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

(1) Sites more than 3 miles from the nearest key viewing area shall be visually subordinate as seen from any key viewing area, according to MCC 38.7035 (B) ~~(25)~~(26). An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the start of on-the-ground activities.

(2) Sites less than 3 miles from the nearest key viewing area shall be fully screened from any key viewing area, according to MCC 38.7035 (B) ~~(26)~~(27). An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the start of on-the-ground activities. Disposal activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

2.7 - Correcting a Code Citation Error

§ 38.2225(A)(8) REVIEW USES

(b) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, as defined in MCC 38.0015, where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. Current use includes a minimum area which would satisfy subsection ~~(5)~~(8) (c) 4. below; and

2.8 - Correcting a Code Citation Error

Staff Note: Section 8 of Ordinance 1064 (2005) deleted MCC 38.0040(A) relating to Land Divisions. Those provisions were relocated to MCC 38.7725(A) in Section 98 of Ordinance 1064. However, the cross-reference to MCC 38.0040 in MCC 38.7300 was not updated at that time.

§ 38.3025 REVIEW USES

(A) The following uses may be allowed on lands designated GGR, pursuant to MCC 38.0530(B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

* * *

(7) Land divisions, pursuant to the provisions of MCC ~~38.0040~~ 38.7725(A).

2.9 – Changing spelling of ‘supercede’ to more common usage ‘supersede’ consistent with the spelling in other parts of the MCC.

38.0800 Applicability in the event of conflicts.

As applied to lands within the Columbia River Gorge National Scenic Area, the provisions of MCC 38.0510 through 38.0800 ~~supercede~~ supersede all conflicting provisions in the Multnomah County Code.

2.10 – Spelling error

§ 38.7040 SMA Scenic Review Criteria

§ 38.7040(C)(2)(a)

1. The limiting factors to meeting the required scenic standard and/or applicable ~~provisions~~ provisions of 38.7040(A),

2.11 – Spelling error

§ 38.7040 SMA Scenic Review Criteria

(D) SMA Requirements for areas not seen from KVAs Unless expressly exempted by other provisions in MCC 38.7040, colors of structures on sites not visible from key viewing areas shall be earth-tones found at the specific site. The specific colors or list of acceptable colors shall be approved as a condition of approval, drawing from the recommended palette of colors included in the Scenic ~~Resources~~ Resources Implementation Handbook.

2.12 – Spelling errors and capitalization

§ 38.7045 GMA Cultural Resource Review Criteria

§ 38.7045(E)

(2) The Planning Director shall require an ~~Evaluation of Significance~~ evaluation of significance if the ~~Reconnaissance~~ reconnaissance or ~~Historic Survey~~ historic survey or substantiated comment received indicate that the proposed use might affect any of the following:

- (a) Cultural resources
- (b) Archaeological resources
- (c) Traditional cultural properties
- (d) Historic buildings or structures

(3) The Planning Director shall deem the cultural resource review process complete if no substantiated comment is received during the 30 day comment period and the ~~Reconnaissance~~ reconnaissance or ~~Historic Survey~~ historic survey indicate that the proposed use would have no ~~affect~~ effect on the items listed in sub-section (2)(a) through (d) above.

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

(F) Evaluations of ~~Significance~~ significance shall meet the following standards:

(1) Evaluations of ~~Significance~~ significance shall follow the procedures in How to Apply the National Register Criteria for Evaluation (U.S. Department of the Interior, n.d.) and Guidelines for the Evaluation and Documentation of Traditional Cultural Properties (Parker and King, n.d.). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

(2) To evaluate the significance of cultural resources, the information gathered during the ~~reconnaissance~~ reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analysis, and archival research may be required.

(3) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.

(4) The Evaluation of Significance shall follow the principles, guidelines, and report format recommended by Oregon SHPO (Oregon State Historic Preservation Office 1990). It shall incorporate the results of the ~~reconnaissance~~ reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.

2.13 – Incomplete citation

§ 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 (A)(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 (A)(2)(a) and (2)(b).

2.14 – Spelling error

MCC 38.7370 Forest Practices in the Special Management Area

DESIRED FOREST STRUCTURE AND PATTERN						
1	2	3	4	5	6	7
Vegetation Type [#]	Forest Structure (Average % total canopy closure (cc)) [*]	Typical Forest Openings Size Disturbance caused Historic (Natural) Desired	Percent Openings at One Time Historic (Natural) Desired	Leave Trees Includes all available remnant old forest	Average Down Wood Pieces 30 ft long per acre (scattered)	Average Snags (Conifers) No. per acre Snags are 20-40 ft in height

DESIRED FOREST STRUCTURE AND PATTERN								
1	2	3		4	5	6	7	
West Conifer	60-80% canopy closure Understory layer variable (0-60% of total cc)	Variable sizes with mosaic pattern, irregular shapes Mosaic fire 1-100 acres Catastrophic fire over 100 acres	Retain forested character Allow openings up to 15 acres (up to 5 acres in the foreground of KVAs) All openings 1 acre or less on National Forest land and all Open Space LUD Openings retain 15 - 40 % canopy closure	10%(mosaic fire) up to 55%(catastrophic fire) Intense fire return interval is 300 yrs	Not to exceed 8% for West Coniferous <u>Coniferous</u> Woodland Landscape Setting and not to exceed 4% for Gorge Walls, Canyonlands and Wildlands Landscape Setting Widely dispersed, variable sized mosaic of irregular shapes blending with existing openings.	Leave 15% of existing trees per acre throughout opening and in clumps. Include 3 trees per acre of the largest size trees available	18 - 25 pieces greater than 20" dbh	10 snags at 10" - 20" dbh, and 7 snags greater than 20" dbh
East Conifer (Ponderosa Pine/Douglas fir)	40-80% canopy closure Understory layer less than 25% of total cc	Few Openings due to low intensity fires. ¼ to 2 acres	Openings less than 1 acre Openings have 0 - 40% canopy closure Openings widely dispersed	1 -10%	1 - 10% (% by vegetation type)	No leave trees required	3 - 6 pieces greater than 20" dbh	5 snags at 10"-20" dbh and 3 snags greater than 20" dbh

3.0 SECTION 3.0 PROPOSED CODE AMENDMENTS – CHAPTER 39 – ZONING CODE

3.1 - Correcting spelling errors and adding to the list of common names to the Nuisance Plant List.

§ 39.5580- NUISANCE PLANT LIST.

Table 1

Nuisance Plant List:

Common Name	Scientific Name
Lesser celandine	<i>Chelidonium majus</i>
Canada Thistle	<i>Cirsium arvense</i>
Common Thistle	<i>Cirsium vulgare</i>
Western Clematis	<i>Clematis ligusticifolia</i>
Traveler's Joy	<i>Clematis vitalba</i>
Poison hemlock	<i>Conium maculatum</i>
Field Morning-glory	<i>Convolvulus arvensis</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>
Lady's nightcap	<i>Convolvulus sepium</i> <u><i>sepium</i></u>
Pampas grass	<i>Cortaderia selloana</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>
Scotch broom	<i>Cytisus scoparius</i>
Queen Ann's Lace	<i>Daucus carota</i> <u><i>Anne's</i></u>
South American Waterweed	<i>Elodea densa</i>
Common Horsetail	<i>Equisetum arvense</i>
Giant Horsetail	<i>Equisetum telemateia</i> <u><i>telmateia</i></u>
Crane's Bill	<i>Erodium cicutarium</i> <u><i>Cranesbill</i></u>
Roberts Geranium	<i>Geranium robertianum</i> <u><i>Robert</i></u> <u><i>robertianum</i></u>
English Ivy	<i>Hedera helix</i>
St. John's Wort	<i>Hypericum perforatum</i>
English Holly	<i>Ilex aquafolium</i> <u><i>Ilex</i></u>
Golden Chain Tree	<i>Laburnum watereri</i>
Duckweed, Water Lentil	<i>Lemna minor</i>

Fall Dandelion	Loentodon <u>Leontodon autumnnalis</u>
Purple Loosestrife	<i>Lythrum salicaria</i>
Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Reed Canary grass	<i>Phalaris arundinacea</i>
Annual Bluegrass	<i>Poa annua</i>
Swamp Smartweed	<i>Polygonum coccineum</i>
Climbing Binaweed <u>Bindweed, Wild buckwheat</u>	<i>Polygonum convolvulus</i>
Giant Knotweed	<i>Polygonum sachalinense</i>
English, Portugese <u>Portuguese</u> Laurel	<i>Prunus laurocerasus</i>
Poison Oak	<i>Rhus diversiloba</i>
Himalayan Blackberry	Rubus discolor <u>Rubus discolor</u>
Evergreen Blackberry	<i>Rubus laciniatus</i>
Tansy Ragwort	<i>Senecio jacobaea</i>
Blue Bindweed	<i>Solanum dulcamara</i>
Garden Nightshade	<i>Solanum nigrum</i>
Hairy Nightshade	<i>Solanum sarrachoides</i>
Common Dandelion	Taraxacum officinale <u>officinale</u>
Common Bladderwort	Utricularia vulgaris <u>Utricularia vulgaris</u>
Stinging Nettle	Urtica <u>Urtica dioica</u>
Periwinkle (large leaf)	<i>Vinca major</i>
Periwinkle (small leaf)	<i>Vinca minor</i>
Spiny Cocklebur	Xanthium spinosum <u>spinosum</u>
Bamboo sp.	<i>various genera</i>

3.2 – Amend Adjustments and Variances code to explicitly state that adjustment/variance cannot be granted unless in support of a lawful use.

Staff Note: This recommended change stems from a land use case where a Hearings Officer denied an application for approval of an addition, but granted a variance for the required setback for that addition. The result was that the applicant could not implement the variance because it was not associated with an underlying lawful use. This amendment codifies staff's current practice in implementing the Code and is intended to avoid future confusion and incongruous holdings by Hearings Officers and other tribunals. The practical effect, however, will be the same – where there is no underlying lawful use, there can be no adjustment or variance of the standards for that use.

§ 39.8210 ADJUSTMENT APPROVAL CRITERIA.

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through ~~(E)~~ (F) are met:

(F) The adjustment must be in support of a lawfully established use or in support of the lawful establishment of a use.

§ 39.8215 VARIANCE APPROVAL CRITERIA.

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through ~~(F)~~ (G) are met:

(G) The variance must be in support of a lawfully established use or in support of the lawful establishment of a use.

3.3 – Clarifying that additional one year extensions do not apply to residential development in EFU and CFU zones.

Staff Note: The proposed additional text reinforces what is already stated in Subsection (A), that extensions for dwelling approvals listed in MCC 39.1185(C) are eligible for a one-time 24 month time extension. The new text makes it clear that the dwellings referenced in

MCC 39.1185(C) (Type II and III decisions approving residential development on EFU/CFU outside the UGB) are not eligible for additional one-year extensions.

§ 39.1195 EXTENSION OF A TYPE II OR TYPE III DECISION.

(A) The Planning Director shall grant one extension period of 24 months for approvals of dwellings listed in MCC 39.1185 (C) and shall grant one extension period of up to 12 months for all other approvals provided:

- (1) An applicant makes a written request for an extension of the development approval period;
- (2) The request is submitted to the county prior to the expiration of the approval period;
- (3) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
- (4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(B) Pursuant to OAR 660-033-0140, approval of an extension in EFU and CFU districts is an administrative decision, is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision. All other extension requests authorized by this section are land use decisions and shall be reviewed under the Type II procedures set forth in MCC 39.1125.

(C) **Except for approvals of dwellings listed in MCC 39.1185 (C),** ~~A~~ additional one-year extensions shall be authorized where applicable criteria for the decision have not changed. For each additional extension, the Planning Director shall confirm compliance with the standards in MCC 39.1195 (A) (1-4).

3.4 - Correcting OAR Citation Errors

§ 39.4265 STANDARDS FOR SPECIFIED FARM DWELLINGS.

§ 39.4265(B)(1)

(e) Prior to the final approval for a dwelling, the applicant shall provide evidence that the covenants, conditions and restrictions form referred to as “Exhibit A” in OAR 660-033-0135~~(9)~~**(5)(b)** has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants,

conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling.

§ 39.4265(B)(4)

(e) Prior to the final approval for a dwelling, the applicant shall provide evidence that the covenants, conditions and restrictions form referred to as “Exhibit A” in OAR 660-033-0135(9)(5)(b) has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling.

§ 39.4265(B)(5)

(g) “Commercial dairy farm” is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by OAR 660-033-0135(5)(3)(a) or (7)(4)(a), whichever is applicable, from the sale of fluid milk.

§ 39.4265(C)(4)

(c) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11)(8); and

3.5 – Fixes confusing lettering that could be read as a subsection rather than a sentence presenting ‘either/or’ logic.

§ 39.3005- LOT OF RECORD – GENERALLY.

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, **either** (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.