



April 10, 2024

Joe Turner, Hearings Officer/c/o Multnomah County Land Use Planning Division
1600 SE 190th Avenue
Portland, Oregon 97233
via email only to: LUP-comments@multco.us

Re: Oregon Parks and Recreation Department's application # T3-2023-16947 to install electric vehicle chargers at Rooster Rock State Park and for a Lot of Record Verification

Dear Examiner Turner:

Friends of the Columbia Gorge has reviewed and would like to comment on the above-referenced application. Friends is a non-profit organization with approximately 5,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge. Our membership includes hundreds of citizens who reside within the Columbia River Gorge National Scenic Area.

Friends of the Columbia Gorge reviews and comments on all land use applications subject to the National Scenic Area Provisions of the Multnomah County Code. These comments are intended to identify application requirements and resource protection standards and provide recommendations to the permitting agency and the public regarding legal requirements.

Burden of Proof

The Multnomah County Code places the burden of proof on the applicant. MCC § 38.0580. The applicant must submit all necessary supporting documentation and information sufficient to demonstrate compliance with all applicable approval criteria and must prove with that evidence that all applicable approval criteria are or can be met.

Application Requirements

Under section 38.0600 of the Multnomah County Code (MCC), a complete application is required prior to review. An application must not be accepted until any omissions or deficiencies have been corrected by the applicant. MCC § 38.0600(A). Approval of a land use proposal not accompanied by a complete and adequate application violates the county's scenic area ordinance, denies the public any meaningful opportunity to comment on the proposed development, and results in a decision not based on substantial evidence. Such a decision is subject to reversal, as held by the Gorge Commission unanimously in the *Eagle Ridge* case. CRGC No. COA-S-99-01 (June 22, 2001). It is similarly unlawful for the County to use conditions of approval to defer the submission of complete and adequate application materials. *Eagle Ridge* at 9–10.

Site Plan Map

Each site plan must contain a map of the project area. MCC § 38.0045(A)(2) contains a list of specific elements that must be included in site plan maps. Site plan maps must include the following required elements:

- North arrow
- Map scale
- Boundaries, dimensions, and size of the subject parcel
- Significant terrain features or landforms
- Groupings and species of trees and other vegetation on the parcel
- Location and species of vegetation that would be removed or planted
- Bodies of water and watercourses
- Location and width of existing and proposed roads, driveways, and trails
- Location and size of existing and proposed structures
- Location of existing and proposed services, including wells or other water supplies, sewage disposal systems, power and telephone poles, and lines, and outdoor lighting
- Location and depth of all proposed grading and ditching
- Proposed uses on parcels contiguous to established recreation sites must provide a buffer between the proposed use and recreation site sufficient to insure that the proposed use will not detract from the use or enjoyment of the recreation site

Elevation Drawings

Pursuant to MCC § 38.0045(A)(3), applications for structures and additions to structures must provide scale elevation drawings showing:

- the appearance of proposed structures, including both natural and finished grade, and
- the geometric exterior of the length and width of structures seen from a horizontal view.

Parcels Visible from Key Viewing Areas

If the project is proposed on a parcel visible from key viewing areas, then under MCC § 38.7035(B)(4) the application must also contain the following for all buildings:

- A written description of the proposed building height, shape, color, exterior building materials, and exterior lighting; and
- A description and illustration of all proposed screening vegetation, including the number, size, species, and exact location of all vegetation.

Without the above-mentioned required information, neither the County nor any other reviewing agency can accurately evaluate the potential impacts of the development. In addition, this information is required in order to afford the public a meaningful opportunity to comment on the proposed development.

Allowed Uses

Public Recreation Zone

The proposed project is located in a Public Recreation zone in a Special Management Area. MCC §§ 38.2825(C) specify which uses are allowed in SMA Public Recreation zones.

Resource Impact Review

Scenic Resource Protection

MCC § 38.7040 contains the scenic resource protection standards for the Special Management Areas. Whether or not the proposed development is visible from KVAs, exterior colors must be dark earth-tones found at the specific site or in the surrounding landscape. Actual specific colors meeting this standard must be proposed in the land use application and must be included in the conditions of approval. Colors that are not expressly approved by a land use decision may not be used. MCC §§ 38.7040(A)(10), (D)(1).

Key Viewing Areas

According to the Seen Areas Composite GIS data layer, the subject parcel may be visible from key viewing areas such as the Columbia River, Rooster Rock State Park, Crown Point Park, the Historic Columbia River Highway, Larch Mountain Road, Portland Women's Forum State Park, Washington State Route 14, Beacon Rock, and Sherrard Point on Larch Mountain. If so, then the following rules apply:

- New development and land uses must be sited so that they are visually subordinate or not visually evident to their settings as seen from KVAs and that scenic resources are not adversely affected, including cumulative effects, based on the degree of visibility from KVAs. MCC § 38.7040(A)(1). This includes evaluation of past, present and likely future actions. Individually insignificant but cumulatively significant actions must be evaluated and cumulative adverse impacts must be avoided. 16 USC 544(a)(3). Since the scenic standards allow some visibility of development, simply achieving the standard does not guarantee that there will not be cumulative adverse effects.
- Development must be designed to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics. MCC § 38.7040(A)(4).
- When screening of development is needed to meet the scenic standard from key viewing areas, use of existing topography and vegetation must be given priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms. MCC § 38.7040(A)(4).
- Development must be sited to avoid the need for new landscaping wherever possible. MCC § 38.7040(A)(9)(a).
- New landscaping can be used to screen development only when application of all other available guidelines in the MCC is not sufficient to make the development meet the scenic standard from key viewing areas. MCC § 38.7040(A)(9)(a). Any screening vegetation must be sized to provide sufficient screening to meet the scenic standard within five years or less from the start of construction and must be installed as soon as practicable, and prior to project completion. MCC §§ 38.7040(A)(9)(b), (c). Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of vegetation that does not survive. MCC §§ 38.7040(A)(9)(c).
- Scenic standards must be met by blending new development with the adjacent natural landscape elements rather than with existing development. MCC § 37.7040(A)(3).

- The extent and type of conditions applied to a proposed development or use to achieve the scenic standard must be proportionate to its degree of visibility from key viewing areas. MCC § 38.7040(A)(5).
- Under MCC § 7040(A)(5)(a), decisions must include written findings addressing the Primary factors influencing the degree of visibility, including but not limited to:
 - The amount of area of the building site exposed to key viewing areas,
 - The degree of existing vegetation providing screening,
 - The distance from the building site to the key viewing areas from which it is visible,
 - The number of key viewing areas from which it is visible, and
 - The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).
- Exterior lighting must be directed downward, hooded, and shielded. Hooding and shielding materials must be non-reflective and opaque. MCC § 38.7040(A)(12).
- The silhouette of proposed development must remain below the skyline of a bluff, cliff, or ridge as visible from key viewing areas. MCC § 38.7040(A)(7).
- Structure height must remain below the average tree canopy height of the natural vegetation adjacent to the structure, unless it has been demonstrated that compliance with this standard is not feasible considering the function of the structure. MCC § 38.7040(A)(8).
- For structures, exterior building materials must be non-reflective or low-reflective and continuous surfaces of glass must be limited to ensure meeting the scenic standard. MCC § 38.7040(A)(11).

New development must be sited on the parcel in a location that will achieve visual subordination as seen from KVAs, using existing topography and vegetation for screening and applying any necessary design changes before requiring new screening measures.

Landscape Setting

MCC § 38.7040(B) specifies the standards for ensuring compatibility of development with the landscape setting in the SMAs whether or not the proposed development would be visible from KVAs. This development is proposed in a River Bottomlands landscape setting. River bottomlands must retain the overall visual character of a floodplain and associated islands. Buildings must have an overall horizontal appearance in areas with little tree cover. MCC § 38.7040(B)(3).

Natural Resource Protection

The County must review whether the proposed development would contribute to cumulative adverse impacts to natural resources. MCC §§ 38.7075, 38.7075(J)(3), 38.7075(K)(9). This includes evaluation of past, present, and likely future actions. Individually insignificant but cumulatively significant actions must be evaluated and cumulative adverse impacts must be avoided. 16 USC 544(a)(3).

MCC § 38.7075 contains the standards for projects that may affect natural resources in the Special Management Areas.

Water Resources

All Water Resources must, in part, be protected by establishing undisturbed buffer zones as specified in MCC 38.7075(A)(2)(a) and (2)(b). MCC § 38.7075(A). All buffer zones shall be retained undisturbed and in their natural condition, except as permitted with a mitigation plan and the satisfaction of the criteria in MCC § 7075(G). MCC §§ 38.7075(A)(1), (G). The applicant is responsible for identifying all water resources and their appropriate buffers. MCC § 38.7075(C).

Sensitive Wildlife Resources

Protection of wildlife/plant areas and sites must be done when proposed new development or uses are within 1000 feet of a rare wildlife or rare plant area or site. MCC § 38.7075(H). The Planning Director shall submit site plans of proposed uses or development proposed within 1,000 feet of a rare wildlife or rare 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 Biodiversity Information Center for plant issues). MCC § 38.7075(I). The County, in consultation with the state and federal wildlife biologists and botanists, must use the criteria in MCC § 38.7075(K) when reviewing and evaluating the site plan to ensure that the proposed development or uses do not compromise the integrity and function of or result in adverse effects to the wildlife and plant area or site. MCC § 38.7075(K).

Cultural Resource Protection

MCC § 38.7050 contains the standards for protection of cultural resources in the Special Management Areas. The cultural resource review criteria will be deemed satisfied, except the inadvertent discovery provisions, if the U.S. Forest Service or Planning Director does not require a cultural resource survey and no comment is received during the comment period provided in MCC 38.0530(B). The procedures of MCC 38.7045 are utilized for all proposed developments or land uses other than those on all Federal lands, federally assisted projects and forest practices. MCC § 38.7050(C).

If a use is proposed within 500 feet of a known cultural resource, the Gorge Commission is responsible for preparing a cultural resource reconnaissance survey and report. MCC § 38.7045(A)(2). For other uses, a reconnaissance survey need not be prepared if the area has a low probability of containing cultural resources, as determined by the Columbia River Gorge Commission and United States Forest Service. MCC § 38.7045(A)(1)(f). Reconnaissance surveys and reports must comply with the standards at MCC § 38.7045(D)(1).

Significant Cultural Resource

If a cultural resource is identified, it must be evaluated for significance. MCC § 38.7045(F). If the resource is determined to be significant, the County must determine whether the project is likely to adversely affect the resource. MCC § 38.7045(I)(2). If an adverse effect is likely, then a mitigation plan must be prepared pursuant to MCC § 38.7045(I)(2).

Conditions of Approval

All conditions of approval must be entered into the deeds of the affected parcels and registered with the county.

Conclusion

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven D. McCoy', with a stylized, cursive flourish at the end.

Steven D. McCoy
Staff Attorney