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**STAFF REPORT FOR THE CONTINUED VIRTUAL
PLANNING COMMISSION HEARING**

November 1, 2021

**AMENDMENTS TO MULTNOMAH COUNTY CHAPTER 38 ZONING CODE
AND COMPREHENSIVE PLAN IN RESPONSE TO FEDERALLY MANDATED REVISIONS TO THE
MANAGEMENT PLAN FOR THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA APPROVED
BY THE COLUMBIA RIVER GORGE COMMISSION (GORGE 2020 PROJECT) AND OTHER
AMENDMENTS TO CHAPTER 38 CODE AND THE COUNTY COMPREHENSIVE PLAN NOT
RELATED TO THE MANAGEMENT PLAN REVISIONS**

(PC-2021-14505)

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1.0 INTRODUCTION

The Multnomah County Planning Commission held a public hearing on October 4, 2021 to consider a proposal to amend Multnomah County Chapter 38 Zoning Code and Comprehensive Plan in response to federally mandated revisions to the Management Plan for the Columbia River Gorge National Scenic Area and other amendments to Chapter 38 and the Comprehensive Plan not related to the Management Plan Revisions.

During the October 4th hearing, staff presented a summary of the amendments and the Commission received public testimony. The Planning Commission deliberated on the proposal and voted to keep the public record open and continue the virtual hearing to 6:30pm on November 1, 2021. The next section of this staff report summarizes issues considered by the Commission during the October 4th hearing, reports back on questions raised during the hearing, and summarizes additional revisions proposed since the October 4th hearing.

Please see the October 4, 2021 staff report for a more detailed project description, summary of the proposed amendments and full exhibit list. An updated Exhibit A1 (Chapter 38 Zoning Code Revisions) has been attached to this staff report in response to feedback received during the

October 4th hearing. The new revisions proposed since the October 4th hearing are described below and marked within the revised Exhibit A1 attachment using **green background**.

2.0 KEY ISSUE SUMMARY

2.1 (Summary of Policy Questions Discussed During the October 4th Hearing)

Staff outlined the following four policy questions for the Commission's consideration during the October 4th hearing. A staff note follows each question explaining how the issue has been addressed.

- 1. Should the 50-foot fire protection setback from steep slopes in forest zones apply to all buildings (as drafted), or should dwellings be exempted from setback requirement as allowed by Management Plan (MCC 38.7305)?**

Staff Note: The Planning Commission supported application of fire protection setbacks to all buildings, including dwellings, as proposed. No further code amendments are necessary to implement this policy direction.

- 2. Should a path be provided for an alternative requirement for slope setbacks and fire break requirements in the Forest Zones as proposed (MCC 38.7305)?**

Staff Note: The Planning Commission was undecided. The majority of Commissioners appeared to support the added flexibility provided for in the proposal but more information was requested on how the fire official would conduct these assessments and what types of alternative means and methods might be suggested by the fire official to satisfy the standards. The Commission recommended that an invitation be extended to a representative of the Corbett Fire District to help address these questions at the continued hearing. Staff forwarded this invitation from the Commission to a representative with the Corbett Fire District.

- 3. Should the public comment period for Type 2 NSA applications (except Expedited Uses) be expanded from 14 to 21 days as proposed (MCC 38.0530)?**

Staff Note: The Planning Commission supported extending the public comment period referenced above from 14 to 21 days, as proposed during the October 4th hearing. A request was made during public testimony by Michael Lang, Friends of the Columbia River Gorge, for the county to also consider extending the local appeal period for Type 2 decisions from 14 to 21 days. The Planning Commission asked staff to explore this proposal and report back at the continued hearing.

County code currently provides a 30-day appeal period for Type 3 NSA decisions (Type 3 decisions are rendered by a County Hearings Officer) which can be appealed to the Columbia River Gorge Commission. This is why Type 3 decisions were not included in this analysis of whether the appeal period for Type 2 decisions should be extended from 14 to 21 days.

Staff reviewed all Type 2 NSA decisions issued by Multnomah County over the past four years and determined the average timeframe for the county to process these 37 Type 2 decisions was 128 days. Increasing the public comment period from 14 to 21 days for all Type 2 applications, as proposed, would result in the average permit processing timeframe to increase to 135 days (128 days + an additional 7 days = 135).

Multnomah County makes every attempt to process all land use applications within 150-days given this is the time limit referenced in state law for land use decisions outside of the National Scenic Area. It is staff's estimation that increasing both the public comment period and the appeal period from 14 to 21 days as recommended during public testimony would likely raise the average Type 2 NSA permit processing timeline to 142 days (128 days + an additional 14 days = 142). We would expect that the application processing timeframe for a measurable number of applications would exceed 150-days given the 142 days is an average calculation. Such an outcome would not align with the county's internal case processing goal of issuing all land use decisions within 150-days.

In conclusion, staff recommends that the Commission approve the proposed code amendments increasing the public comment period from 14 to 21 days for Type 2 applications but retain the existing 14-day Type 2 decision appeal period without amendment at this time. This opportunity to increase the appeal period can be re-assessed in the future, particularly if average case processing timelines decrease in the NSA due to either additional resources or process efficiencies.

4. Should the property owner be required to occupy the dwelling during rental of an Overnight Accommodation use (MCC 38.7337)?

Staff Note: The Commission supported retention of the proposed owner occupancy requirement as reflected in the Management Plan guidelines. The Commission also asked staff to explore the feasibility of establishing a new additional requirement that access to the subject property be from a county maintained road so that local residents are not financially burdened with having to pay for road maintenance repairs related to the Overnight Accommodation business (by vehicles of renters and employees). Staff interpreted this direction as intending to relate to maintenance by any public entity (county or state).

Staff's conclusion after researching this request is that the county should not impose a requirement that Overnight Accommodation uses only take access from a publically maintained road as part of the current set of Code amendments. More questions arose during staff's research than could be resolved as part of this project given the county's December 11, 2021 adoption deadline. It is staff's professional opinion that more study should occur before the county applies different access standards to one home based business use category, but not to other home based businesses such as Home Occupations, for example.

2.2 (Summary of Public Testimony Requesting Specific Amendments)

Definitions

It was recommended by Michael Lang, Friends of the Columbia River Gorge, during the October 4th public testimony that staff further refine the definition of ‘**Dwelling Unit**’ in MCC 38.0015 to delete reference to ‘*bedrooms*’ in the definition and instead replace that term with ‘*sleeping area(s)*’.

Definition proposed at the October 4, 2021 hearing:

Dwelling unit: A single self-contained unit ~~designed for occupancy by one family and having not more than one cooking with basic facility needs for day-to-day living.~~ Facility needs include, but are not limited to, a food preparation area or kitchen, bedrooms, and a full bathroom.

Mr. Lang provided the following detailed description of the perceived problem to staff after the October 4th hearing to help explain the recommended edit...*“The concern is that the new definition requires a kitchen and multiple bedrooms and a full bathroom to be consider a dwelling. A “dwelling,” or second or third dwelling on a single parcel, would not meet the new definition unless it had all three facility needs, including multiple bedrooms. A landowner could potentially get approval for multiple accessory structures because they have one or less formal bedrooms in each. These buildings could then be used as dwellings. Changing the definition to delete “bedrooms” and replace it with “sleeping area(s)” would fix this loophole and include studio and one bedroom dwellings.”*

Staff supports Mr. Lang’s recommendation. This amendment, and others proposed by staff to this definition, have been made within updated Exhibit A1 for the Commission’s consideration. The proposed revised definition would read as follows:

Dwelling unit: A single self-contained unit with minimum facilities for meeting the needs of daily living. Such facilities shall include, but are not limited to, a food preparation area or kitchen, sleeping area, and a bathroom consisting of a toilet, hand washing basin and shower and/or bathtub.

Additionally, Mr. Lang recommended during public testimony at the October 4th hearing that the definition of ‘**Suitability (Suitable)**’ be amended in MCC 38.0015 through the addition of the phrase ‘by development’ when referring to land committed ‘by development’ to another land use that does not allow for agricultural use. Again, staff supports this recommendation and the change has also been made to the proposed code within updated Exhibit A1.

Savings Clause

Mr. Lang recommended the addition of the following statement in county code during the October 4th hearing: *“If any provision of the Management Plan is more restrictive than this code,*

Multnomah County shall apply the more restrictive provision of the Management Plan, otherwise the provisions of Chapter 38 apply.” Staff’s understanding is the intent of this additional language is to avoid a situation where the county applies a less protective standard than required by the Management Plan.

After careful consideration, it is staff’s opinion that such a statement is not necessary and could be problematic. Staff agrees with Mr. Lang that the Management Plan requires county codes to provide equal or greater protection of the scenic, cultural, natural, and recreational resources of the NSA. The Gorge Commission is charged with determining consistency with the Plan requirements when a county amends their National Scenic Area zoning regulations and this determination by the Gorge Commission will occur if the Multnomah County Board of Commissioners approves these proposed amendments.

The Gorge Commission will not approve county provisions that do not provide equal or greater protection than the Management Plan and the time to challenge a determination of consistency on any particular provision of code occurs through the Gorge Commission’s consistency evaluation process. Adding such a provision to county code, as recommended by Mr. Lang, could create a situation where a challenge on the sufficiency of a county standard could arise during application review after county adoption and approval of consistency by the Gorge Commission of the county land use regulations. Introducing the potential of the county re-opening the Gorge Commission’s evaluation of consistency after adoption would also complicate the ability for staff and members of the public to confidently rely on adopted code to make decisions.

2.3 (Additional Revisions)

After the October 4th hearing, staff added a new Expedited Uses category in MCC 38.1010(A)(25) for renewals of Overnight Accommodations permits pursuant to MCC 38.7337. This addition helps clarify that Overnight Accommodation renewals shall be processed as an Expedited Use as stated in MCC 38.7337.

3.0 EXHIBITS TO THIS STAFF REPORT

EXHIBIT A1 Proposed Amendments to Chapter 38 Columbia River Gorge National Scenic Area Zoning Code (Updated 10/22/21)