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CLARK COUNTY  
WASHINGTON

COMMUNITY PLANNING

## STAFF REPORT

TO: Clark County Planning Commission

FROM: Oliver Orjiako, Director *OO*

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DATE: January 18, 2018

SUBJECT: CPZ2017-00028 Clark County Unified Development Code (Title 40) Amendments - Columbia River Gorge National Scenic Area

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## BACKGROUND

The Columbia River Gorge National Scenic Area (NSA) was created in 1986. The NSA includes parts of three Washington counties (Clark, Skamania, and Klickitat) and three Oregon counties (Multnomah, Hood River, and Wasco). The bi-state Columbia River Gorge Commission was created to manage the non-federal land in the NSA; the U.S. Forest Service manages federal land in the NSA. Clark County has approximately 7800 acres located inside the boundaries of the National Scenic Area.

The first Management Plan for the NSA was adopted in 1992 to ensure that land in the NSA is used consistently with the purposes and standards of the National Scenic Area Act. In response, Clark County adopted a Columbia River Gorge NSA ordinance in 1994. The Gorge Commission and Forest Service must revise the management plan at least every 10 years.

On February 9, 2016, the Columbia River Gorge Commission adopted revisions to the Management Plan in response to the Oregon Court of Appeal's decision in *Friends of the Columbia River Gorge National Scenic Area v. Columbia River Gorge Commission* (see Exhibit B). The Columbia River Gorge Commission mandates that all six counties in the National Scenic Area amend their development codes to be consistent with the adopted Management Plan. The draft amendments to CCC Chapter 40.240 are included in Exhibit A. These amendments will not come into effect until the Gorge Commission and the US Secretary of Agriculture concur that the amendments are consistent with the Gorge Management Plan.

## PROPOSED ACTION

This is a proposal to amend the Columbia River Gorge National Scenic Area CCC Chapter 40.240 in response to an Oregon Court of Appeals' decision having to do with cultural resource surveys and the review of the cumulative effects of development applications.

With regard to cultural resources, the proposed additional text codifies the existing practice of requiring a reconnaissance survey if any element of any land use application requires a reconnaissance survey. A new provision states that a reconnaissance survey may still be conducted even if a proposed use falls within an exemption.

With regard to natural resources, the proposed additional text requires evaluation of applications for “adverse effect, including cumulative effect” and prohibits adverse effect. Cumulative effects require an analysis of potential impacts to natural resources, which don’t always fall neatly within a county boundary. Clark County’s Title 40.240 specifically applies to the National Scenic Area within Clark County, but cumulative impacts analysis may go beyond the boundary of Clark County and require coordination with neighboring counties. This is already the standard practice of Clark County Community Development.

### **SUMMARY OF COMMENTS RECEIVED**

A draft of the proposed changes to Title 40.240 was sent to the Department of Commerce and the Columbia Gorge Commission on September 29, 2017. No comments were received from the Department of Commerce. The Gorge Commission replied that the proposed code amendments accurately reflect the revisions that need to be made. A Notice of Determination of Non-Significance and SEPA Environmental Checklist was published in the paper of record on December 4, 2017, and comments were received and included in your packet.

### **NEXT STEPS**

The Board of County Councilors will hold a hearing in February 2018 to discuss these proposed changes to Title 40.240 and approve an adopting ordinance. The ordinance will go into effect after the Columbia River Gorge Commission and the U.S. Secretary of Agriculture concur that the revisions are consistent with the Management Plan.

### **RECOMMENDATION**

Based on the information presented in this report and the supporting documents, staff recommends that the Planning Commission forward a recommendation of **APPROVAL** to county council.



1 **40.240 COLUMBIA RIVER GORGE NATIONAL SCENIC AREA DISTRICTS**

2 **ARTICLE I. ADMINISTRATION**

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4 **40.240.040 Definitions**

5 As used in this chapter, unless otherwise noted, the following words and their derivations shall have the following  
 6 meanings. The definitions do not apply to areas of Clark County outside of the Columbia River Gorge National Scenic  
 7 Area.  
 8  
 9

Accepted agricultural practice	A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.
Accessory structure/building	A structure or detached building whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use. The term "detached" means that the main building and accessory building do not share a common wall. An accessory building connected to the main building by a breezeway is a detached building.
Active wildlife site	A wildlife site that has been used within the past five (5) years by a sensitive wildlife species.
Addition	An extension or increase in the area or height of an existing building.
<u>Adversely affect or Adversely affecting:</u>	<u>A reasonable likelihood of more than moderate adverse consequences for the scenic, cultural, recreation or natural resources of the scenic area, the determination of which is based on:</u> (1) <u>the context of a proposed action;</u> (2) <u>the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence;</u> (3) <u>the relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts; and</u> (4) <u>proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant effects to an insignificant level.</u>
Agency official	The federal, state, or local agency head or designee who has authority over a proposed project.
Agricultural specialist (SMA)	A person such as a county extension agent with a demonstrated knowledge of farming operations, and a demonstrated ability to interpret and recommend methods to implement regulations pertaining to agriculture. Such abilities are usually obtained through a combination of higher education and experience.
Agricultural structure/building	A structure or building located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.
Agricultural use	The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, livestock, poultry, furbearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes: <ul style="list-style-type: none"> <li>• The operation or use of farmland subject to any agriculture-related government program.</li> <li>• Land lying fallow for one (1) year as a normal and regular requirement of good agricultural husbandry.</li> <li>• Land planted in orchards or other perennials prior to maturity.</li> <li>• Land under buildings supporting accepted agricultural practices.</li> </ul> Agricultural use does not include livestock feedlots.  (Amended: Ord. 2006-08-21)
<u>Air:</u>	<u>The mixture of gases comprising the Earth's atmosphere.</u>
Anadromous fish	Species of fish that migrate upstream to freshwater after spending part of their life in the ocean saltwater.

Anaerobic	A condition in which molecular oxygen is absent (or effectively so) from the environment.
Animal unit	An animal unit consists of one adult horse, or two ponies, or five miniature horses. <i>(Amended: Ord. 2009-03-02)</i>

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## ARTICLE VI. RESOURCE PROTECTION GUIDELINES

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### 40.240.820 General Management Area Cultural Resource Review Criteria

#### A. General Provisions for Implementing the Cultural Resources Protection Process.

1. All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 CFR Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).

2. Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any party who submits written comments on the proposed use related to such surveys, assessments, plans and evaluations. Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal governments do not have to be consulted.

#### 3. Reconnaissance and Historic Surveys and Survey Reports.

##### a. Reconnaissance Survey Requirements and Exceptions.

(1) Each proposed use or element of a proposed use within an application shall be evaluated independently to determine whether a reconnaissance survey is required; for example, an application that proposes a land division and a new dwelling would require a reconnaissance survey if a survey would be required for the dwelling.

~~(1) (2)~~ A reconnaissance survey shall be required for all proposed uses within five hundred (500) feet of a known cultural resource, including those uses listed as exceptions in Section 40.240.820(A)(3)(a)~~(2)(3)~~.

(3) ~~(2)~~ A reconnaissance survey shall be required for all proposed uses, except:

(a) The modification, expansion, replacement, or reconstruction of existing buildings and structures.

(b) Proposed uses that would not disturb the ground, including land divisions and lot line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.

(c) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved. The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.

1 (d) Proposed uses that occur on sites that have been disturbed by human activities; provided,  
2 that the proposed uses do not exceed the depth and extent of existing ground disturbance. To  
3 qualify for this exception, a project applicant must demonstrate that land-disturbing activities  
4 occurred in the project area. Land-disturbing activities include grading and cultivation.

5 (e) Proposed uses that would occur on sites that have been adequately surveyed in the past. The  
6 project applicant must demonstrate that the project area has been adequately surveyed to qualify  
7 for this exception. Past surveys must have been conducted by a qualified professional and must  
8 include a surface survey and subsurface testing. The nature and extent of any cultural resources in  
9 the project area must be adequately documented.

10 (f) Proposed uses occurring in areas that have a low probability of containing cultural  
11 resources, except:

12 (i) Residential development that involves two (2) or more new dwellings for the same  
13 project applicant.

14 (ii) Recreation facilities that contain parking areas for more than ten (10) cars, overnight  
15 camping facilities, boat ramps, and visitor information and environmental education  
16 facilities.

17 (iii) Public transportation facilities that are outside improved rights-of-way.

18 (iv) Electric facilities, lines, equipment, and appurtenances that are thirty-three (33)  
19 kilovolts or greater.

20 (v) Communications, water and sewer, and natural gas transmission (as opposed to  
21 distribution) lines, pipes, equipment, and appurtenances.

22 (vi) Areas that have a low probability of containing cultural resources shall be identified  
23 by the Columbia River Gorge Commission using the results of reconnaissance surveys  
24 conducted by the Gorge Commission, the Forest Service, public agencies, and private  
25 archaeologists.

26 (4) The Gorge Commission may choose to conduct a reconnaissance survey for proposed uses listed in  
27 the exceptions if, in its professional judgment, a reconnaissance survey may be necessary to ensure  
28 protection of cultural resources.

29 b. A historic survey shall be required for all proposed uses that would alter the exterior architectural  
30 appearance of buildings and structures that are fifty (50) years old or older, or would compromise features of  
31 the surrounding area that are important in defining the historic or architectural character of buildings or  
32 structures that are fifty (50) years old or older.

33 c. The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for  
34 small-scale uses in the GMA. When archaeological resources or traditional cultural properties are  
35 discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or  
36 property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for  
37 large-scale uses shall be the responsibility of the project applicant. For this section, large-scale uses include  
38 residential development involving two (2) or more new dwellings; all recreation facilities; commercial and  
39 industrial development; public transportation facilities; electric facilities, lines, equipment, and  
40 appurtenances that are thirty-three (33) kilovolts or greater; and communications, water and sewer, and  
41 natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

42 d. Reconnaissance Surveys for Small-Scale Uses. Reconnaissance surveys for small-scale uses shall  
43 generally include a surface survey and subsurface testing. They shall meet the following guidelines:

44 (1) A surface survey of the project area shall be conducted, except for inundated areas and  
45 impenetrable thickets.

- 1                   (2)    Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be  
2                   present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of  
3                   cultural resources.
- 4                   e.    Reconnaissance Survey Reports for Small-Scale Uses. The results of a reconnaissance survey for  
5                   small-scale uses shall be documented in a confidential report that includes:
- 6                   (1)    A description of the fieldwork methodology used to identify cultural resources, including a  
7                   description of the type and extent of the reconnaissance survey.
- 8                   (2)    A description of any cultural resources that were discovered in the project area, including a  
9                   written description and photographs.
- 10                  (3)    A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if  
11                  applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.
- 12                  f.    Reconnaissance Surveys for Large-Scale Uses.
- 13                  (1)    Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A  
14                  written description of the survey shall be submitted to and approved by the Gorge Commission's  
15                  designated archaeologist.
- 16                  (2)    Reconnaissance surveys shall reflect the physical characteristics of the project area and the design  
17                  and potential effects of the proposed use. They shall meet the following guidelines:
- 18                         (a)    Archival research shall be performed before any field work. It should entail a thorough  
19                         examination of tax records; historic maps, photographs, and drawings; previous archaeological,  
20                         historic, and ethnographic research; cultural resource inventories and records maintained by  
21                         federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters,  
22                         and newspapers.
- 23                         (b)    Surface surveys shall include the entire project area, except for inundated areas and  
24                         impenetrable thickets.
- 25                         (c)    Subsurface probes shall be placed at intervals sufficient to document the presence or  
26                         absence of cultural resources.
- 27                         (d)    Archaeological site inventory forms shall be submitted to the State Historic Preservation  
28                         Officer whenever cultural resources are discovered.
- 29                  g.    Reconnaissance Survey Reports for Large-Scale Uses. The results of a reconnaissance survey for  
30                  large-scale uses shall be documented in a confidential report that includes:
- 31                  (1)    A description of the proposed use, including drawings and maps.
- 32                  (2)    A description of the project area, including soils, vegetation, topography, drainage, past  
33                  alterations, and existing land use.
- 34                  (3)    A list of the documents and records examined during the archival research and a description of  
35                  any prehistoric or historic events associated with the project area.
- 36                  (4)    A description of the fieldwork methodology used to identify cultural resources, including a map  
37                  that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be  
38                  prepared at a scale of one (1) inch equals one hundred (100) feet (1:1,200), or a scale providing greater  
39                  detail.

- 1 (5) An inventory of the cultural resources that exist in the project area, including a written  
2 description, photographs, drawings, and a map. The map shall be prepared at a scale of one (1) inch  
3 equals one hundred (100) feet (1:1,200), or a scale providing greater detail.
- 4 (6) A summary of all written comments submitted by Indian tribal governments and other interested  
5 parties.
- 6 (7) A preliminary assessment of whether the proposed use would or would not have an effect on  
7 cultural resources. The assessment shall incorporate concerns and recommendations voiced during  
8 consultation meetings and information obtained through archival and ethnographic research and field  
9 surveys.
- 10 h. Historic Surveys and Reports.
- 11 (1) Historic surveys shall document the location, form, style, integrity, and physical condition of  
12 historic buildings and structures. They shall include original photographs and maps. Archival research,  
13 blueprints, and drawings should be used as necessary.
- 14 (2) Historic surveys shall describe any uses that will alter or destroy the exterior architectural  
15 appearance of the historic buildings or structures, or compromise features of the site that are important in  
16 defining the overall historic character of the historic buildings or structures.
- 17 (3) The project applicant shall provide detailed architectural drawings and building plans that clearly  
18 illustrate all proposed alterations.

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21 **40.240.840 General Management Area Wetland Review Criteria**

22 A. Wetlands Boundaries and Site Plans for Review Uses in Wetlands.

- 23 1. If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for  
24 determining the exact location of the wetland boundary.
- 25 a. The approximate location and extent of wetlands in the Scenic Area are indicated on the list of hydric  
26 soils and the soil survey maps and the National Wetlands Inventory (U.S. Department of the Interior, 1987).  
27 Wetlands boundaries shall be delineated using the procedures specified in the *Corps of Engineers Wetland*  
28 *Delineation Manual* (Wetlands Research Program Technical Report y-87-1, on-line edition, updated  
29 through March 21, 1997).
- 30 b. All wetlands delineations shall be conducted by a professional who has been trained to use the federal  
31 delineation process, such as a soil scientist, botanist, or wetlands ecologist.
- 32 c. The responsible official may verify the accuracy of, and may render adjustments to, a wetlands  
33 boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the  
34 responsible official shall, at the applicant's expense, obtain professional services to render a final  
35 delineation.
- 36 d. Proposed uses within wetlands or wetlands buffer areas shall comply with SEPA, this section, and  
37 Chapter 40.450, as applicable. Chapter 40.240 shall prevail in cases of conflict with such regulations.
- 38 2. In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands  
39 buffer zones shall include:
- 40 a. A site plan map prepared at a scale of one (1) inch equals one hundred (100) feet (1:1,200), or a scale  
41 providing greater detail;

- 1           b.    The exact boundary of the wetland and the wetlands buffer zone: and
- 2           c.    A description of actions that would alter or destroy the wetland.

3 B.    Uses Allowed Outright in Wetlands and Wetlands Buffer Zones.

4           Uses allowed outright in wetlands and wetlands buffer zones are listed in Section 40.240.120. This section shall  
5 not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia  
6 River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered  
7 NSA-001 and dated September 1986. This map is available at county planning departments and Commission and  
8 Forest Service offices. The boundaries of the main stem appear as a heavy black line that generally follows the  
9 shoreline. For Section 40.240.050, backwaters and isolated water bodies created by roads and railroads are not part of  
10 the main stem of the Columbia River.

11 C.    The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the  
12 provisions in Section 40.240.840(E), and reviewed under the applicable provisions of Sections 40.240.800 through  
13 40.240.900; provided that proposed uses in wetlands and wetland buffer zones shall be evaluated for adverse effects,  
14 including cumulative effects, and adverse effects shall be prohibited:

- 15           1.    The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions  
16 would not:
  - 17           a.    Increase the size of an existing structure by more than one hundred percent (100%);
  - 18           b.    Result in a loss of wetlands acreage or functions; and
  - 19           c.    Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding  
20 further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland  
21 or wetlands buffer zone than the existing structure.
- 22           2.    The construction of minor water-related recreation structures that are available for public use. Structures in  
23 this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of  
24 impervious materials; observation decks; and interpretative aids, such as kiosks and signs.
- 25           3.    The construction of minor water-dependent structures that are placed on pilings, if the pilings allow  
26 unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry  
27 land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife  
28 management structures that are constructed by federal, state, or tribal resource agencies.

29           (Amended: Ord. 2008-06-02)

30 D.    Uses not listed in Sections 40.240.840(B) and (C) may be allowed in wetlands and wetlands buffer zones, when  
31 approved pursuant to Section 40.240.840(F) and reviewed under the applicable provisions of Sections 40.240.800  
32 through 40.240.900.

33 E.    Applications for modifications to serviceable structures and minor water-dependent and water-related structures  
34 in wetlands shall demonstrate that:

- 35           1.    Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or  
36 minimum the impacts of the structure do not exist;
- 37           2.    All reasonable measures have been applied to ensure that the structure will result in the minimum feasible  
38 alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and  
39 hydrology;
- 40           3.    The structure will be constructed using best management practices;

- 1 4. Areas disturbed during construction of the structure will be rehabilitated to the maximum extent  
2 practicable; and
- 3 5. The structure complies with all applicable federal, state, and county laws.
- 4 F. Applications for all other review uses in wetlands shall demonstrate that:
  - 5 1. The proposed use is water-dependent, or is not water-dependent but has no practicable alternative  
6 considering all of the following:
    - 7 a. The basic purpose of the use cannot be reasonably accomplished using one (1) or more other sites in  
8 the vicinity that would avoid or result in less adverse effects on wetlands;
    - 9 b. The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope,  
10 configuration, or density as proposed, or by changing the design of the use in a way that would avoid or  
11 result in less adverse effects on wetlands; and
    - 12 c. Reasonable attempts have been made to remove or accommodate constraints that caused a project  
13 applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure,  
14 parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an  
15 applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not  
16 exist. An alternative site for a proposed use shall be considered practicable if it is available and the proposed  
17 use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall  
18 project purposes.
  - 19 2. The proposed use is in the public interest. The following factors shall be considered when determining if a  
20 proposed use is in the public interest:
    - 21 a. The extent of public need for the proposed use;
    - 22 b. The extent and permanence of beneficial or detrimental effects that the proposed use may have on the  
23 public and private uses for which the property is suited;
    - 24 c. The functions and size of the wetland that may be affected;
    - 25 d. The economic value of the proposed use to the general area; and
    - 26 e. The ecological value of the wetland and probable effect on public health and safety, fish, plants, and  
27 wildlife.
  - 28 3. Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or  
29 destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.
  - 30 4. Groundwater and surface-water quality will not be degraded by the proposed use.
  - 31 5. Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be  
32 located in wetlands or wetlands buffer zones.
  - 33 6. The proposed use complies with all applicable federal, state, and county laws.
  - 34 7. Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.
  - 35 8. Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands.  
36 Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be  
37 used only as a last resort to offset unavoidable wetlands impacts. The following wetlands restoration, creation,  
38 and enhancement guidelines shall apply:

- 1 a. Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded  
2 wetlands. Wetlands restoration shall be the preferred alternative.
- 3 b. Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with  
4 Section 40.240.840(H) and Chapter 40.450, although Chapter 40.240 shall prevail in cases of conflict.
- 5 c. Wetlands restoration, creation, and enhancement projects shall use native vegetation.
- 6 d. The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies  
7 the required acreage of replacement wetlands and the second number specifies the acreage of wetlands  
8 altered or destroyed):
- |                  |     |
|------------------|-----|
| (1) Restoration: | 2:1 |
| (2) Creation:    | 3:1 |
| (3) Enhancement: | 4:1 |
- 9
- 10 e. Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed  
11 such that no net loss of wetlands functions occurs.
- 12 f. Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this  
13 guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit  
14 may be substituted; provided, that no net loss of wetlands functions occurs.
- 15 g. Wetlands restoration, creation, or enhancement should occur within one thousand (1,000) feet of the  
16 affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur  
17 within the same watershed and as close to the altered or destroyed wetland as practicable.
- 18 h. Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is  
19 altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts  
20 before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or  
21 used.
- 22 i. Five (5) years after a wetland is restored, created, or enhanced, at least seventy-five percent (75%) of  
23 the replacement vegetation must survive. For a period of at least five (5) years, the owner shall monitor the  
24 hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it  
25 conforms with the approved wetlands compensation plan and this guideline.

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27 **40.240.850 General Management Area Stream, Pond, Lake and Riparian Area Review Criteria**

28 A. Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas.

- 29 1. If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be  
30 responsible for determining the exact location of the ordinary high water mark or normal pool elevation.
- 31 2. In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes,  
32 and their buffer zones shall include:
- 33 a. A site plan map prepared at a scale of one (1) inch equals one hundred (100) feet (1:1,200), or a scale  
34 providing greater detail;
- 35 b. The exact boundary of the ordinary high water mark or normal pool elevation and prescribed buffer  
36 zone; and
- 37 c. A description of actions that would alter or destroy the stream, pond, lake, or riparian area.

1 B. Uses.

2 Uses allowed outright in streams, ponds, lakes, and their buffer zones are listed in Section 40.240.120.

3 C. The following uses may be allowed in streams, ponds, lakes and riparian area, and their buffer zones, when  
4 approved pursuant to Section 40.240.850(E), and reviewed under the applicable provisions of Sections 40.240.800  
5 through 40.240.900; provided that proposed uses in streams, ponds, lakes, and their buffer zones shall be evaluated for  
6 adverse effects, including cumulative effects, and adverse effects shall be prohibited:

7 1. The modification, expansion, replacement, or reconstruction of serviceable structures; provided, that such  
8 actions would not:

9 a. Increase the size of an existing structure by more than one hundred percent (100%);

10 b. Result in a loss of water quality, natural drainage, and fish and wildlife habitat; or

11 c. Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding  
12 further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream,  
13 pond, lake, or buffer zone than the existing structure.

14 2. The construction of minor water-related recreation structures that are available for public use. Structures in  
15 this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of  
16 impervious materials; observation decks, and interpretative aids, such as kiosks and signs.

17 3. The construction of minor water-dependent structures that are placed on pilings, if the pilings allow  
18 unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry  
19 land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife  
20 management structures that are constructed by federal, state, or tribal resource agencies.

21 D. Uses not listed in Section 40.240.850(B) and (C) may be allowed in streams, ponds, lakes, and riparian areas,  
22 when approved pursuant to Section 40.240.850(F) and reviewed under the applicable provisions of Section  
23 40.240.800 through 40.240.900.

24 E. 1. Applications for modifications to serviceable structures and minor water-dependent and water-related  
25 structures in aquatic and riparian areas shall demonstrate that:

26 a. Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer zone  
27 and/or minimizing the impacts of the structure do not exist;

28 b. All reasonable measures have been applied to ensure that the structure will result in the minimum  
29 feasible alteration or destruction of water quality, natural drainage, and fish and wildlife habitat of streams,  
30 ponds, lakes, and riparian areas;

31 c. The structure will be constructed using best management practices;

32 d. Areas disturbed during construction of the structure will be rehabilitated to the maximum extent  
33 practicable; and

34 e. The structure complies with all applicable federal, state, and local laws.

35 2. Applications for all other review uses in wetlands, streams, ponds, and lakes shall demonstrate that:

36 a. The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as  
37 determined by Section 40.240.840(F)(1), substituting the term "stream," "pond," "lake," or "riparian area"  
38 as appropriate.

39 b. The proposed use is in the public interest as determined by Section 40.240.840(F)(2), substituting the  
40 term "stream," "pond," "lake," or "riparian area" as appropriate.

- 1 c. Measures have been applied to ensure that the proposed use results in minimum feasible impacts to  
2 water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer  
3 zone. At a minimum, the following mitigation measures shall be considered when new uses are proposed in  
4 streams, ponds, lakes, and buffer zones:
- 5 (1) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance.  
6 The Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods  
7 for in water work.
- 8 (2) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and  
9 riparian vegetation.
- 10 (3) Nonstructural controls and natural processes shall be used to the greatest extent practicable.
- 11 (4) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and  
12 should serve multiple purposes and properties.
- 13 (5) Stream channels should not be placed in culverts unless absolutely necessary for property access.  
14 Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks.  
15 When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width  
16 and grade should be used.
- 17 (6) Temporary and permanent control measures should be applied to minimize erosion and  
18 sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree  
19 protection, sediment barriers, infiltration systems, and culverts.
- 20 d. Groundwater and surface water quality will not be degraded by the proposed use.
- 21 e. Those portions of a proposed use that are not water-dependent or have a practicable alternative will be  
22 located outside of stream, pond, and lake buffer zones.
- 23 f. The proposed use complies with all applicable federal, state, and county laws.
- 24 g. Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and  
25 enhancement. Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage,  
26 and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has  
27 been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable.  
28 When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces  
29 aquatic and riparian areas, enhancement shall also be required. The following rehabilitation and  
30 enhancement guidelines shall apply:
- 31 (1) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation  
32 and enhancement plan.
- 33 (2) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity,  
34 volume, and normal water fluctuation.
- 35 (3) Natural stream channel and shoreline dimensions shall be replicated, including depth, width,  
36 length, cross-sectional profile, and gradient.
- 37 (4) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.
- 38 (5) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.
- 39 (6) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and  
40 structures. Structures include large woody debris and boulders.

1 (7) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant  
2 species that replicate the original vegetation community.

3 (8) Rehabilitation and enhancement efforts shall be completed no later than ninety (90) days after the  
4 aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

5 (9) Three (3) years after an aquatic area or buffer zone is rehabilitated or enhanced, at least  
6 seventy-five percent (75%) of the replacement vegetation must survive. The owner shall monitor the  
7 replacement vegetation and take corrective measures to satisfy this guideline.

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9 (Amended: Ord. 2006-05-04)

10 **40.240.860 General Management Area Sensitive Wildlife Review Criteria**

11 A. Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife.

12 1. Proposed uses within 1,000 feet of a sensitive wildlife area or site shall be evaluated for adverse effects,  
13 including cumulative effects, and adverse effects shall be prohibited. shall not adversely affect sensitive wildlife  
14 areas or sensitive wildlife sites:

15 a. "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear  
16 in the wildlife inventory map prepared and maintained by the Gorge Commission:

- 17 (1) Bald eagle habitat;
- 18 (2) Deer and elk winter range;
- 19 (3) Elk habitat;
- 20 (4) Mountain goat habitat;
- 21 (5) Peregrine falcon habitat;
- 22 (6) Pika colony area;
- 23 (7) Piloted woodpecker habitat;
- 24 (8) Pine marten habitat;
- 25 (9) Shallow water fish habitat (Columbia R.);
- 26 (10) Special streams;
- 27 (11) Special habitat area;
- 28 (12) Spotted owl habitat;
- 29 (13) Sturgeon spawning area;
- 30 (14) Tributary fish habitat;
- 31 (15) Turkey habitat;
- 32 (16) Waterfowl area;
- 33 (17) Western pond turtle habitat.

34 b. "Sensitive wildlife sites" means sites that are used by animal species that are:

1 (1) Listed as endangered or threatened pursuant to federal or state endangered species acts; and

2 (2) Listed as endangered, threatened, sensitive, or candidate by the Washington Fish and Wildlife  
3 Commission, considered to be of special interest to the public (limited to great blue heron, osprey,  
4 golden eagle, and prairie falcon).

5 2. In addition to the information required in all site plans, site plans for uses within one thousand (1,000) feet  
6 of a sensitive wildlife area or site shall include a map prepared at a scale of one (1) inch equals one hundred (100)  
7 feet (1:1,200), or a scale providing greater detail.

8 B. Uses.

9 Uses allowed outright in sensitive wildlife areas are listed in Section 40.240.120.

10 C. Field Survey.

11 A field survey to identify sensitive wildlife areas or sites shall be required for:

12 1. Land divisions that create four (4) or more parcels;

13 2. Recreation facilities that contain parking areas for more than ten (10) cars, overnight camping facilities,  
14 boat ramps, and visitor information and environmental education facilities;

15 3. Public transportation facilities that are outside improved rights-of-way;

16 4. Electric facilities, lines, equipment, and appurtenances that are thirty-three (33) kilovolts or greater; and

17 5. Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes,  
18 equipment, and appurtenances and other project-related activities except when all of their impacts will occur  
19 inside previously disturbed road, railroad or utility corridors, or existing development utility sites, that are  
20 maintained annually.

21 6. Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be  
22 conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites  
23 discovered in a project area shall be described and shown on the site plan map.

24 (Amended: Ord. 2007-11-13)

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26 **40.240.870 General Management Areas Rare Plant Review Criteria**

27 A. Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants.

28 1. Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are:

29 a. Endemic to the Columbia River Gorge and vicinity; or

30 b. Listed as endangered or threatened pursuant to federal or state endangered species acts; or

31 c. Listed as endangered, threatened, or sensitive by the Oregon-Washington Natural Heritage Program.

32 2. In addition to the information required in site plans, site plans for uses within one thousand (1,000) feet of a  
33 sensitive plant shall include a map prepared at a scale of one (1) inch equals one hundred (100) feet (1:1,200), or  
34 a scale providing greater detail.

35 3. Proposed uses within 1,000 feet of a sensitive plant shall be evaluated for adverse effects, including cumulative  
36 effects, and adverse effects shall be prohibited.

37 B. Uses.

- 1 Uses allowed outright in rare plant areas are listed in Section 40.240.120.
- 2 C. Field Survey. A field survey to identify sensitive plants shall be required for:
- 3 1. Land divisions that create four (4) or more parcels;
- 4 2. Recreation facilities that contain parking areas for more than ten (10) cars, overnight camping facilities,  
5 boat ramps, and visitor information and environmental education facilities;
- 6 3. Public transportation facilities that are outside improved rights-of-way;
- 7 4. Electric facilities, lines, equipment, and appurtenances that are thirty-three (33) kilovolts or greater; and
- 8 5. Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes,  
9 equipment, and appurtenances and other project-related activities, except when all of their impacts will occur  
10 inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are  
11 maintained annually;
- 12 6. Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be  
13 conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field  
14 surveys shall identify the precise location of the sensitive plants and delineate a two hundred (200) foot buffer  
15 zone. The results of a field survey shall be shown on the site plan map.
- 16 D. Uses not listed in Section 40.240.870(B) may be allowed within one thousand (1,000) feet of a sensitive plant,  
17 when approved pursuant to Section 40.240.860(E), and reviewed under the applicable provisions of Sections  
18 40.240.800 through 40.240.900.
- 19 E. Uses that are proposed within one thousand (1,000) feet of a sensitive plant shall be reviewed as follows:
- 20 1. Site plans shall be submitted to the Washington Natural Heritage Program by the responsible official. The  
21 Natural Heritage Program staff will review the site plan and their field survey records. They will identify the  
22 precise location of the affected plants and delineate a two hundred (200) foot buffer zone on the project  
23 applicant's site plan. If the field survey records of the state heritage program are inadequate, the project applicant  
24 shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the  
25 affected plants.
- 26 2. The rare plant protection process may conclude if the responsible official, in consultation with the Natural  
27 Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer  
28 zone.
- 29 3. New uses shall be prohibited within sensitive plant species buffer zones, except those listed in Section  
30 40.240.870(B).
- 31 4. If a proposed use must be allowed within a sensitive plant buffer area in accordance with Section  
32 40.240.150, the project applicant shall prepare a protection and rehabilitation plan pursuant to Section  
33 40.240.870(F).
- 34 5. The responsible official shall submit a copy of all field surveys and protection and rehabilitation plans to  
35 the Washington Natural Heritage Program. The Natural Heritage Program staff will have twenty (20) days from  
36 the date that a field survey is mailed to submit written comments to the responsible official. The responsible  
37 official shall record and address any written comments submitted by the Natural Heritage Program staff in the  
38 land use review order. Based on the comments from the Natural Heritage Program staff, the responsible official  
39 will make a final decision on whether the proposed use would be consistent with the rare plant policies and  
40 guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the  
41 responsible official shall justify how the opposing conclusion was reached.
- 42 F. Protection and Rehabilitation Plans.

1 Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that  
2 occurs within a sensitive plant buffer zone as the result of a variance. Protection and rehabilitation plans shall meet the  
3 following guidelines:

4 1. Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by  
5 the project applicant.

6 2. Construction, protection, and rehabilitation activities shall occur during the time of the year when ground  
7 disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.

8 3. Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable.  
9 "Replacement" is used here to mean the establishment of a particular plant species in areas of suitable habitat not  
10 affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.  
11 Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at  
12 least seventy-five (75) percent of the replacement plants survive three (3) years after the date they are planted.

13 4. Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and  
14 maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation  
15 easements, livestock management, and noxious weed control.

16 5. Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural  
17 condition.

18 6. Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be  
19 implemented immediately after the plants and their surrounding habitat are disturbed.

20 7. Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:

21 a. Describe the biology of sensitive plant species that will be affected by a proposed use.

22 b. Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that  
23 will not be altered or destroyed.

24 c. Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will  
25 result from a proposed use.

26 d. Include a three (3) year monitoring, maintenance, and replacement program. The project applicant  
27 shall prepare and submit to the responsible official an annual report that documents milestones, successes,  
28 problems, and contingency actions.

29 G. Sensitive Plant Buffer Zones.

30 1. A two hundred (200) foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain  
31 in an undisturbed, natural condition.

32 2. Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation,  
33 manmade features, or natural plant habitat boundaries negate the need for a two hundred (200) foot radius. Under  
34 no circumstances shall the buffer zone be less than twenty-five (25) feet.

35 3. Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the  
36 project applicant:

37 a. Identifies the precise location of the sensitive plants;

38 b. Describes the biology of the sensitive plants; and

39 c. Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the  
40 affected plants and the surrounding habitat that is vital to their long-term survival.

1 4. All requests shall be prepared as a written report. Published literature regarding the biology of the affected  
2 plants and recommendations regarding their protection and management shall be cited. The report shall include  
3 detailed maps and photographs.

4 5. The responsible official shall submit all requests to reduce sensitive plant species buffer areas to the  
5 Washington Natural Heritage Program. The Natural Heritage Program staff will have twenty (20) days from the  
6 date that such a request is mailed to submit written comments to the responsible official. The responsible official  
7 shall record and address any written comments submitted by the Washington Natural Heritage Program in the  
8 development review order. Based on the comments from the Washington Natural Heritage Program, the  
9 responsible official will make a final decision on whether the reduced buffer area is justified. If the final decision  
10 contradicts the comments submitted by the Natural Heritage Program staff, the responsible official shall justify  
11 how the opposing conclusion was reached.

12 (Amended: Ord. 2006-05-04)

13 **40.240.880 Special Management Areas Natural Resource Review Criteria**

14 A. All new developments and uses, as described in a site plan prepared by the applicant, shall be evaluated using  
15 the following guidelines to ensure that the natural resources are protected from adverse effects. Proposed uses that  
16 would adversely affect water resources (wetlands, streams, ponds, lakes, and riparian areas) shall be prohibited.  
17 Cumulative effects analysis is not required for expedited review uses or developments. Comments from state and  
18 federal agencies shall be carefully considered.

19 B. Water Resources (Wetlands, Streams, Ponds, Lakes, and Riparian Areas).

20 1. All water resources shall, in part, be protected by establishing undisturbed buffer zones as specified in  
21 subsections (B)(1)(b)(1) and (2) of this section. These buffer zones are measured horizontally from a wetland,  
22 stream, lake, or pond boundary as defined below.

23 a. All buffer zones shall be retained undisturbed and in their natural condition, except as permitted with a  
24 mitigation plan.

25 b. Buffer zones shall be measured outward from the bank full flow boundary for streams, the high water  
26 mark for ponds and lakes, the normal pool elevation for the Columbia River, and the wetland delineation  
27 boundary for wetlands on a horizontal scale that is perpendicular to the wetlands, stream, pond or lake  
28 boundary. The following buffer zone widths shall be required:

29 (1) A minimum two hundred (200) foot buffer on each wetland, pond, lake, and each bank of a  
30 perennial or fish-bearing stream, some of which can be intermittent.

31 (2) A fifty (50) foot buffer zone along each bank of intermittent (including ephemeral),  
32 non-fish-bearing streams.

33 (3) Maintenance, repair, reconstruction and realignment of roads and railroads within their  
34 rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all of  
35 the following:

36 (a) The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside  
37 of the right-of-way;

38 (b) The wetland is not critical habitat; and

39 (c) Proposed activities within the right-of-way would not adversely affect a wetland adjacent  
40 to the right-of-way.

41 c. The buffer width shall be increased for the following:

42 (1) When the channel migration zone exceeds the recommended buffer width, the buffer width shall  
43 extend to the outer edge of the channel migration zone.

1 (2) When the frequently flooded area exceeds the recommended riparian buffer zone width, the  
2 buffer width shall be extended to the outer edge of the frequently flooded area.

3 (3) When an erosion or landslide hazard area exceeds the recommended width of the buffer, the  
4 buffer width shall be extended to include the hazard area.

5 d. Buffer zones can be reconfigured if a project applicant demonstrates all of the following:

6 (1) Integrity and function of the buffer zones is maintained;

7 (2) Total buffer area on the development proposal is not decreased;

8 (3) Width reduction shall not occur within another buffer; and

9 (4) Buffer zone width is not reduced more than fifty percent (50%) at any particular location.

10 Such features as intervening topography, vegetation, manmade features, natural plant or wildlife habitat  
11 boundaries, and floodplain characteristics should be considered.

12 e. Requests to reconfigure buffer zones shall be considered if an appropriate professional (botanist, plant  
13 ecologist, wildlife biologist, or hydrologist), hired by the project applicant:

14 (1) Identifies the precise location of the sensitive wildlife/plant or water resource;

15 (2) Describes the biology of the sensitive wildlife/plant or hydrologic condition of the water  
16 resource; and

17 (3) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on  
18 the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water  
19 resource and its long-term function.

20 f. The responsible official shall submit all requests to reconfigure sensitive wildlife/plant or water  
21 resource buffers to the Forest Service and the appropriate state agencies for review. All written comments  
22 shall be included in the project file. Based on the comments from the state and federal agencies, the  
23 responsible official will make a final decision on whether the reconfigured buffer zones are justified. If the  
24 final decision contradicts the comments submitted by the federal and state agencies, the responsible official  
25 shall justify how the opposing conclusion was reached.

26 (1) When a buffer zone is disturbed by a new use, it shall be replanted with only native plant species  
27 of the Columbia River Gorge.

28 (2) The applicant shall be responsible for identifying all water resources and their appropriate  
29 buffers.

30 (3) Wetlands boundaries shall be delineated using the following:

31 (a) The approximate location and extent of wetlands in the Scenic Area as shown on the  
32 National Wetlands Inventory (U.S. Department of the Interior, 1987). In addition, the list of  
33 hydric soils and the soil survey maps shall be used as an indicator of wetlands.

34 (b) Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands  
35 that are discovered by the local planning staff during an inspection of a potential project site shall  
36 be delineated and protected.

37 (c) The project applicant shall be responsible for determining the exact location of a wetlands  
38 boundary. Wetlands boundaries shall be delineated using the procedures specified in the 1987  
39 *Corps of Engineers Wetland Delineation Manual* (on-line edition).

1 (d) All wetlands delineations shall be conducted by a professional who has been trained to use  
2 the federal delineation procedures, such as a soil scientist, botanist, or wetlands ecologist.

3 2. Stream, pond, and lake boundaries shall be delineated using the bank full flow boundary for streams and the  
4 high water mark for ponds and lakes. The project applicant shall be responsible for determining the exact location  
5 of the appropriate boundary for the water resource.

6 3. The responsible official may verify the accuracy of, and render adjustments to, a bank full flow, high water  
7 mark, normal pool elevation (for the Columbia River), or wetland boundary delineation. If the adjusted boundary  
8 is contested by the project applicant, the responsible official shall obtain professional services, at the project  
9 applicant's expense, or ask for technical assistance from the Forest Service to render a final delineation.

10 4. Buffer zones shall be undisturbed unless the following criteria have been satisfied:

11 a. The proposed use must have no practicable alternative as determined by the practicable alternative  
12 test. Those portions of a proposed use that have a practicable alternative will not be located in wetlands,  
13 stream, pond, lake, and riparian areas and/or their buffer zone.

14 b. Filling and draining of wetlands shall be prohibited with exceptions related to public safety or  
15 restoration/enhancement activities as permitted when all of the following criteria have been met:

16 (1) A documented public safety hazard exists or a restoration/enhancement project exists that would  
17 benefit the public and is corrected or achieved only by impacting the wetland in question;

18 (2) Impacts to the wetland must be the last possible documented alternative in fixing the public safety  
19 concern or completing the restoration/enhancement project; and

20 (3) The proposed project minimizes the impacts to the wetland.

21 c. Unavoidable impacts to wetlands and aquatic and riparian areas and their buffer zones shall be offset  
22 by deliberate restoration and enhancement or creation (wetlands only) measures as required by the  
23 completion of a mitigation plan.

24 5. Proposed uses and development within wetlands, streams, ponds, lakes, riparian areas and their buffer zones  
25 shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse effects shall  
26 be prohibited.

27

28 C. Wildlife and Plants.

29 1. Protection of sensitive wildlife/plant areas and sites shall begin when proposed new developments or uses  
30 are within one thousand (1,000) feet of a sensitive wildlife/plant site and/or area. Sensitive wildlife areas and  
31 endemic plants are those areas depicted in the wildlife inventory and listed in the "Types of Wildlife Areas and  
32 Sites Inventoried in the Columbia Gorge" and "Columbia Gorge and Vicinity Endemic Plant Species" tables in  
33 the Management Plan including all priority habitats listed in this chapter. The approximate locations of sensitive  
34 wildlife and/or plant areas and sites are shown in the wildlife and rare plant inventory.

35 2. The responsible official shall submit site plans (of uses that are proposed within one thousand (1,000) feet  
36 of a sensitive wildlife and/or plant area or site) for review to the Forest Service, the Washington Department of  
37 Fish and Wildlife for wildlife issues and the Washington Natural Heritage Program for plant issues.

38 3. The Forest Service wildlife biologists a  
39 nd/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field  
40 survey records. They shall:

41 a. Identify/verify the precise location of the wildlife and/or plant area or site;

- 1           b. Determine if a field survey will be required;
- 2           c. Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the  
3 proposed use would compromise the integrity and function of or result in adverse affects (including  
4 cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when  
5 wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season;  
6 and
- 7           d. Delineate the undisturbed two hundred (200) foot buffer on the site plan for sensitive plants and/or the  
8 appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.
- 9           (1) Buffer zones can be reconfigured if a project applicant demonstrates all of the following:
- 10               (a) Integrity and function of the buffer zones is maintained;
- 11               (b) Total buffer area on the development proposal is not decreased;
- 12               (c) Width reduction shall not occur within another buffer; and
- 13               (d) Buffer zone width is not reduced more than fifty percent (50%) at any particular location.  
14 Such features as intervening topography, vegetation, manmade features, natural plant or wildlife  
15 habitat boundaries, and floodplain characteristics could be considered.
- 16           (2) Requests to reduce buffer zones shall be considered if an appropriate professional botanist, plant  
17 ecologist, wildlife biologist, or hydrologist, hired by the project applicant:
- 18               (a) Identifies the precise location of the sensitive wildlife/plant or water resource;
- 19               (b) Describes the biology of the sensitive wildlife/plant or hydrologic condition of the water  
20 resource; and
- 21               (c) Demonstrates that the proposed use will not have any negative effects, either direct or  
22 indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term  
23 survival or water resource and its long-term function.
- 24           (3) The responsible official shall submit all requests to reconfigure sensitive wildlife/plant or water  
25 resource buffers to the Forest Service and the appropriate state agencies for review. All written  
26 comments shall be included in the record of application and based on the comments from the state and  
27 federal agencies, the responsible official will make a final decision on whether the reduced buffer zones  
28 is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the  
29 responsible official shall justify how the opposing conclusion was reached.
- 30           4. The responsible official, in consultation with the state and federal wildlife biologists and/or botanists, shall  
31 use the following criteria in reviewing and evaluating the site plan to ensure that the proposed developments or  
32 uses do not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or  
33 site:
- 34               a. Published guidelines regarding the protection and management of the affected wildlife/plant species.  
35 Examples include: the Washington Department of Fish and Wildlife technical papers that include  
36 management guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and  
37 the Larch Mountain salamander (Rodrick and Milner, 1991).
- 38               b. Physical characteristics of the subject parcel and vicinity, including topography and vegetation.
- 39               c. Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.
- 40               d. Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful life of  
41 the area or site.

1 e. In areas of winter range, habitat components, such as forage, and thermal cover, important to the  
2 viability of the wildlife must be maintained or, if impacts are to occur, enhancement must mitigate the  
3 impacts so as to maintain overall values and function of winter range.

4 f. The site plan is consistent with the Washington State guidelines when they become finalized.

5 g. The site plan activities coincide with periods when fish and wildlife are least sensitive to disturbance.  
6 These would include, among others, nesting and brooding periods (from nest building to fledgling of young)  
7 and those periods specified.

8 h. The site plan illustrates that new developments and uses, including bridges, culverts, and utility  
9 corridors, shall not interfere with fish and wildlife passage.

10 i. Maintain, protect, and enhance the integrity and function of priority habitats (such as old growth  
11 forests, talus slopes, and oak woodlands) as listed in Table 40.240.880-1. This includes maintaining  
12 structural, species, and age diversity, maintaining connectivity within and between plant communities, and  
13 ensuring that cumulative impacts are considered in documenting integrity and function.

14 5. The wildlife/plant protection process may terminate if the responsible official, in consultation with the  
15 Forest Service and Washington Department of Fish and Wildlife, or Heritage program, determines:

16 a. The sensitive wildlife area or site is not active; or

17 b. The proposed use is not within the buffer zones and would not compromise the integrity of the  
18 wildlife/plant area or site; and

19 c. The proposed use is within the buffer and could be easily moved out of the buffer by simply modifying  
20 the project proposal (site plan modifications).

21 If the project applicant accepts these recommendations, the responsible official shall incorporate them into the  
22 final decision and the wildlife/plant protection process may conclude.

23 6. If the measures in this section fail to eliminate the adverse affects, the proposed project shall be prohibited,  
24 unless the project applicant can meet the practicable alternative test in subsection (E) of this section by preparing  
25 a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.

26 7. The responsible official shall submit a copy of all field surveys (if completed) and mitigation plans to the  
27 Forest Service and appropriate state agencies. The Executive Director shall include all comments in the record of  
28 application and address any written comments submitted by the state and federal wildlife agency/heritage  
29 programs in the final decision. Based on the comments from the state and federal wildlife agency/heritage  
30 program, the responsible official shall make a final decision on whether the proposed use would be consistent  
31 with the wildlife/plant policies and guidelines. If the final decision contradicts the comments submitted by the  
32 state and federal wildlife agency/heritage program, the responsible official shall justify how the opposing  
33 conclusion was reached.

34 8. The responsible official shall require the project applicant to revise the mitigation plan as necessary to  
35 ensure that the proposed use would not adversely affect a sensitive wildlife/plant area or site.

36 9. Proposed uses and developments within 1,000 feet of sensitive wildlife areas and sites or within 1,000 feet of  
37 rare plants shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse  
38 shall be prohibited.

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40 (Amended: Ord. 2006-05-04)