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CLARK COUNTY
WASHINGTON

COMMUNITY PLANNING

PLANNING COMMISSION RECOMMENDATION

TO: Clark County Council

FROM: Steve Morasch, Planning Commission Chair
Prepared by: Sharon Lumbantobing, Planner II

DATE: March 13, 2018

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

PLANNING COMMISSION RECOMMENDATION

On January, 18, 2018, the Planning Commission voted 6 to 0 to amend the Clark County Code (CCC) 40.240.040 Definitions, CCC 40.240.820 General Management Area Cultural Resource Review Criteria, CCC 40.240.840 General Management Area Wetland Review Criteria, CCC 40.240.850 General Management Area Stream, Pond, Lake and Riparian Area Review Criteria, CCC 40.240.860 General Management Area Sensitive Wildlife Review Criteria, CCC 40.240.870 General Management Areas Rare Plant Review Criteria and CCC 40.240.880 Special Management Areas Natural Resource Review Criteria.

BACKGROUND

The Columbia River Gorge National Scenic Area (CRGNSA) was created in 1986. The CRGNSA 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 (Gorge Commission) was created to manage the non-federal land, while the U.S. Forest Service manages the federal land in the CRGNSA. Clark County has approximately 7,800 acres located inside the boundaries of the CRGNSA.

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

On February 9, 2016, the 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* (PA0502, A131399). On July 20, 2017, the Gorge Commission requested that all six counties in the CRGNSA amend their development codes to be consistent with the adopted Management Plan (Attachment B).

On August 21, 2017, the council directed staff to draft code amendments to address changes made to the CRGNSA Management Plan. The proposed amendments to CCC Chapter 40.240 are included in Attachment A.

Planning Commission held a work session regarding the proposed changes on January 4, 2018 and a public hearing regarding the proposal on January 18, 2018. Planning Commission accepted staff's recommendation.

These amendments will not become effective 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 CRGNSA 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. CCC Chapter 40.240 specifically applies to the CRGNSA 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 CCC Chapter 40.240 was sent to the Department of Commerce and the Gorge Commission on September 29, 2017. No comments were received from the Department of Commerce. The Gorge Commission replied that the proposed code amendments reflect the revisions that need to be made. A Notice of Determination of Non-Significance and SEPA Checklist were published in the paper of record on December 4, 2017, and one comment was received and is included in your packet.

RECOMMENDATION AND CONCLUSIONS

Based upon the information presented in this report and in the supporting documents, Planning Commission is recommending **APPROVAL** of proposed code amendments to CCC 40.240 by the council.

1 **Attachment A**

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40.240.040 Definitions

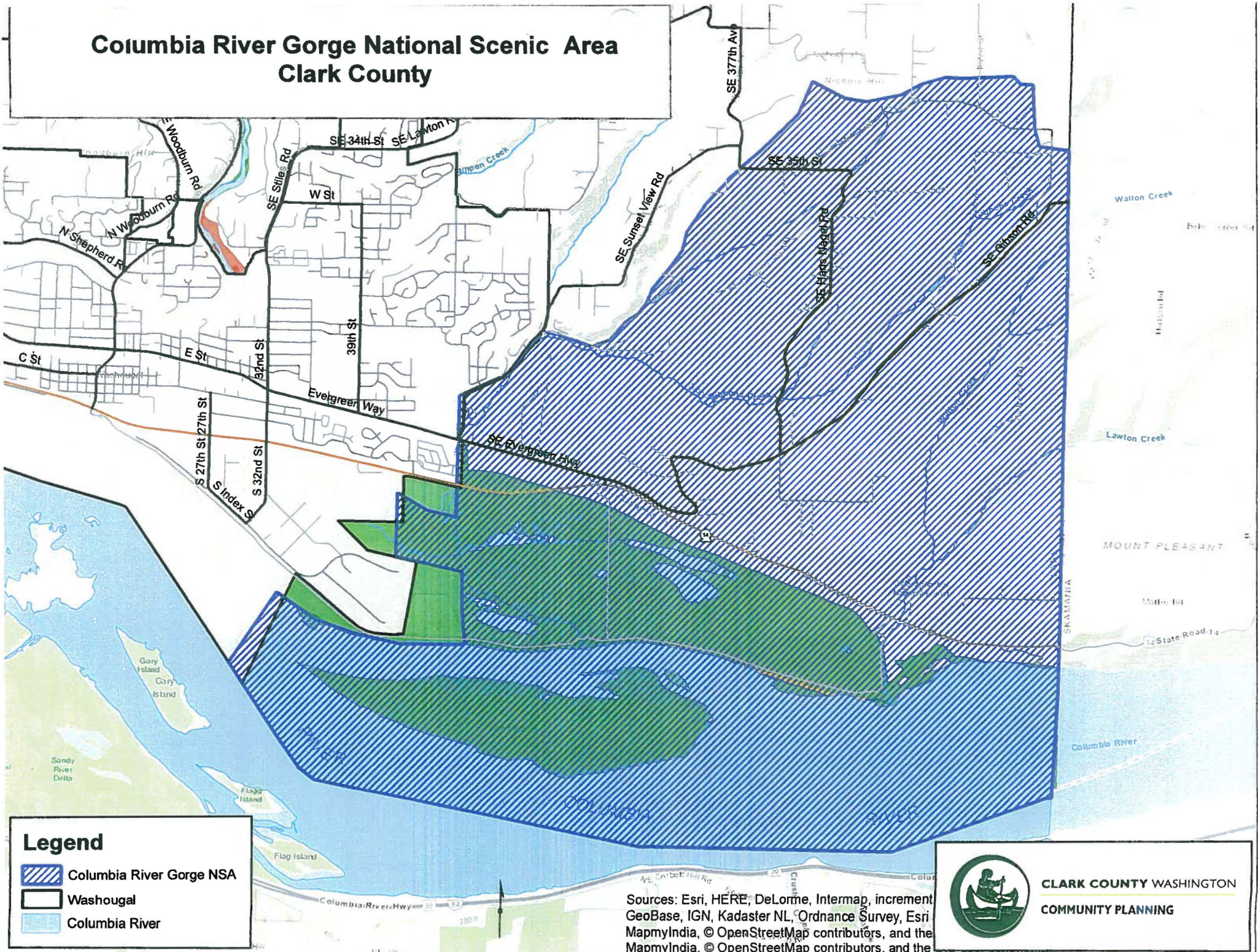
As used in this chapter, unless otherwise noted, the following words and their derivations shall have the following meanings. The definitions do not apply to areas of Clark County outside of the Columbia River Gorge National Scenic Area.

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"> • The operation or use of farmland subject to any agriculture-related government program. • Land lying fallow for one (1) year as a normal and regular requirement of good agricultural husbandry. • Land planted in orchards or other perennials prior to maturity. • Land under buildings supporting accepted agricultural practices. 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. (Amended: Ord. 2009-03-02)

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2 (Amended: Ord. 2006-05-04)
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Columbia River Gorge National Scenic Area Clark County



Legend

-  Columbia River Gorge NSA
-  Washougal
-  Columbia River



CLARK COUNTY WASHINGTON
COMMUNITY PLANNING

Sources: Esri, HERE, DeLorme, Intermap, increment GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri MapmyIndia, © OpenStreetMap contributors, and the MapmyIndia, © OpenStreetMap contributors, and the

1 **40.240.820 General Management Area Cultural Resource Review Criteria**

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

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

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

14 3. Reconnaissance and Historic Surveys and Survey Reports.

15 a. Reconnaissance Survey Requirements and Exceptions.

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

20 ~~(4) (2)~~ A reconnaissance survey shall be required for all proposed uses within five hundred
21 (500) feet of a known cultural resource, including those uses listed as exceptions in Section
22 40.240.820(A)(3)(a)~~(2)~~~~(3)~~.

23 (3) (2) A reconnaissance survey shall be required for all proposed uses, except:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (2) Subsurface testing shall be conducted if the surface survey reveals that cultural
30 resources may be present. Subsurface probes shall be placed at intervals sufficient to
31 determine the absence or presence of cultural resources.

32 e. Reconnaissance Survey Reports for Small-Scale Uses. The results of a reconnaissance
33 survey for small-scale uses shall be documented in a confidential report that includes:

34 (1) A description of the fieldwork methodology used to identify cultural resources, including
35 a description of the type and extent of the reconnaissance survey.

36 (2) A description of any cultural resources that were discovered in the project area,
37 including a written description and photographs.

38 (3) A map that shows the project area, the areas surveyed, the location of subsurface
39 probes, and, if applicable, the approximate boundaries of the affected cultural resources and
40 a reasonable buffer zone.

41 f. Reconnaissance Surveys for Large-Scale Uses.

42 (1) Reconnaissance surveys for large-scale uses shall be designed by a qualified
43 professional. A written description of the survey shall be submitted to and approved by the
44 Gorge Commission's designated archaeologist.

45 (2) Reconnaissance surveys shall reflect the physical characteristics of the project area and
46 the design and potential effects of the proposed use. They shall meet the following
47 guidelines:

48 (a) Archival research shall be performed before any field work. It should entail a
49 thorough examination of tax records; historic maps, photographs, and drawings;
50 previous archaeological, historic, and ethnographic research; cultural resource
51 inventories and records maintained by federal, state, and local agencies; and primary
52 historic accounts, such as diaries, journals, letters, and newspapers.

53 (b) Surface surveys shall include the entire project area, except for inundated areas
54 and impenetrable thickets.

55 (c) Subsurface probes shall be placed at intervals sufficient to document the presence
56 or absence of cultural resources.

57 (d) Archaeological site inventory forms shall be submitted to the State Historic
58 Preservation Officer whenever cultural resources are discovered.

- 1 g. Reconnaissance Survey Reports for Large-Scale Uses. The results of a reconnaissance
2 survey for large-scale uses shall be documented in a confidential report that includes:
3 (1) A description of the proposed use, including drawings and maps.
4 (2) A description of the project area, including soils, vegetation, topography, drainage, past
5 alterations, and existing land use.
6 (3) A list of the documents and records examined during the archival research and a
7 description of any prehistoric or historic events associated with the project area.
8 (4) A description of the fieldwork methodology used to identify cultural resources, including
9 a map that shows the project area, the areas surveyed, and the location of subsurface
10 probes. The map shall be prepared at a scale of one (1) inch equals one hundred (100) feet
11 (1:1,200), or a scale providing greater detail.
12 (5) An inventory of the cultural resources that exist in the project area, including a written
13 description, photographs, drawings, and a map. The map shall be prepared at a scale of one
14 (1) inch equals one hundred (100) feet (1:1,200), or a scale providing greater detail.
15 (6) A summary of all written comments submitted by Indian tribal governments and other
16 interested parties.
17 (7) A preliminary assessment of whether the proposed use would or would not have an
18 effect on cultural resources. The assessment shall incorporate concerns and
19 recommendations voiced during consultation meetings and information obtained through
20 archival and ethnographic research and field surveys.

21 h. Historic Surveys and Reports.

- 22 (1) Historic surveys shall document the location, form, style, integrity, and physical
23 condition of historic buildings and structures. They shall include original photographs and
24 maps. Archival research, blueprints, and drawings should be used as necessary.
25 (2) Historic surveys shall describe any uses that will alter or destroy the exterior
26 architectural appearance of the historic buildings or structures, or compromise features of the
27 site that are important in defining the overall historic character of the historic buildings or
28 structures.
29 (3) The project applicant shall provide detailed architectural drawings and building plans
30 that clearly illustrate all proposed alterations.
- 31 4. The responsibility and cost of preparing an evaluation of significance, assessment of effect, or
32 mitigation plan shall be borne by the project applicant, except for resources discovered during
33 construction. The Gorge Commission shall conduct and pay for evaluations of significance and
34 mitigation plans for resources that are discovered during construction of small-scale and large-scale
35 uses.
- 36 5. Cultural resources are significant if one (1) of the following criteria is satisfied:
37 a. The cultural resources are included in, or eligible for inclusion in, the National Register of
38 Historic Places. The criteria for evaluating the eligibility of cultural resources for the National
39 Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR
40 60.4).
41 b. The cultural resources are determined to be culturally significant by an Indian tribal
42 government, based on criteria developed by that Indian tribal government and filed with the
43 Gorge Commission.
- 44 6. The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall
45 comprise cultural resource professionals, interested individuals, and at least one (1) representative
46 from each of the four (4) Indian tribes. If a project applicant's and Indian tribal government's
47 evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the
48 applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a
49 recommendation to the responsible official as to whether affected cultural resources are significant.

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51 *(Amended: Ord. 2006-05-04)*

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1 **40.240.840 General Management Area Wetland Review Criteria**

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

- 3 1. If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be
4 responsible for determining the exact location of the wetland boundary.
5 a. The approximate location and extent of wetlands in the Scenic Area are indicated on the list
6 of hydric soils and the soil survey maps and the National Wetlands Inventory (U.S. Department
7 of the Interior, 1987). Wetlands boundaries shall be delineated using the procedures specified in
8 the *Corps of Engineers Wetland Delineation Manual* (Wetlands Research Program Technical
9 Report y-87-1, on-line edition, updated through March 21, 1997).
10 b. All wetlands delineations shall be conducted by a professional who has been trained to use
11 the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.
12 c. The responsible official may verify the accuracy of, and may render adjustments to, a
13 wetlands boundary delineation. In the event the adjusted boundary delineation is contested by
14 the applicant, the responsible official shall, at the applicant's expense, obtain professional
15 services to render a final delineation.
16 d. Proposed uses within wetlands or wetlands buffer areas shall comply with SEPA, this
17 section, and Chapter 40.450, as applicable. Chapter 40.240 shall prevail in cases of conflict with
18 such regulations.
19 2. In addition to the information required in all site plans, site plans for proposed uses in wetlands
20 or wetlands buffer zones shall include:
21 a. A site plan map prepared at a scale of one (1) inch equals one hundred (100) feet (1:1,200),
22 or a scale providing greater detail;
23 b. The exact boundary of the wetland and the wetlands buffer zone; and
24 c. A description of actions that would alter or destroy the wetland.

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

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

34 C. The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant
35 to the provisions in Section 40.240.840(E), and reviewed under the applicable provisions of Sections
36 40.240.800 through 40.240.900; provided that proposed uses in wetlands and wetland buffer zones shall
37 be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited:

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

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

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1 **40.240.850 General Management Area Stream, Pond, Lake and Riparian Area Review Criteria**

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

3 1. If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant
4 shall be responsible for determining the exact location of the ordinary high water mark or normal pool
5 elevation.

6 2. In addition to the information required in all site plans, site plans for proposed uses in streams,
7 ponds, lakes, and their buffer zones shall include:

8 a. A site plan map prepared at a scale of one (1) inch equals one hundred (100) feet (1:1,200),
9 or a scale providing greater detail;

10 b. The exact boundary of the ordinary high water mark or normal pool elevation and prescribed
11 buffer zone; and

12 c. A description of actions that would alter or destroy the stream, pond, lake, or riparian area.

13 B. Uses.

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

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

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

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

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

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

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

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

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

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1 **40.240.860 General Management Area Sensitive Wildlife Review Criteria**

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

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

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

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

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

- 26 (1) Listed as endangered or threatened pursuant to federal or state endangered species
27 acts; and
- 28 (2) Listed as endangered, threatened, sensitive, or candidate by the Washington Fish and
29 Wildlife Commission, considered to be of special interest to the public (limited to great blue
30 heron, osprey, golden eagle, and prairie falcon).

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

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

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1 **40.240.870** **General Management Areas Rare Plant Review Criteria**

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

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

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

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

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

10 2. In addition to the information required in site plans, site plans for uses within one thousand
11 (1,000) feet of a sensitive plant shall include a map prepared at a scale of one (1) inch equals one
12 hundred (100) feet (1:1,200), or a scale providing greater detail.

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

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

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

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

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

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

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

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

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

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

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

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

(b) The wetland is not critical habitat; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (2) The applicant shall be responsible for identifying all water resources and their appropriate buffers.
- (3) Wetlands boundaries shall be delineated using the following:
 - (a) The approximate location and extent of wetlands in the Scenic Area as shown on the National Wetlands Inventory (U.S. Department of the Interior, 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands.
 - (b) Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands that are discovered by the local planning staff during an inspection of a potential project site shall be delineated and protected.
 - (c) The project applicant shall be responsible for determining the exact location of a wetlands boundary. Wetlands boundaries shall be delineated using the procedures specified in the *1987 Corps of Engineers Wetland Delineation Manual* (on-line edition).
 - (d) All wetlands delineations shall be conducted by a professional who has been trained to use the federal delineation procedures, such as a soil scientist, botanist, or wetlands ecologist.

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

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

4. Buffer zones shall be undisturbed unless the following criteria have been satisfied:
 - a. The proposed use must have no practicable alternative as determined by the practicable alternative test. Those portions of a proposed use that have a practicable alternative will not be located in wetlands, stream, pond, lake, and riparian areas and/or their buffer zone.
 - b. Filling and draining of wetlands shall be prohibited with exceptions related to public safety or restoration/enhancement activities as permitted when all of the following criteria have been met:
 - (1) A documented public safety hazard exists or a restoration/enhancement project exists that would benefit the public and is corrected or achieved only by impacting the wetland in question;
 - (2) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project; and
 - (3) The proposed project minimizes the impacts to the wetland.
 - c. Unavoidable impacts to wetlands and aquatic and riparian areas and their buffer zones shall be offset by deliberate restoration and enhancement or creation (wetlands only) measures as required by the completion of a mitigation plan.

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

C. Wildlife and Plants.

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

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

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

- a. Identify/verify the precise location of the wildlife and/or plant area or site;
- b. Determine if a field survey will be required;

- c. Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season; and
 - d. Delineate the undisturbed two hundred (200) foot buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.
 - (1) Buffer zones can be reconfigured if a project applicant demonstrates all of the following:
 - (a) Integrity and function of the buffer zones is maintained;
 - (b) Total buffer area on the development proposal is not decreased;
 - (c) Width reduction shall not occur within another buffer; and
 - (d) Buffer zone width is not reduced more than fifty percent (50%) at any particular location. Such features as intervening topography, vegetation, manmade features, natural plant or wildlife habitat boundaries, and floodplain characteristics could be considered.
 - (2) Requests to reduce buffer zones shall be considered if an appropriate professional botanist, plant ecologist, wildlife biologist, or hydrologist, hired by the project applicant:
 - (a) Identifies the precise location of the sensitive wildlife/plant or water resource;
 - (b) Describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource; and
 - (c) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long-term function.
 - (3) The responsible official shall submit all requests to reconfigure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the record of application and based on the comments from the state and federal agencies, the responsible official will make a final decision on whether the reduced buffer zones is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the responsible official shall justify how the opposing conclusion was reached.
4. The responsible official, in consultation with the state and federal wildlife biologists and/or botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the proposed developments or uses do not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or site:
- a. Published guidelines regarding the protection and management of the affected wildlife/plant species. Examples include: the Washington Department of Fish and Wildlife technical papers that include management guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).
 - b. Physical characteristics of the subject parcel and vicinity, including topography and vegetation.
 - c. Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.
 - d. Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful life of the area or site.
 - e. In areas of winter range, habitat components, such as forage, and thermal cover, important to the viability of the wildlife must be maintained or, if impacts are to occur, enhancement must mitigate the impacts so as to maintain overall values and function of winter range.
 - f. The site plan is consistent with the Washington State guidelines when they become finalized.
 - g. The site plan activities coincide with periods when fish and wildlife are least sensitive to disturbance. These would include, among others, nesting and brooding periods (from nest building to fledgling of young) and those periods specified.
 - h. The site plan illustrates that new developments and uses, including bridges, culverts, and utility corridors, shall not interfere with fish and wildlife passage.
 - i. Maintain, protect, and enhance the integrity and function of priority habitats (such as old growth forests, talus slopes, and oak woodlands) as listed in Table 40.240.880-1. This includes maintaining structural, species, and age diversity, maintaining connectivity within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function.

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

- a. The sensitive wildlife area or site is not active; or
- b. The proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site; and
- c. The proposed use is within the buffer and could be easily moved out of the buffer by simply modifying the project proposal (site plan modifications).

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

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

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

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

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

(Amended: Ord. 2006-05-04)



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COUNTY COUNCILORS

July 20, 2017

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2705 E. 2nd Street
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Dear County Officials and Planning Directors,

On February 9, 2016, the Columbia River Gorge Commission adopted revisions to the *Management Plan for the Columbia River Gorge National Scenic Area* to respond to the Oregon Court of Appeals' decision in *Friends of the Columbia Gorge v. Columbia River Gorge Commission*. These revisions included changes to general management area guidelines and changes to Special Management Area guidelines that the U.S. Forest Service previously adopted. On August 4, 2016, the U.S. Secretary of Agriculture, through his designee, concurred with the revisions.

In accordance with Sections 7(b) and 8(h) of the National Scenic Area Act, I am transmitting these revisions to you to adopt into your land use ordinances for the National Scenic Area. Sections 7(b) and 8(h) require that you notify the Commission within 60 days of the date of this transmittal of your intent to adopt these revisions and that you adopt the revisions within 270 days of the date of this transmittal. These revisions are mandatory; however, the Management Plan allows you to enact variations on these revisions so long as the variations provide greater protection for Gorge resources.

After you adopt your ordinance amendments, you must submit the amendments to the Gorge Commission to determine that the amendments are consistent with the Management Plan and for the U.S. Secretary of Agriculture's concurrence. Your ordinance amendments for the general management area revisions may go into effect after the Commission determines they are consistent with the Management Plan and the amendments for the Special Management Area revisions may go into effect after the Secretary's concurrence.

In our experience, most counties elect for both GMA and SMA revisions to go into effect after the Secretary's concurrence.

The Gorge Commission staff is committed to assisting you to understand these revisions, discussing possible variations, and providing guidance on their implementation. We also welcome the opportunity to review your draft ordinance amendments so we can advise on consistency with the revisions.

I have enclosed a copy of the Secretary's concurrence and the Commission's staff report to the Gorge Commission summarizing the revisions. The text of the revisions is attached to the staff report. The Commission staff's lead for these revisions was its Counsel, Jeff Litwak. Please don't hesitate to call Jeff (509-493-3323, ext. 222) if you have any questions.

Sincerely,

Krystyna U. Wolniakowski
Executive Director

cc: Robin Shoal, Staff Officer, Natural Resources and Planning, USFS, National Scenic Area Office

Enclosures