

TO: Columbia River Gorge Commission

FROM: Jeff Litwak, Counsel

DATE: February 13, 2018

SUBJECT: **Action Item:** Adoption of Amendments to Commission Rule 350-81 (Land Use Ordinance for Klickitat County)

Action Requested

Conduct a public rulemaking hearing on proposed amendments to Commission Rule 350-81 (National Scenic Area Land Use Ordinance for Klickitat County) and vote to:

1. Find the amendments affecting lands in the General Management Area (GMA) consistent with the Management Plan; and
2. Tentatively find the amendments affecting lands in the Special Management Area (SMA) consistent with the Management Plan and direct staff to forward them to the Secretary of Agriculture for concurrence.

The proposed amendments are attached to this staff report in strikes and underline format. The revisions to the Management Plan that necessitated this rulemaking are also attached.

A motion to adopt the above recommendations requires a majority of the commissioners present at the meeting and at least three commissioners from each state. If the Commission votes to adopt the proposed rules, the rules would go into effect 30 days after the staff sends notice of the adoption to the states. Staff will send notice of the adoption of the rules after the Secretary of Agriculture concurs with the amendments affecting lands in the Special Management Area.

Background and Analysis

In 2016, the Commission adopted revisions to the Management Plan to address points in a decision from the Oregon Court of Appeals. This proposed rulemaking only adopts those revisions into Commission Rule 350-81 (the Commission's National Scenic Area Land Use Ordinance for Klickitat County). The other Gorge counties are currently working on their revisions to their land use ordinances and the Commission will hold hearings later this spring on the counties revisions.

There are two attachments to this staff report: (1) the proposed amendments to the land use ordinance as filed in the Oregon Bulletin (the text of the proposed rules filed in the Washington State Register is identical), and (2) the package of revisions to the Management Plan that staff sent to the counties. The package of revisions to the Management Plan contains the background on why the Commission revised the Plan and the adopted revisions. Staff refers you to that document rather than repeat the text here. I have highlighted the changes in the proposed rules so you can find the changes easily.

The proposed amendments to the National Scenic Area Land Use Ordinance for Klickitat County implement the revisions to the Management Plan. The text of the ordinance amendments is identical to the revisions to the Management Plan, except that staff corrected three typos in the definition of “Adversely affect or Adversely affecting.” The typos existed in the Management Plan and weren’t caught in the revisions to the Management Plan. The definition in the proposed amendments is now identical to the definition of “adversely affect or adversely affecting” in the National Scenic Area Act. The typos are not substantive and do not require a plan amendment prior to fixing the typos.

There is no opportunity to make substantive changes to these proposed amendments at this hearing. If you would like to make substantive changes, you would need to amend the Management Plan first.

Staff filed notice of this hearing and the proposed amendments in the Washington State Register on December 6, 2017 and the Notice appeared in Washington State Register No. 17-24-105. Staff filed notice of this hearing and the proposed amendments in the Oregon Bulletin on December 13, 2017. These filing dates allow the Commission to hold the rulemaking hearing on February 13, 2018.

Staff can answer any questions you have prior to the hearing or at the hearing.

Comments Received to Date

As of the date that staff sent this staff report to the Commission, the Commission has not received any comments. The rulemaking notices stated that comments are allowed up through the end of the Commission’s public hearing on this rule.

If staff receives any comments on this proposed rule prior to your hearing, we will forward to you the comments and any analysis that we are able to do.

OFFICE OF THE SECRETARY OF STATE
DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
MARY BETH HERKERT
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800 SUMMER STREET NE
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 350
COLUMBIA RIVER GORGE COMMISSION

FILED

12/13/2017 9:15 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amendments to Land Use Ordinance to be Consistent with Recent Revisions to NSA Management Plan

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/13/2018 10:00 AM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:

Nancy Andring

Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 02/13/2018

TIME: 9:00 AM

OFFICER: Commission Chair

ADDRESS: Best Western Hood River

Inn

1108 Marina Way

Hood River, OR 97031

SPECIAL INSTRUCTIONS:

9:00 am is the beginning of the Commission meeting. The precise time of this rulemaking hearing will be available when the agenda is finalized approximately 1 week before the meeting.

NEED FOR THE RULE(S):

The amendments are necessary to comply with Columbia River Gorge National Scenic Area Act, 16 U.S.C. §§ 544 to 544p. The National Scenic Area Act requires that when the Commission revises the Management Plan, all land use ordinances implementing the Management Plan must be revised to be consistent with the Management Plan. These amendments to the Gorge Commission's National Scenic Area Land Use Ordinance for Klickitat County make the ordinance consistent with recent amendments to the NSA Management Plan. The amendments add two definitions and specify when new development proposals must be reviewed for cumulative effects to scenic, cultural, natural, and recreational resources in the National Scenic Area. The changes to the Management Plan were the result of a court decision.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Revisions to the Management Plan for the Columbia River Gorge National Scenic Area, available at the Gorge Commission office.

FISCAL AND ECONOMIC IMPACT:

These rule amendments codify language already adopted into the Management Plan and largely codify the Commission staff's existing practice. The Commission does not anticipate any fiscal or economic impact of these amendments.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

No state agencies or units of local governments are affected by these rule amendments; no small businesses will be affected. The rules require the Commission staff to make additional findings relating to cumulative effects of development proposals, which the Commission staff has been routinely doing for several years. Making these findings takes little additional time in most cases. Some development proposals may require Commission staff to spend an additional few hours to obtain and analyze relevant information and write findings. No additional equipment or supplies are needed.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in this rulemaking. This rulemaking only codifies changes previously made to the National Scenic Area Management Plan. There was no opportunity to alter the text of the proposed rule changes.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

This rulemaking only codifies changes previously made to the National Scenic Area Management Plan. There was no opportunity to alter the text of the proposed rule changes.

RULES PROPOSED:

350-081-0020, 350-081-0540, 350-081-0560, 350-081-0570, 350-081-0580, 350-081-0590, 350-081-0600

AMEND: 350-081-0020

RULE SUMMARY: Add new definitions "(5) Adversely affect or Adversely affecting" and "(10) Air" and renumber subsequent definitions

CHANGES TO RULE:

350-081-0020

Definitions ¶¶

As used in Commission Rule 350-81, unless otherwise noted, the following words and their derivations shall have the following meanings:¶¶

(1) 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.¶¶

(2) 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.¶

(3) Active wildlife site: A wildlife site that has been used within the past 5 years by a sensitive wildlife species.¶

(4) Addition: An extension or increase in the area or height of an existing building.¶

(5) **Adversely affect or Adversely affecting: 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-**¶

(a) the context of a proposed action;¶

(b) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence;¶

(c) the relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts; and¶

(d) 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.¶

(6) Agency official: The federal, state, or local agency head or designee who has authority over a proposed project.¶

(67) 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.¶

(78) 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.¶

(89) 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, fur bearing 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:¶

(a) The operation or use of farmland subject to any agriculture related government program.¶

(b) Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.¶

(c) Land planted in orchards or other perennials prior to maturity.¶

(d) Land under buildings supporting accepted agricultural practices.¶

Agricultural use does not include livestock feedlots.¶

(910) Air: The mixture of gases comprising the Earth's atmosphere.¶

(11) Anadromous fish: Species of fish that migrate upstream to freshwater after spending part of their life in the ocean (saltwater).¶

(102) Anaerobic: A condition in which molecular oxygen is absent (or effectively so) from the environment.¶

(113) Aquaculture: The cultivation, maintenance, and harvesting of aquatic species.¶

(124) Aquatic area: The water area of a stream, pond, or lake measured at the ordinary high water mark.¶

(135) Archaeological resources: See cultural resource.¶

(146) Archival research: Research in primary documents that is likely to yield information regarding human occupation of the area in question, including but not limited to deed, census, cartographic, and judicial records.¶

(157) Bed and breakfast inn: An establishment located in a structure designed as a single family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single family dwelling and are owner occupied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.¶

(168) Best management practices: Conservation techniques and management measures that (1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; (2) minimize

adverse affects to groundwater and surface water flow and circulation patterns; and (3) maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.¶

(179) Biodiversity (SMA): A diversity of biological organisms at the genetic, species, ecosystem, and landscape levels.¶

(1820) Boat landing: Cleared area or developed structure used to facilitate launching or retrieving watercraft.¶

(219) Buffer zone: An area adjacent to a wetland, stream, pond, or other sensitive area that is established and managed to protect sensitive natural resources from human disturbance. In instances that involve a wetland, stream, or pond, the buffer zone includes all or a portion of the riparian area.¶

(202) Building: Any structure used or intended for supporting or sheltering any use or occupancy. Buildings have a roof supported by columns or walls. They include, but are not limited to, dwellings, garages, barns, sheds and shop buildings.¶

(213) Camping or recreational vehicle: A vacation trailer, camper, self propelled vehicle, or structure equipped with wheels for highway use that is intended for recreational purposes, but not for residential purposes, and is equipped with plumbing, sink, or toilet. A camping or recreational vehicle shall be considered a dwelling unit if it is connected to a sewer system (including septic tank), water, and electrical lines or is occupied on the same parcel for more than 60 days in any consecutive 12-month period.¶

(224) Campsite: Single camping unit, that usually consists of a cleared, level area for a tent, and may include a parking spur, fire ring, table, and other amenities.¶

(235) Capability: The ability of land to produce forest or agricultural products due to characteristics of the land itself, such as soil, slope, exposure, or other natural factors.¶

(246) Canopy closure (SMA): For forest practices, the percentage measuring the degree to which one layer of a tree canopy blocks sunlight or obscures the sky as measured from below.¶

(257) Cascadian architecture (SMA): Architectural style using native rock work, large timber, and steeply pitched roofs in a rustic manner.¶

(268) Catastrophic situations (SMA): Forces such as fire, insect and disease infestations, and earth movements.¶

(279) Childcare center: A facility providing daycare to three or more children, but not including:¶

(a) The provision of care that is primarily educational, unless provided to a preschool child for more than 4 hours a day.¶

(b) The provision of care that is primarily supervised training in a specific subject, including but not limited to dancing, gymnastics, drama, music or religion.¶

(c) The provision of short-term care related to or associated with group athletic or social activities.¶

(d) The provision of daycare in the provider's home in the family living quarters for less than 13 children.¶

(2830) Columbia River Gorge National Scenic Area Graphic Signing System: Sign design standards developed for the Scenic Area for public signs in and adjacent to public road rights-of-way.¶

(2931) Commercial development/use: Any facility or use of land or water whose function is primarily retail buying or selling of goods or services or both. This does not include fruit or produce stands.¶

(302) Commercial forest products: These include timber for lumber, pulp, and firewood for commercial purposes.¶

(313) Commercial recreation: Any private (non governmental) recreational activity or facility on privately owned land, excluding nonprofit facilities. This does not include operation of a public recreation facility by a private vendor.¶

(324) Community facility: Basic utilities and services necessary to support public service needs, including but not limited to water and power utilities, sanitation facilities, public microwave stations and communication facilities, schools, roads and highways. This does not include sanitary landfills.¶

(335) Consulting parties (cultural resources): Organizations or individuals who submit substantive written comments to a local government in a timely manner because they are concerned with the effects of a proposed use on cultural resources.¶

(346) Contiguous land: Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether or not portions of the parcels have separate tax lot numbers, lie in different counties, lie in

different sections or government lots, lie in different land use or zoning designations, or are separated by public or private roads. Contiguous land does not include parcels that meet only at a single point.¶

(357) Counties: The six counties within the Scenic Area: Hood River, Multnomah, and Wasco in Oregon, and Clark, Skamania, and Klickitat in Washington.¶

(368) Created opening (SMA): A created forest opening with less than 40 percent average canopy closure of overstory trees and less than 60 percent average canopy closure of understory trees averaging less than 5 inches diameter at breast height for coniferous forests and less than 25 percent total canopy cover for oak woodlands.

This definition does not include agricultural fields.¶

(379) Creation (wetlands): A human activity that converts an upland into a wetland. This definition presumes that the area to be converted has not been a wetland in recent times (100 to 200 years).¶

(3840) Cultivation: Any activity that prepares land for raising crops by turning, breaking, or loosening the soil. Cultivation includes plowing, harrowing, leveling, and tilling.¶

(3941) Cultural resource: Evidence of human occupation or activity that is important in the history, architecture, archaeology or culture of a community or region. Cultural resources include, but are not limited to, the following:¶

(a) Archaeological resources. Physical evidence or ruins of human occupation or activity that are located on or below the surface of the ground and are at least 50 years old. Archaeological resources include, but are not limited to, the remains of houses, villages, camp and fishing sites, and cave shelters; rock art such as petroglyphs and pictographs; artifacts such as arrowheads, utensils, tools, fragments of tools and utensils, obsidian flakes or other material byproducts from tool and utensil-making activities; and graves, human remains, and associated artifacts.¶

(b) Historic buildings and structures. Standing or above ground buildings and structures that are at least 50 years old. Historic buildings and structures include, but are not limited to, log cabins, barns, canals, flumes, pipelines, highways, and tunnels.¶

(c) Traditional cultural properties. Locations, buildings, structures, and objects that are associated with cultural beliefs, customs, or practices of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community. Traditional cultural properties include, but are not limited to, a location associated with the traditional beliefs of a Native American group about its origins or its cultural history; a location where a community has traditionally carried out artistic or other cultural practices important in maintaining its historical identity; and a location where Native American religious practitioners have historically gone, and go today, to perform ceremonial activities. Objects may include petroglyphs, pictographs, rock cairns or other rock structures, trees, and rock outcrops.¶

(402) Cumulative effects: The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.¶

(413) Cut: An area where soil or earth is excavated or removed in conjunction with development activities.¶

(424) Dedicated site: An area actively devoted to the current use and as delineated on the site plan.¶

(435) Deer and elk winter range: Areas normally used, or capable of being used, by deer and elk from December through April.¶

(446) Destruction of wetlands: Loss of the wetlands or any of its component parts, including the filling, draining, or other adverse effect to the sustainable functioning of the wetland.¶

(457) Developed recreation: Recreational opportunities characterized by high density use on specific sites and requiring facilities installation. Density of use, amount of site development, and type of recreation site can vary widely across the spectrum of recreation activities.¶

(468) Developed road prism (SMA): The area of the ground associated with a particular road and containing the road surface, ditch, shoulder, retaining walls, or other developed features. Does not include the natural appearing portions of cut and fill slopes.¶

(479) Development: Any land division or structure, including but not limited to new construction of buildings and structures, and mining, dredging, filling, grading, paving, and excavation.¶

(4850) Diameter at breast height (dbh): The diameter of a tree as measured at breast height.¶

(4951) Duplex: A building containing two dwelling units and designed for occupancy by two families.¶

(502) Dwelling, single family: A detached building containing one dwelling unit and designed for occupancy by one family only.¶

(513) Dwelling unit: A single unit designed for occupancy by one family and having not more than one cooking area or kitchen.¶

(524) Earth materials: Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials, including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).¶

(535) Effect on treaty rights: To bring about a change in, to influence, to modify, or to have a consequence to Indian treaty or treaty-related rights in the Treaties of 1855 with the Nez Perce, Umatilla, Warm Springs and Yakima tribes executed between the individual Indian tribes and the Congress of the United States and as adjudicated by the Federal courts.¶

(546) Emergency/disaster: A sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.¶

(557) Emergency/disaster response: Actions involving any development (such as new structures, grading, or excavation) or vegetation removal that must be taken immediately in response to an emergency/disaster event (as defined above). Emergency/disaster response actions not involving any structural development or ground-disturbance (such as use of emergency transport vehicles, communications activities or traffic control measures) are not included in this definition and are not affected by these provisions.¶

(568) Endemic: Plant and animal species that are found only in the vicinity of the Columbia River Gorge area.¶

(579) Enhancement (natural resources): A human activity that increases one or more functions of an existing wetland, stream, lake, riparian area, or other sensitive area. Enhancement is generally limited to a wetland, stream, lake, riparian area, or other sensitive area that is degraded. Enhancing an area that is in good or excellent condition may reduce biological diversity and eliminate other natural functions and may not be desirable.¶

(5860) Ephemeral streams (SMA): streams that contain flowing water only during, and for a short duration after, precipitation events.¶

(5961) Ethnography: The descriptive and analytic study of the culture of particular groups. An ethnographer seeks to understand a group through interviews with its members and often through living in and observing it.¶

(602) Existing use or structure: Any use or structure that was legally established. "Legally established" means: (1) the landowner or developer obtained applicable land use and building permits and complied with land use regulations and other laws that were in effect at the time the use or structure was established, or that were in effect at the time the landowner or developer corrected an improperly established use or structure; (2) the use or structure was initially operated or constructed according to those applicable permits, land use regulations and other laws, or has been operated or constructed according to permits obtained to correct an improperly established use or structure; and (3) any changes to the original use or structure must comply with all applicable permit requirements, land use regulations and other laws that were in effect at the time the change was established.¶

(613) Exploration, development (extraction and excavation), and production of mineral resources: Includes all or any part of the process of surface, underground, or submerged mining of mineral resources. Minerals include soil, coal, clay, stone, sand, gravel, metallic ore, oil and gases and any other material or substance excavated for commercial, industrial or construction use. For the Management Plan, this definition includes all exploration and mining, regardless of area disturbed or volume mined. Production of mineral resources means the use of portable crushing, onsite stockpiling, washing, milling, screening, or sorting equipment or other similar methods of initial treatment of a mineral resource to transport to another site for use or further processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.¶

(624) Fill: The placement, deposition, or stockpiling of sand, sediment, or other earth materials to create new uplands or create an elevation above the existing surface.¶

(635) Finished grade: The final elevation of the ground level of a property after construction is completed.¶

(646) Fire break: A break in ground cover fuels, adjacent to and surrounding buildings.¶

(657) Footprint: The area that falls directly beneath and shares the same perimeter as a structure.¶

(668) Forbs: Broad leaved herbs, in contrast to ferns, fern allies, and grasses and grasslike plants.¶

(679) Foreground (SMA): One half mile on either side of a traveled road or trail.¶

(6870) Forest health (SMA): A measure of the robustness of forest ecosystems. Forests are deemed healthy when they have capacity across the landscape for renewal, for the maintenance of wildlife habitats, for recovery from a wide range of disturbances, and for retention of their resilience.¶

(6971) Forest practice (SMA): Any activity conducted on or directly pertaining to forested land and relating to forest ecosystem management including but not limited to growing, thinning, or removing live or dead forest tree or shrub species, road and trail construction, reforestation, fertilizing, brush control, prevention of wildfire, and suppression of diseases and insects. The removal of hazardous trees is excluded. Uses that include establishment, management or harvest of Christmas trees, nursery stock, or fiber producing tree species requiring intensive cultivation (irrigation, fertilization, etc.) and a harvest rotation of 12 years or less are considered agricultural uses.¶

(702) Forest practice (GMA): Those activities related to the growing and harvesting of forest tree species, as defined by the Oregon Forest Practices Act or the Washington Forest Practices Act.¶

(713) Forest products: Commodities produced from a forest, including, but not limited to, timber products, boughs, mushrooms, pine cones, and huckleberries.¶

(724) Forest stand structure (SMA): The number, types and spacing of tree species, tree sizes, and canopy layers contained in a stand of trees.¶

(735) Forest use: The growing, propagation, and harvesting of forest tree species and other forest products.¶

(746) Fully screened: A description of the relative visibility of a structure where that structure is not visible as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan).¶

(757) Grade (ground level): The average elevation of the finished ground elevation as defined by the Uniform Building Code.¶

(768) Grading: Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.¶

(779) Hazard tree (SMA): A tree with a structural defect that will predictably result in whole or partial failure within 1.5 tree lengths of a road or maintained development. A defective tree is hazardous only when its failure could result in danger to people or damage to structures, vehicles, or other property.¶

(780) Height of building: The greatest vertical distance between the point of lowest finished grade adjoining any exterior wall of a building and the highest point of the roof, such as the highest coping or parapet of a flat roof, the highest deck line of a mansard roof, or the highest ridge of a hip, gable, gambrel, shed or other pitched roof.¶

(7981) Herbaceous: A plant with no persistent woody stem above the ground, with characteristics of an herb.¶

(802) Herbs: Nonwoody (herbaceous) plants, including grasses and grasslike plants, forbs, ferns, fern allies, and nonwoody vines. (Note: Seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)¶

(813) Historic buildings and structures: See cultural resource.¶

(824) Historic survey: Actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs.¶

(835) Horses, boarding of (GMA): The stabling, feeding, and grooming, or the use of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals, and exercise tracks. These facilities are either operated for a fee or by a nonprofit organization.¶

(846) Hydric soil: A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.¶

(857) In lieu sites: Sites acquired by the Army Corps of Engineers and transferred to the Bureau of Indian Affairs for treaty fishing, in lieu of those usual and accustomed fishing areas lost by inundation from reservoir construction. These sites were acquired under the provisions of Public Law 14 and Public Law 100 581, Section 401. Additional in lieu sites will be provided for.¶

(868) Indian tribal government: The governing bodies of the Nez Perce Tribe (Nez Perce Tribal Executive Committee), the Confederated Tribes of the Umatilla Indian Reservation (Board of Trustees), the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribal Council), and the Confederated Tribes and Bands of the Yakama Indian Nation (Tribal Council).¶¶

(879) Indian tribes: The Nez Perce Tribe, the Confederated Tribes and Bands of the Yakama Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.¶¶

(8890) Industrial uses: Any use of land or water primarily involved in:¶¶

(a) Assembly or manufacture of goods or products,¶¶

(b) Processing or reprocessing of raw materials, processing of recyclable materials or agricultural products not produced within a constituent farm unit,¶¶

(c) Storage or warehousing, handling or distribution of manufactured goods or products, raw materials, agricultural products, forest products, or recyclable materials for purposes other than retail sale and service, or¶¶

(d) Production of electric power for commercial purposes.¶¶

(891) Interpretive displays: Signs and structures that provide for the convenience, education, and enjoyment of visitors, helping visitors understand and appreciate natural and cultural resources and their relationship to them.¶¶

(902) Key components: The attributes that are essential to maintain the long term use and productivity of a wildlife site. The key components vary by species and wildlife site. Examples include fledgling and perching trees, watering sites, and foraging habitat.¶¶

(913) Key viewing areas: Those portions of important public roads, parks, or other vantage points within the Scenic Area from which the public views Scenic Area landscapes. These include:¶¶

(a) Historic Columbia River Highway;¶¶

(b) Crown Point;¶¶

(c) Highway I 84, including rest stops;¶¶

(d) Multnomah Falls;¶¶

(e) Washington State Route 14;¶¶

(f) Beacon Rock;¶¶

(g) Panorama Point Park;¶¶

(h) Cape Horn;¶¶

(i) Dog Mountain Trail;¶¶

(j) Cook Underwood Road;¶¶

(k) Rowena Plateau and Nature Conservancy Viewpoint;¶¶

(l) Portland Women's Forum State Park;¶¶

(m) Bridal Veil State Park;¶¶

(n) Larch Mountain;¶¶

(o) Rooster Rock State Park;¶¶

(p) Bonneville Dam Visitor Centers;¶¶

(q) Columbia River;¶¶

(r) Washington State Route 141;¶¶

(s) Washington State Route 142;¶¶

(t) Oregon Highway 35;¶¶

(u) Sandy River;¶¶

(v) Pacific Crest Trail;¶¶

(w) SMA only;¶¶

(x) Old Washington State Route 14 (County Road 1230);¶¶

(y) Wyeth Bench Road;¶¶

(z) Larch Mountain Road;¶¶

(aa) Sherrard Point on Larch Mountain.¶¶

(924) Land division: The division or redivision of contiguous land(s) into tracts, parcels, sites or divisions,

regardless of the proposed parcel or tract size or use. A land division includes, but is not limited to, short subdivisions, partitions, and subdivisions.¶

(935) Landscape setting: The combination of land use, landform, and vegetation patterns that distinguish an area in appearance and character from other portions of the Scenic Area.¶

(946) Livestock feedlot: Stockyards and commercial livestock finishing yards for cattle, sheep, swine, and fur bearers. Feedlots do not include winter pasture or winter hay feeding grounds.¶

(957) Lot line adjustment: Relocation of one or more common boundary lines between two contiguous parcels that does not create additional parcels.¶

(968) Maintenance: Ordinary upkeep or preservation of a serviceable structure affected by wear or natural elements. Maintenance does not change the original size, scope, configuration or design of a structure. Maintenance includes, but is not limited to, painting and refinishing, regrouting masonry, patching roofs, grading gravel roads and road shoulders, cleaning and armoring ditches and culverts, filling potholes, controlling vegetation within rights-of-way, removing trees and other roadside hazards within rights-of-way, and testing and treating utility poles.¶

(979) Mitigation: The use of any or all of the following actions:¶

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.¶

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.¶

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.¶

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.¶

(98100) Mosaic (SMA): The dispersal of overstory and understory leave trees in irregularly spaced clumps of varying sizes throughout an irregularly shaped created forest opening.¶

(99101) Multifamily dwelling: A dwelling constructed or modified into two or more single family units.¶

(1002) Native species: Species that naturally inhabit an area.¶

(1013) Natural grade: The undisturbed elevation of the ground level of a property before any excavation or construction operations.¶

(1024) Natural Resources: Wetlands, streams, ponds and lakes, riparian areas, wildlife and wildlife habitat, rare plants, and natural areas.¶

(1035) Natural resource specialist: A person with professional qualifications, including an academic degree or sufficient professional experience, in the subject matter the specialist is being asked to analyze or evaluate.¶

(1046) Natural resource based recreation (SMA): Recreation activities, uses, or facilities that essentially depend on the unique natural, scenic, or cultural resources found within the Scenic Area. Campgrounds, trails, boating and windsurfing facilities, swimming beaches, picnic sites, viewpoints, interpretive parks, and similar outdoor recreation facilities are considered resource based; golf courses, tennis courts, and rental cabins are not.¶

(1057) Nonprofit organization: An organization whose nonprofit status has been approved by the U.S. Internal Revenue Service.¶

(1068) Not visually evident (SMA): A visual quality standard that provides for development or uses that are not visually noticeable to the casual visitor. Developments or uses shall only repeat form, line, color, and texture that are frequently found in the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not be noticeable.¶

(1079) Old growth (SMA): A forest stand usually at least 180-220 years old with moderate to high canopy closure; a multi-layered, multi-species canopy dominated by large overstory trees; high incidence of large trees, some with broken tops and other indications of old and decaying wood (decadence); numerous large snags, and heavy accumulations of wood, including large logs on the ground.¶

(1108) Operational (SMA): For new agricultural use, an agricultural use shall be deemed operational when the improvements and investments described in the Stewardship Plan are in place on the parcel.¶

(10911) Ordinary high water mark: The mark on all streams, ponds, and lakes that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting

upland. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute.¶

(1102) Other related major structure (SMA): A structure related to a dwelling on a parcel in the SMA that is less than 40 acres in size, which is not incidental and subordinate to the main use of the property. A building or structure that satisfies the definition of "accessory building" is not an "other related major structure" or a "major development action."¶

(1113) Overstory (SMA): For forest practices, the tall or mature trees that rise above the shorter or immature understory trees.¶

(1124) Parcel:¶

(a) Any unit of land legally created by a short division, partition, or subdivision that was legally recognized under all state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.¶

(b) Any unit of land legally created and separately described by deed, sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.¶

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the Forest Service Office prior to the Final Interim Guidelines.¶

(d) A unit of land shall not be considered a separate parcel simply because the subject tract of land:¶

(A) Is a unit of land solely created to establish a separate tax account;¶

(B) Lies in different counties;¶

(C) Lies in different sections or government lots;¶

(D) Lies in different land use or zoning designations; or¶

(E) Is dissected by a public or private road.¶

(1135) Practicable: Able to be done, considering technology and cost.¶

(1146) Preexisting: Existing prior to the adoption of the Columbia River Gorge National Scenic Area Management Plan.¶

(1157) Previously disturbed: An area of land where the natural surface has been graded, excavated, paved and/or graveled.¶

(1168) Project area: The geographic area or areas within which new development and uses may cause changes in the character or use of cultural resources, if any such resources exist.¶

(1179) Public use facility: Recreation development(s) that meet the definition of "recreation facility" in the Management Plan and are open for use by the general public. Private clubs and other facilities limited to members or otherwise restricted in availability shall not be considered public use facilities.¶

(11820) Rare plant species: Used in a generic sense to refer to various categories of sensitive plants cited in federal and state programs.¶

(1219) Recreation facility: A cluster or grouping of recreational developments or improvements located in relatively close proximity to one another, and that are not separated in distance by more than 1/4 mile of land that does not contain any such developments or improvements, except for roads and/or pathways.¶

(1202) Reconnaissance survey: Actions conducted to determine if archaeological resources are present in an area that would be affected by a proposed use. Reconnaissance surveys may include archival research, surface surveys, subsurface testing, and ethnographic research.¶

(1213) Recreation opportunity spectrum (ROS): A means of classifying areas in relation to the types of recreation opportunities and experiences they provide or are appropriate for. The spectrum ranges from primitive (wilderness areas) to urban (highly modified areas).¶

(a) Primitive: Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified.¶

(b) Semiprimitive: Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.¶

(c) Roaded Natural: Roaded areas with moderately frequent human encounters and with resource modifications evident.

(d) Rural: Roaded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.

(e) Suburban: Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent human encounters, and dominant resource modifications encroaching into the rural landscape.

(f) Urban: Highly accessible, roaded areas dominated by human encounters and human-related structures.

(1224) Recreation resources: Areas and facilities that provide recreation opportunities and experiences. Recreation resources include semiprimitive areas with few facilities and developed sites.

(1235) Regularly maintained: An area of land that has been previously disturbed and where periodic actions have been taken to (1) keep the area clear of vegetation (e.g., shoulders, utility yards), (2) limit the height and type of vegetation (e.g., utility rights-of-way), and/or (3) establish and retain non-native vegetation (e.g., landscaped medians, rest area grounds).

(1246) Rehabilitation (natural resources): A human activity that returns a wetland, stream, buffer zone, or other sensitive area that was disturbed during construction of a permitted use to its natural or preconstruction condition.

(1257) Remnant old forest (SMA): Large trees in the overstory that are well into the mature growth state (older than 180 years).

(1268) Repair: Replacement or reconstruction of a part of a serviceable structure after damage, decay or wear. A repair returns a structure to its original and previously authorized and undamaged condition. It does not change the original size, scope, configuration or design of a structure, nor does it excavate beyond the depth of the original structure. Repair includes, but is not limited to, reroofing a building, replacing damaged guardrails, reconstructing a rotten deck or porch, replacing a broken window or door, replacing a utility pole and associated anchors, replacing a section of broken water or sewer line, replacing a damaged or defective utility line, reconstructing a portion of a building damaged by fire or a natural event, and replacing railroad ties or rails.

(1279) Resource based recreation: Those recreation uses that are essentially dependent upon the natural, scenic, or cultural resources of the Scenic Area and that do not adversely affect those resources upon which they depend.

(12830) Restoration (wetlands): A human activity that converts an area that was formerly a wetland back into a wetland. This definition presumes that the area to be restored no longer qualifies as a wetland because of past activities, alterations, or catastrophic events.

(12931) Review uses: Proposed uses and developments that must be reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they comply with the policies and guidelines in the Management Plan.

(1302) Riparian area: The area immediately adjacent to streams, ponds, lakes, and wetlands that directly contributes to the water quality and habitat components of the water body. This may include areas that have high water tables and soils and vegetation that exhibit characteristics of wetness, as well as upland areas immediately adjacent to the water body that directly contribute shade, nutrients, cover, or debris, or that directly enhance water quality within the water body.

(1313) Road: The entire right of way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:

(a) Ways described as streets, highways, throughways, or alleys.

(b) Road related structures that are in the right of way, such as tunnels, culverts, or similar structures.

(c) Structures that provide for continuity of the right of way, such as bridges.

(1324) Scenic Area: The Columbia River Gorge National Scenic Area.

(1335) Scenic travel corridor: Those portions of Interstate 84, the Historic Columbia River Highway, Oregon Highway 35, and Washington State Routes 14, 141, and 142 located in the Scenic Area and specifically designated to be managed as scenic and recreational travel routes.

(1346) Secretary: The Secretary of Agriculture.¶¶

(1357) Sensitive plant species: Plant species that are (1) endemic to the Columbia River Gorge and vicinity, (2) listed as endangered or threatened pursuant to federal or state endangered species acts, or (3) listed as endangered, threatened or sensitive by the Oregon or Washington Natural Heritage Program. In the SMA, sensitive plant species also include plant species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.¶¶

(1368) Sensitive wildlife species: Animal species that are (1) listed as endangered or threatened pursuant to federal or state endangered species acts, (2) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission, (3) listed as sensitive by the Oregon Fish and Wildlife Commission, or (4) considered to be of special interest to the public, limited to great blue heron, osprey, mountain goat, golden eagle, and prairie falcon. In the SMA, sensitive wildlife species also include animal species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.¶¶

(1379) Service station: A business operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.¶¶

(13840) Serviceable: Presently useable.¶¶

(13941) Shall: Action is mandatory.¶¶

(1402) Should: Action is encouraged.¶¶

(1413) Shrub: A woody plant usually greater than 3 feet but less than 20 feet tall that generally exhibits several erect, spreading, or prostrate stems and has a bushy appearance. (Note: For the Management Plan, seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)¶¶

(1424) Sign: Any placard, poster, billboard, advertising structure or inscribed surface, pattern or artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure, or other visually communicative or expressive device that is visible from an out of doors position and is used to advertise or call the public's attention to any public, business, commercial, industrial, recreational or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name, text, device, signal, ornament, logotype, or advertising matters is made visible. The meaning of "sign" shall also include any sign currently in disuse, but still visible from an out of doors position, and any frame or support structure erected specifically to bear or uphold a sign.¶¶

(1435) Significant cultural resource (SMA): A cultural resource that is included in, or eligible for inclusion in, the National Register of Historic Places. (The criteria for evaluating the eligibility of properties for the National Register of Historic Places appear in "National Register Criteria for Evaluation" [36 CFR 60].)¶¶

(1446) Skyline: The line that represents the place at which a landform, such as a cliff, bluff or ridge, meets the sky, as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). In areas with thick, unbroken tree cover, the skyline is generally formed by the top of the vegetative canopy. In treeless areas or areas with more open tree cover, the skyline is generally formed by the surface of the ground.¶¶

(1457) Soil capability class: A classification system developed by the U.S. Department of Agriculture, Natural Resources Conservation Service to group soils as to their capability for agricultural use.¶¶

(1468) Special habitat area: Wetlands, mudflats, shallow water, and riparian vegetation that have high values for waterfowl, shorebirds, raptors, songbirds, upland game, and reptiles.¶¶

(1479) Special streams: Streams that are primary water supplies for fish hatcheries and rearing ponds.¶¶

(14850) Stand: A group of trees possessing uniformity in regard to type, age, vigor, or size.¶¶

(14951) Story: A single floor level of a structure, as defined by the Uniform Building Code.¶¶

(1502) Streams: Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, springs and defined channel swales. The channel or bed does not have to contain water year round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff structures, or other artificial watercourses unless they are used to convey streams naturally occurring prior to construction of such watercourses. For the Management Plan, streams are categorized into two classes: perennial streams and intermittent streams. Perennial stream means a stream that flows year round during years of normal

precipitation. Intermittent stream means a stream that flows only part of the year, or seasonally, during years of normal precipitation.¶¶

(1513) Structure: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to, buildings, walls, fences, roads, parking lots, signs, and additions/alterations to structures.¶¶

(1524) Submit: To deliver a document (e.g., land use application, written comment) to a reviewing agency's office by personal delivery, commercial delivery, mail, fax, or E-mail. When a document must be submitted within a specified period, it must arrive at the reviewing agency's office by the close of business on the last day of the specified period.¶¶

(1535) Subsurface testing: Any procedure that removes material from beneath the ground surface for the purpose of identifying cultural resources, such as shovel tests, posthole digger tests, and auger borings.¶¶

(1546) Suitability: The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibility among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.¶¶

(1557) Thinning (SMA): A forest practice intended to create favorable conditions for the continued growth of trees within an existing stand of trees. A thinning becomes a forest opening in coniferous forests when the average canopy closure of the overstory layer is zero or less than 40 percent and the understory layer is less than 60 percent average canopy closure of trees averaging less than 5 inches diameter at breast height. A thinning becomes a forest opening in oak woodlands when the total average canopy closure is less than 25 percent.¶¶

(1568) Total canopy closure (SMA): For forest practices, the percentage measuring the degree to which all layers of the tree canopy combine together to block sunlight or obscure the sky as measured from below.¶¶

(1579) Travelers accommodations: Any establishment having rooms rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental use or use of facilities.¶¶

(15860) Treatment (SMA): For forest practices, a site-specific operation that carries out the forest management objectives for an area.¶¶

(15961) Treaty rights or other rights: Rights reserved by the Indian tribes through the Treaties of 1855. These include the right of fishing at all usual and accustomed places, as well as the privilege of pasturing livestock and hunting and gathering on open and unclaimed lands in common with the citizens of the states.¶¶

(1602) Tributary fish habitat: Streams that are used by anadromous or resident fish for spawning, rearing and/or migration.¶¶

(1613) Understory (SMA): For forest practices, the shorter or immature trees below the tall or mature overstory trees.¶¶

(1624) Undertaking: Any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resources are located in the area of potential effects. For federal undertakings, the project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements [36 CFR 800.16(y)].¶¶

(1635) Unimproved lands: Lands that generally do not have developments such as buildings or structures.¶¶

(1646) Upland: Any area that does not qualify as a wetland because the associated hydrologic regime is not sufficiently wet to elicit development of vegetation, soils, and/or hydrologic characteristics associated with wetlands.¶¶

(1657) Uses allowed outright: New uses and developments that may occur without being reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they are consistent with the Management Plan.¶¶

(1668) Utility facility: Any structure that provides for the transmission or distribution of water, sewer, fuel, electricity, or communications.¶¶

(1679) Vested right: The right to develop or continue to develop a use, development or structure that was reviewed and approved pursuant to this Management Plan.¶¶

(16870) Viewshed: A landscape unit seen from a key viewing area.¶

(16971) Visual quality objective (VQO): A set of visual management goals established by the Forest Service to achieve a desired visual objective. These objectives include retention (not visually evident) and partial retention (visually subordinate), and others in the Mt. Hood and Gifford Pinchot National Forest Plans.¶

(1702) Visually subordinate: A description of the relative visibility of a structure or use where that structure or use does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually dominant in relation to their surroundings. Visually subordinate forest practices in the SMA shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.¶

(1713) Water dependent: Uses that absolutely require, and cannot exist without, access or proximity to, or siting within, a water body to fulfill their basic purpose. Water dependent uses include, but are not limited to, docks, wharfs, piers, dolphins, certain fish and wildlife structures, boat launch facilities, and marinas. Dwellings, parking lots, spoil and dump sites, roads, restaurants, trails and paths, trailer parks, resorts, and motels are not water dependent.¶

(1724) Water related: Uses not directly dependent upon access to a water body, but whose presence facilitates public access to and enjoyment of a water body. In the GMA, water related uses shall be limited to boardwalks, trails and paths, observation decks, and interpretative aids, such as kiosks and signs.¶

(1735) Wetlands: Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include riparian areas, rivers, streams, and lakes.¶

(1746) Wetlands functions: The beneficial roles that wetlands serve, including storage, conveyance, and attenuation of floodwaters and stormwaters; groundwater recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game and nongame birds, mammals, and other living resources; protection of habitat for endangered, threatened, and sensitive species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.¶

(1757) Winery: An agricultural facility used for processing grapes into wine, including laboratories, processing areas, offices, and storage areas. A winery is distinct from a wine sales/tasting room; each of these uses must be explicitly reviewed and approved.¶

(1768) Wine sales/tasting room: A facility that is accessory to a winery and used for tasting and retail sales of wine, including interior space (e.g., wine bar, sitting room) and exterior space (e.g., patio, veranda). A wine sales/tasting room shall not be used for preparing or serving meals or hosting weddings, receptions or other commercial events, unless allowed, reviewed and approved under the "Commercial Events" provisions in 350-081-0108. A wine sales/tasting room is distinct from a winery; each of these uses must be explicitly reviewed and approved.¶

(1779) Woody plant: A seed plant (gymnosperm or angiosperm) that develops persistent, hard, fibrous tissues.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Statutes/Other Implemented: ORS 196.150

AMEND: 350-081-0540

RULE SUMMARY: Add provisions to .0540(c)(A) relating to requirements for cultural resource reconnaissance surveys and renumber subsections

CHANGES TO RULE:

350-081-0540

General Management Area Cultural Resource Review Criteria ¶¶

(1) General Provisions for Implementing the Cultural Resources Protection Process.¶¶

(a) 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 Code of Federal Regulations (CFR) Part 61 and Guidelines for Evaluating and Documenting Traditional Cultural Properties (Parker and King, no date).¶¶

(b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). 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.¶¶

(c) Reconnaissance and Historic Surveys and Survey Reports.¶¶

(A) Reconnaissance survey requirements and exceptions.¶¶

(i) 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.¶¶

(ii) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in 350-081-0540(1)(c)(A)(iii) below.¶¶

(iii) A reconnaissance survey shall be required for all proposed uses, except:¶¶

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

(II) 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.¶¶

(III) 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.¶¶

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

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

(VI) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:¶¶

(aa) Residential development that involves two or more new dwellings for the same project applicant.¶¶

(bb) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat

ramps, and visitor information and environmental education facilities.¶

(cc) Public transportation facilities that are outside improved rights-of-way.¶

(dd) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.¶

(ee) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances. Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archaeologists. The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.¶

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

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

(C) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant. For 350-081-0540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.¶

(D) Reconnaissance Surveys for Small-Scale Uses. Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:¶

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

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

(E) Reconnaissance Survey Reports for Small-Scale Uses. The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:¶

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

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

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

(F) Reconnaissance Surveys for Large-Scale Uses¶

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

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

(l) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research;

cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.¶¶

(II) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.¶¶

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

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

(G) Reconnaissance Survey Reports for Large-Scale Uses¶¶

The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:¶¶

(i) A description of the proposed use, including drawings and maps.¶¶

(ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.¶¶

(iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.¶¶

(iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.¶¶

(v) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.¶¶

(vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.¶¶

(vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.¶¶

(H) Historic Surveys and Reports¶¶

(i) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.¶¶

(ii) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.¶¶

(iii) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.¶¶

(d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.¶¶

(e) Cultural resources are significant if one of the following criteria is satisfied:¶¶

(A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).¶¶

(B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.¶¶

(f) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Executive Director as to whether affected cultural resources are

significant.¶

(g) Determination of potential effects to significant cultural resources shall include consideration of cumulative effects of proposed developments that are subject to any of the following: 1) a reconnaissance or historic survey; 2) a determination of significance; 3) an assessment of effect; or 4) a mitigation plan.¶

(2) Cultural Resource Reconnaissance and Historic Surveys¶

(a) Consultation and Ethnographic Research;¶

(A) When written comments are submitted to the Executive Director within the comment period provided in 350-081-0040, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons. Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed. All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.¶

(B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate. All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.¶

(b) Notice of Survey Results:¶

(A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.¶

(B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.¶

(c) Conclusion of the Cultural Resource Protection Process¶

(A) The Executive Director shall make a final decision on whether the proposed use would be consistent with 350-081-0540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.¶

(B) The cultural resource protection process may conclude when one of the following conditions exists:¶

(i) The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.¶

(ii) A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2(b)(B) above.¶

(iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone. Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected. An evaluation of significance shall be

conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.¶

(iv) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:¶

(a) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or¶

(b) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in The Secretary of the Interior's Standards for Rehabilitation (U.S. Department of the Interior 1990) and The Secretary of the Interior's Standards for Historic Preservation Projects (U.S. Department of the Interior 1983). The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission. The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Executive Director question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.¶

(3) Evaluation of Significance¶

(a) Evaluation Criteria and Information Needs If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:¶

(A) Evaluations of significance shall follow the procedures in How to Apply the National Register Criteria for Evaluation (U.S. Department of the Interior, no date) and Guidelines for Evaluating and Documenting Traditional Cultural Properties (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.¶

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

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

(D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.¶

(E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.¶

(b) Notice of Evaluation Results:¶

(A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Executive Director shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.¶

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.¶

(c) Cultural Resources are Culturally Significant:¶

(A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.¶

(B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Executive Director, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Executive Director within 30 calendar days from the date the evaluation of significance is mailed.¶

(d) Conclusion of the Cultural Resource Protection Process:¶

(A) The Executive Director shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Executive Director shall justify how an opposing conclusion was reached.¶

(B) The cultural resource protection process may conclude if the affected cultural resources are not significant.¶

(C) If the project applicant or the Executive Director determines that the cultural resources are significant, the effects of the proposed use shall be assessed.¶

(4) Assessment of Effect:¶

(a) Assessment Criteria and Information Needs If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:¶

(A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.5) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.11.¶

(i) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant.¶

(ii) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on cultural resources include, but are not limited to:¶

(I) Physical destruction, damage, or alteration of all or part of the cultural resource.¶

(II) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.¶

(III) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.¶

(IV) Neglect of a significant cultural resource resulting in its deterioration or destruction, except as described in 36 CFR 800.5.¶

(B) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.¶

(C) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:¶

(i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.¶

(ii) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with The Secretary of the Interior's Standards for Rehabilitation (U.S. Department of the Interior 1990) and The Secretary of the Interior's Standards for Historic Preservation Projects (U.S. Department of the Interior 1983).¶

(b) Notice of Assessment Results:¶

(A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on

significant cultural resources, the Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.¶¶

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the assessment of effect is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.¶¶

(c) Conclusion of the Cultural Resource Protection Process¶¶

(A) The Executive Director shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.¶¶

(B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.¶¶

(C) A mitigation plan shall be prepared if a project applicant or the Executive Director determines that the proposed use would have an adverse effect on significant cultural resources.¶¶

(5) Mitigation Plans¶¶

(a) Mitigation Plan Criteria and Information Needs Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:¶¶

(A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.¶¶

(B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use. Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.¶¶

(C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.11, including, but not limited to:¶¶

(i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.¶¶

(ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.¶¶

(iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.¶¶

(iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Executive Director.¶¶

(v) Copies of any written recommendations submitted to the Executive Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.¶¶

(b) Notice of Mitigation Plan Results:¶¶

(A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Executive Director shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.¶¶

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.¶¶

(c) Conclusion of the Cultural Resource Protection Process¶¶

(A) The Executive Director shall make a final decision on whether the mitigation plan would reduce an adverse

effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.¶

(B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.¶

(C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.¶

(6) Cultural Resources Discovered After Construction Begins The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Executive Director and the State Historic Preservation Officer. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.¶

(a) Halt of Construction. All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.¶

(b) Notification. The project applicant shall notify the Executive Director within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.¶

(c) Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute 358.905 to 358.955, and Revised Code of Washington 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" and "Evaluation of Significance: Evaluation Criteria and Information Needs". Based on the survey and evaluation report and any written comments, the Executive Director shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant. A mitigation plan shall be prepared if the affected cultural resources are significant.¶

(d) Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.¶

(7) Discovery of Human Remains The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.¶

(a) Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.¶

(b) Notification. Local law enforcement officials, the Executive Director, and the Indian tribal governments shall be contacted immediately.¶

(c) Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.¶

(d) Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.¶

(e) Treatment. In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic. If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs". The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" are met and the mitigation plan is executed.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Statutes/Other Implemented: ORS 196.150

AMEND: 350-081-0560

RULE SUMMARY: delete .0560(1)(c) and amend .0560(3) in its place

CHANGES TO RULE:

350-081-0560

General Management Area Wetland Review Criteria ¶¶

(1) Wetlands Boundaries and Site Plans for Review Uses in Wetlands ¶¶

(a) If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary. ¶¶

(A) The approximate location and extent of wetlands in the Scenic Area is 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. Wetlands boundaries shall be delineated using the procedures specified in the Corps of Engineers Wetlands Delineation Manual (Wetlands Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997). ¶¶

(B) All wetlands delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist. ¶¶

(C) The Executive Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the applicant's expense, obtain professional services to render a final delineation. ¶¶

(b) In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include: ¶¶

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

(B) The exact boundary of the wetland and the wetlands buffer zone; and ¶¶

(C) A description of actions that would alter or destroy the wetland. ¶¶

~~(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within wetlands and their buffer zones. ¶¶~~

(2) Commission Rule 350-081-0560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 350-81, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River. ¶¶

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in 350-081-0560(5), and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620: **Proposed uses in wetlands and wetland buffer zones shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.** ¶¶

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not: ¶¶

(A) Increase the size of an existing structure by more than 100 percent, ¶¶

(B) Result in a loss of wetlands acreage or functions, and ¶¶

(C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure. ¶¶

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

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to

dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.¶¶

(4) Uses not listed in 350-081-0560(2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to 350-081-0560(6) and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620.¶¶

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:¶¶

(a) Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;¶¶

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;¶¶

(c) The structure will be constructed using best management practices;¶¶

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and¶¶

(e) The structure complies with all applicable federal, state, and county laws.¶¶

(6) Applications for all other Review Uses in wetlands shall demonstrate that:¶¶

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:¶¶

(A) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands;¶¶

(B) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and¶¶

(C) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist. An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.¶¶

(b) The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:¶¶

(A) The extent of public need for the proposed use.¶¶

(B) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.¶¶

(C) The functions and size of the wetland that may be affected.¶¶

(D) The economic value of the proposed use to the general area.¶¶

(E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.¶¶

(c) Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.¶¶

(d) Groundwater and surface-water quality will not be degraded by the proposed use.¶¶

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.¶¶

(f) The proposed use complies with all applicable federal, state, and county laws.¶¶

(g) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.¶¶

(h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands.

Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts. The following wetlands restoration, creation, and enhancement guidelines shall apply:¶¶

- (A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.¶
- (B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.¶
- (C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.¶
- (D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):¶
- (i) Restoration: 2:1¶
- (ii) Creation: 3:1¶
- (iii) Enhancement: 4:1¶
- (E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.¶
- (F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.¶
- (G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.¶
- (H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.¶
- (I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.¶
- (7) Wetlands Buffer Zones¶
- (a) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.¶
- (b) The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.¶
- (A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.¶
- (B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.¶
- (C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.¶
- (c) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:¶
- (A) Forest communities: 75 feet¶
- (B) Shrub communities: 100 feet¶
- (C) Herbaceous communities: 150 feet¶
- (d) Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.¶
- (8) Wetlands Compensation Plans Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:¶

- (a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.¶
- (b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.¶
- (c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.¶
- (d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:¶
- (A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.¶
- (B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.¶
- (C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.¶
- (e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.¶
- (f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Statutes/Other Implemented: ORS 196.150

AMEND: 350-081-0570

RULE SUMMARY: delete .0570(1)(c) and amend .0570(3) in its place

CHANGES TO RULE:

350-081-0570

General Management Area Stream, Pond, Lake and Riparian Area Review Criteria ¶¶

(1) Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas ¶¶

(a) If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be responsible for determining the exact location of the ordinary high watermark or normal pool elevation. ¶¶

(b) In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes, and their buffer zones shall include: ¶¶

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

(B) The exact boundary of the ordinary high watermark or normal pool elevation and prescribed buffer zone; and ¶¶

(C) A description of actions that would alter or destroy the stream, pond, lake, or riparian area. ¶¶

~~(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within streams, ponds, lakes, riparian areas and their buffer zones. ¶¶~~

(2) Commission Rule 350-081-0570 shall not apply to proposed uses that would occur in those portions of the main stem of the Columbia River that adjoin the Urban Area. ¶¶

(3) The following uses may be allowed in streams, ponds, lakes and riparian areas and their buffer zones, when approved pursuant 350-081-0570(5), and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620: Proposed uses in streams, ponds, lakes, and riparian areas and their buffer zones shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited. ¶¶

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not: ¶¶

(A) Increase the size of an existing structure by more than 100 percent. ¶¶

(B) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or ¶¶

(C) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure. ¶¶

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

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

(4) Uses not listed in 350-081-0074, 350-081-0570(2) and (3) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to 350-081-0570(6) and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620. ¶¶

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in aquatic and riparian areas shall demonstrate that: ¶¶

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

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

(c) The structure will be constructed using best management practices; ¶¶

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable;

and¶¶

(e) The structure complies with all applicable federal, state, and local laws.¶¶

(6) Applications for all other Review Uses in streams, ponds, lakes, and riparian areas shall demonstrate that:¶¶

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by 350-081-0560(6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.¶¶

(b) The proposed use is in the public interest as determined by 350-081-0560(6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.¶¶

(c) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. At a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:¶¶

(A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2000), unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife. In Washington, the Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods for in-water work.¶¶

(B) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.¶¶

(C) Nonstructural controls and natural processes shall be used to the greatest extent practicable.¶¶

(D) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.¶¶

(E) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.¶¶

(F) Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.¶¶

(d) Groundwater and surface-water quality will not be degraded by the proposed use.¶¶

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of stream, pond, and lake buffer zones.¶¶

(f) The proposed use complies with all applicable federal, state, and county laws.¶¶

(g) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement. Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required. The following rehabilitation and enhancement guidelines shall apply:¶¶

(A) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.¶¶

(B) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.¶¶

(C) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.¶¶

(D) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.¶¶

(E) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.¶¶

(F) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.¶¶

(G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that

replicate the original vegetation community.¶¶

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

(I) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.¶¶

(7) Stream, Pond, and Lake Buffer Zones¶¶

(a) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:¶¶

(A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet¶¶

(B) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet¶¶

(C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by 350-081-0560(7)(b), substituting the term pond or lake as appropriate.¶¶

(b) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.¶¶

(c) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Executive Director may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the project applicant's expense, obtain professional services to render a final delineation.¶¶

(8) Rehabilitation and Enhancement Plans Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake and/or buffer area. They shall satisfy the following guidelines:¶¶

(a) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.¶¶

(b) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.¶¶

(c) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:¶¶

(A) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.¶¶

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.¶¶

(C) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.¶¶

(d) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.¶¶

(e) A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.¶¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Statutes/Other Implemented: ORS 196.150

AMEND: 350-081-0580

RULE SUMMARY: amend .0580(1)(c)

CHANGES TO RULE:

350-081-0580

General Management Area Sensitive Wildlife Review Criteria ¶

(1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife ¶

(a) Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites: ¶

(A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission: ¶

(i) Bald eagle habitat. ¶

(ii) Deer and elk winter range. ¶

(iii) Elk habitat. ¶

(iv) Mountain goat habitat. ¶

(v) Peregrine falcon habitat. ¶

(vi) Pika colony area. ¶

(vii) Pileated woodpecker habitat. ¶

(viii) Pine marten habitat. ¶

(ix) Shallow water fish habitat (Columbia R.). ¶

(x) Special streams. ¶

(xi) Special habitat area. ¶

(xii) Spotted owl habitat. ¶

(xiii) Sturgeon spawning area. ¶

(xiv) Tributary fish habitat. ¶

(xv) Turkey habitat. ¶

(xvi) Waterfowl area. ¶

(xvii) Western pond turtle habitat. ¶

(B) "Sensitive wildlife sites" means sites that are used by animal species that are ¶

(i) Listed as endangered or threatened pursuant to federal or state endangered species acts, ¶

(ii) Listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission, ¶

(iii) Listed as sensitive by the Oregon Fish and Wildlife Commission, or ¶

(iv) Considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, mountain goat, and prairie falcon). Updated lists of species included in sensitive wildlife sites can be found on the websites for the Washington Department of Fish and Wildlife (Species of Concern list) and the Wildlife Division of Oregon Department of Fish and Wildlife. A list also is maintained by the USDA Forest Service - Scenic Area Office and available on the Gorge Commission website. ¶

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

(c) ~~Determination of potential effects to significant natural resources shall include consideration of Proposed uses within 1,000 feet of a sensitive wildlife area or site shall be evaluated for adverse effects, including cumulative effects of proposed developments within 1000 feet of sensitive wildlife areas and s, and adverse effects shall be prohibitesd.~~ ¶

(2) Field Survey. A field survey to identify sensitive wildlife areas or sites shall be required for: ¶

(a) Land divisions that create four or more parcels; ¶

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities; ¶

(c) Public transportation facilities that are outside improved rights-of-way; ¶

- (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and¶
- (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually. Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.¶
- (3) Review uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to 350-081-0580(4) and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620.¶
- (4) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:¶
 - (a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:¶
 - (A) Identify/verify the precise location of the wildlife area or site,¶
 - (B) Ascertain whether the wildlife area or site is active or abandoned, and¶
 - (C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.¶
 - (b) The following factors may be considered when site plans are reviewed:¶
 - (A) Biology of the affected wildlife species.¶
 - (B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).¶
 - (C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.¶
 - (D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.¶
 - (E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.¶
 - (c) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:¶
 - (A) The sensitive wildlife area or site is not active, or¶
 - (B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.¶
 - (d) If the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Executive Director will incorporate them into the development review order and the wildlife protection process may conclude.¶
 - (e) The project applicant shall prepare a wildlife management plan if the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.¶
 - (f) The Executive Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Fish and Wildlife. The state wildlife agency will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the state wildlife agency in the land use review order. Based on the comments from the state wildlife agency, the Executive Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and

guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached. The Executive Director shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.¶¶

(5) Wildlife Management Plans. Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a project site and the habitat requirements of affected wildlife species. This information provides a basis for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife areas and sites, maximizes his/her development options, and mitigates temporary impacts to the wildlife area or site and/or buffer zone. Wildlife management plans shall meet the following guidelines:¶¶

(a) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.¶¶

(b) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.¶¶

(c) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.¶¶

(d) A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall be delineated on the site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.¶¶

(e) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:¶¶

(A) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.¶¶

(B) Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns.¶¶

(f) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer zones. When a buffer zone has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site. Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.¶¶

(g) The applicant shall prepare and implement a 3-year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions. At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances where rehabilitation and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement guidelines.¶¶

(6) New fences in deer and elk winter range¶¶

(a) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.¶¶

(b) New and replacement fences that are allowed in winter range shall comply with the guidelines in Specifications for Structural Range Improvements (Sanderson, et. al. 1990), as summarized below, unless the applicant

demonstrates the need for an alternative design.¶

(A) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.¶

(B) The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.¶

(C) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.¶

(D) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.¶

(c) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: 16 U.S.C. sec. 544c(b), ORS 196.150, RCW 43.97.015

Statutes/Other Implemented: ORS 196.150

AMEND: 350-081-0590

RULE SUMMARY: Amend .0590(c)

CHANGES TO RULE:

350-081-0590

General Management Areas Rare Plant Review Criteria ¶

(1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants ¶

(a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are ¶

(A) Endemic to the Columbia River Gorge and vicinity; ¶

(B) Listed as endangered or threatened pursuant to federal or state endangered species acts, or ¶

(C) Listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program.

Updated lists of sensitive plant species can be found on the websites for the Oregon or Washington Natural Heritage Program. A list also is maintained by the USDA Forest Service - Scenic Area Office and available on the Gorge Commission website. ¶

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail. ¶

~~(c) Determination of potential effects to significant natural resources shall include consideration of Proposed uses within 1,000 feet of a sensitive plant shall be evaluated for adverse effects, including cumulative effects of proposed developments within 1000 feet of rare plants, and adverse effects shall be prohibited. ¶~~

(2) Field Survey A field survey to identify sensitive plants shall be required for: ¶

(a) Land divisions that create four or more parcels; ¶

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities; ¶

(c) Public transportation facilities that are outside improved rights-of-way; ¶

(d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and ¶

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually. Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map. ¶

(3) Review uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to 350-081-0590(4), and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620. ¶

(4) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows: ¶

(a) Site plans shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan. If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants. ¶

(b) The rare plant protection process may conclude if the Executive Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone. ¶

(c) New uses shall be prohibited within sensitive plant species buffer zones. ¶

(d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with 350-081-0078, the project applicant shall prepare a protection and rehabilitation plan pursuant to 350-081-0590(5). ¶

(e) The Executive Director shall submit a copy of all field surveys and protection and rehabilitation plans to the

Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order. Based on the comments from the Natural Heritage Program staff, the Executive Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.¶

(5) Protection and Rehabilitation Plans Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance. Protection and rehabilitation plans shall meet the following guidelines:¶

(a) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.¶

(b) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.¶

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

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

(e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.¶

(f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.¶

(g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:¶

(A) Describe the biology of sensitive plant species that will be affected by a proposed use.¶

(B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.¶

(C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.¶

(D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Executive Director an annual report that documents milestones, successes, problems, and contingency actions.¶

(6) Sensitive Plant Buffer Zones¶

(a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.¶

(b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.¶

(c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:¶

(A) Identifies the precise location of the sensitive plants,¶

(B) Describes the biology of the sensitive plants, and¶

(C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival. All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and

photographs.¶

(d) The Executive Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order. Based on the comments from the Oregon or Washington Natural Heritage Program, the Executive Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Statutes/Other Implemented: ORS 196.150

AMEND: 350-081-0600

RULE SUMMARY: amend .0600(1), .0600(2)(h), .0600(3)(i)

CHANGES TO RULE:

350-081-0600

Special Management Areas Natural Resource Review Criteria ¶¶

(1) 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 natural resources are protected from adverse effects. **Cumulative effects analysis is not required for expedited review uses or developments.** Comments from state and federal agencies shall be carefully considered. (Site plans are described in 350-081-0032).¶¶

(2) Water Resources (Wetlands, Streams, Ponds, Lakes, and Riparian Areas)¶¶

(a) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in subsections (2)(a)(B)(i) and (ii) below. 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. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:¶¶

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

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

(iii) 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:¶¶

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

(II) The wetland is not critical habitat.¶¶

(III) 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:¶¶

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

(ii) 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.¶¶

(iii) 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) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could 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 Executive Director shall submit all requests to re-configure 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 Executive Director 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 Executive Director shall justify how the opposing conclusion was reached.¶

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

(c) The applicant shall be responsible for identifying all water resources and their appropriate buffers. (see above)¶

(d) Wetlands Boundaries shall be delineated using the following:¶

(A) The approximate location and extent of wetlands in the Scenic Area is 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.¶

(e) 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.¶

(f) The Executive Director 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 Executive Director shall obtain professional services, at the project applicant's expense, or ask for technical assistance from the Forest Service to render a final delineation.¶

(g) 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:¶

(i) 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, and¶

(ii) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project, and¶

(iii) 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.¶

(h) Determination of potential natural resources effects shall include consideration of cumulative effects of proposed uses and developments within the following areas: wetlands, streams, ponds, lakes, riparian areas and their buffer zones shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse shall be prohibited..¶

(3) Wildlife and Plants¶

(a) Protection of sensitive wildlife/plant areas and sites shall begin when proposed new developments or uses are

within 1000 ft 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. Updated lists of sensitive wildlife and plant species can be found on websites for the Washington Department of Fish and Wildlife, the Wildlife Division of Oregon Department of Fish and Wildlife, and the Oregon or Washington Natural Heritage Programs. A list also is maintained by the USDA Forest Service - Scenic Area Office and available on the Gorge Commission website.¶

(b) The Executive Director shall submit site plans (of uses that are proposed within 1,000 feet of a sensitive wildlife and/or plant area or site) for review to the Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife for wildlife issues and by the Oregon or Washington Natural Heritage Program for plant issues).¶

(c) 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 200 ft 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.¶

(i) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.¶

(ii) Requests to reduce 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.¶

(iii) The Executive Director shall submit all requests to re-configure 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 Executive Director will make a final decision on whether the reduced buffer zone is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached.¶

(d) The Executive Director, 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 Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron; the Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander.¶

(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 "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife 2000) and the Washington 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 on the following Priority Habitats Table. 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.¶

(e) The wildlife/plant protection process may terminate if the Executive Director, in consultation with the Forest Service and state wildlife agency or Heritage program, determines (1) the sensitive wildlife area or site is not active, or (2) the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site, and (3) 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 Executive Director shall incorporate them into the final decision and the wildlife/plant protection process may conclude.¶

(f) If the above measures fail to eliminate the adverse affects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.¶

(g) The Executive Director 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 Executive Director 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 Executive Director shall justify how the opposing conclusion was reached.¶

(h) The Executive Director 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.¶

(i) Determination of potential natural resources effects shall include consideration of cumulative effects of proposed developments within the following Proposed uses and developments within 1,000 feet of sensitive wildlife areas: and sites or within 1,000 feet of sensitive wildlife areas and sit rare plants shall be evaluated for cumulative effects to natural resources; and 2) sites within 1,000 feet of rare plants cumulative effects that are adverse shall be prohibited.¶

(4) Soil Productivity¶

(a) Soil productivity shall be protected using the following guidelines:¶

(A) A description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.¶

(B) New developments and land uses shall control all soil movement within the area shown on the site plan.¶

(C) The soil area disturbed by new development or land uses, except for new cultivation, shall not exceed 15 percent of the project area.¶

(D) Within 1 year of project completion, 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil-stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.¶

Practicable Alternative Test¶

(5) An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes. A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:

[Table not included. See ED. NOTE.]¶

(a) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife, or plant areas and sites.¶

(b) The basic purpose of the use cannot be reasonably accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife, or plant areas and sites.¶

(c) Reasonable attempts were made to remove or accommodate constraints that caused a project applicant to reject alternatives to the proposed use. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.¶

Mitigation Plan¶

(6) Mitigation Plan shall be prepared when:¶

(a) The proposed development or use is within a buffer zone (wetland, pond, lakes, riparian areas, wildlife or plant areas and/or sites).¶

(b) There is no practicable alternative (see the "practicable alternative" test).¶

(7) In all cases, Mitigation Plans are the responsibility of the applicant and shall be prepared by an appropriate professional (botanist/ecologist for plant sites, a wildlife/fish biologist for wildlife/fish sites, and a qualified professional for water resource sites).¶

(8) The primary purpose of this information is to provide a basis for the project applicant to redesign the proposed use in a manner that protects sensitive water resources, and wildlife/plant areas and sites, that maximizes his/her development options, and that mitigates, through restoration, enhancement, and replacement measures, impacts to the water resources and/or wildlife/plant area or site and/or buffer zones.¶

(9) The applicant shall submit the mitigation plan to the Executive Director. The Executive Director shall submit a copy of the mitigation plan to the Forest Service, and appropriate state agencies. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the Executive Director shall justify how the opposite conclusion was reached.¶

(10) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a mitigation plan involving wetland creation.¶

(11) Mitigation plans shall include maps, photographs, and text. The text shall:¶

(a) Describe the biology and/or function of the sensitive resources (e.g. Wildlife/plant species, or wetland) that will be affected by a proposed use. An ecological assessment of the sensitive resource to be altered or destroyed and the condition of the resource that will result after restoration will be required. Reference published protection and management guidelines.¶

(b) Describe the physical characteristics of the subject parcel, past, present, and future uses, and the past, present, and future potential impacts to the sensitive resources. Include the size, scope, configuration, or density of new uses being proposed within the buffer zone.¶

(c) Explain the techniques that will be used to protect the sensitive resources and their surrounding habitat that will not be altered or destroyed (for examples, delineation of core habitat of the sensitive wildlife/plant species and key components that are essential to maintain the long-term use and integrity of the wildlife/plant area or site).¶

(d) Show how restoration, enhancement, and replacement (creation) measures will be applied to ensure that the

proposed use results in minimum feasible impacts to sensitive resources, their buffer zones, and associated habitats.¶

(e) Show how the proposed restoration, enhancement, or replacement (creation) mitigation measures are NOT alternatives to avoidance. A proposed development/use must first avoid a sensitive resource, and only if this is not possible should restoration, enhancement, or creation be considered as mitigation. In reviewing mitigation plans, the local government, appropriate state agencies, and Forest Service shall critically examine all proposals to ensure that they are indeed last resort options.¶

(12) At a minimum, a project applicant shall provide to the Executive Director a progress report every 3-years that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress.¶

(13) A final monitoring report shall be submitted to the Executive Director for review upon completion of the restoration, enhancement, or replacement activity. This monitoring report shall document successes, problems encountered, resource recovery, status of any sensitive wildlife/plant species and shall demonstrate the success of restoration and/or enhancement actions. The Executive Director shall submit copies of the monitoring report to the Forest Service; who shall offer technical assistance to the Executive Director in helping to evaluate the completion of the mitigation plan. In instances where restoration and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the restoration and enhancement guidelines.¶

(14) Mitigation measures to offset impacts to resources and/or buffers shall result in no net loss of water quality, natural drainage, fish/wildlife/plant habitat, and water resources by addressing the following:¶

(a) Restoration and enhancement efforts shall be completed no later than one year after the sensitive resource or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.¶

(b) All natural vegetation within the buffer zone shall be retained to the greatest extent practicable. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation buffers, livestock management, and noxious weed control. Within five years, at least 75 percent of the replacement vegetation must survive. All plantings must be with native plant species that replicate the original vegetation community.¶

(c) Habitat that will be affected by either temporary or permanent uses shall be rehabilitated to a natural condition. Habitat shall be replicated in composition, structure, and function, including tree, shrub and herbaceous species, snags, pool-riffle ratios, substrata, and structures, such as large woody debris and boulders.¶

(d) If this standard is not feasible or practical because of technical constraints, a sensitive resource of equal or greater benefit may be substituted, provided that no net loss of sensitive resource functions occurs and provided the Executive Director, in consultation with the appropriate State and Federal agency, determine that such substitution is justified.¶

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

(f) Nonstructural controls and natural processes shall be used to the greatest extent practicable.¶

(A) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.¶

(B) Stream channels shall not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to hydrologic and biologic functions. Culverts shall only be permitted if there are no practicable alternatives as demonstrated by the Practical Alternative Test'.¶

(C) Fish passage shall be protected from obstruction.¶

(D) Restoration of fish passage should occur wherever possible.¶

(E) Show location and nature of temporary and permanent control measures that shall be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.¶

(F) Groundwater and surface water quality will not be degraded by the proposed use. Natural hydrologic

conditions shall be maintained, restored, or enhanced in such a manner that replicates natural conditions, including current patterns (circulation, velocity, volume, and normal water fluctuation), natural stream channel and shoreline dimensions and materials, including slope, depth, width, length, cross-sectional profile, and gradient.¶

(G) Those portions of a proposed use that are not water-dependent or that have a practicable alternative will be located outside of stream, pond, and lake buffer zones.¶

(H) Streambank and shoreline stability shall be maintained or restored with natural revegetation.¶

(I) The size of restored, enhanced, and replacement (creation) wetlands shall equal or exceed the following ratios. The first number specifies the required acreage of replacement wetlands, and the second number specifies the acreage of wetlands altered or destroyed.¶

Restoration: 2: 1¶

Creation: 3: 1¶

Enhancement: 4: 1¶

(g) Wetland creation mitigation shall be deemed complete when the wetland is self-functioning for 5 consecutive years. Self-functioning is defined by the expected function of the wetland as written in the mitigation plan. The monitoring report shall be submitted to the local government to ensure compliance. The Forest Service, in consultation with appropriate state agencies, shall extend technical assistance to the local government to help evaluate such reports and any subsequent activities associated with compliance.¶

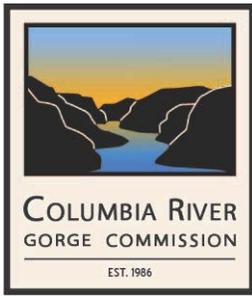
(h) Wetland restoration/enhancement can be mitigated successfully by donating appropriate funds to a non-profit wetland conservancy or land trust with explicit instructions that those funds are to be used specifically to purchase protection easements or fee title protection of appropriate wetlands acreage in or adjacent to the Columbia River Gorge meeting the ratios given above in guideline (9)(f)(I). These transactions shall be explained in detail in the Mitigation Plan and shall be fully monitored and documented in the monitoring report.¶

~~[ED-NOTE: Tables referenced are available from the agency.]¶~~

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Statutes/Other Implemented: ORS 196.150



July 20, 2017

Marc Boldt, Clark County Council Chair
Mark McCauley, County Manager
Martin Snell, Community Development Director
1300 Franklin Street
P.O. Box 9810
Vancouver, WA 98666-9810

Michael Cerbone, Director
Transportation & Land Use Planning Division
1600 SE 190th Avenue
Portland, OR 97233

Debbie Slack, Skamania County Clerk of the Board
Alan Peters, Planner
P.O. Box 1009
Stevenson, WA 98648

Jeff Hecksel, Hood River County Administrator
John Roberts, Planning & Comm. Dev. Director
601 State Street
Hood River, OR 97031

Rod Runyan, Wasco County Chair
Angie Brewer, Planning Director
2705 E. 2nd Street
The Dalles, OR 97058

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



United States
Department of
Agriculture

Forest
Service

Pacific
Northwest
Region

1220 SW Third Avenue (97204)
PO Box 3623
Portland, OR 97208-3623
503-808-2468

File Code: 1900

Date: August 4, 2016

Ms. Krystyna U. Wolniakowski
Executive Director
Columbia River Gorge Commission
PO Box 730
White Salmon, WA 98672

Dear Ms. Wolniakowski,

The Columbia River Gorge Commission submitted proposed revisions to the *Management Plan for the Columbia River Gorge National Scenic Area* for concurrence review by the Secretary of Agriculture. The Secretary, through the Chief of the Forest Service, has delegated this authority to me as Regional Forester. The proposed revisions were received in the US Forest Service-National Scenic Area office on May 24, 2016. Per sections 6(f)(g) and (h) of the Columbia River Gorge National Scenic Area Act, the Regional Forester has 90 days to make a decision regarding concurrence for revisions or amendments to the Management Plan. This 90-day period expires on August 22, 2016.

The proposed revisions pertain to the General Management Area (GMA) land designation within the Scenic Area. They are in response to an Oregon Court of Appeals decision in *Friends of the Columbia Gorge v. Columbia River Gorge Commission* issued in February of 2012.

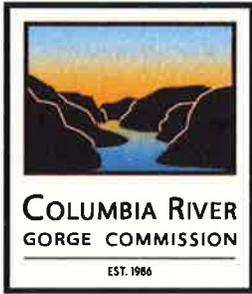
I have reviewed the Forest Service staff report, the Gorge Commission staff report, and the text of the proposed revisions. I concur that the proposed revisions are consistent with the standards established in section 6(d) of the Columbia River Gorge National Scenic Area Act and with the purposes of the Act.

Sincerely,

JP
JAMES M. PEÑA
Regional Forester

cc: Julia Riber, Jessica Rubado, Lynn Burditt, Robin Shoal





May 24, 2016

Lynn Burditt – Area Manager
U.S. Forest Service
Columbia River Gorge National Scenic Area
902 Wasco Avenue, Suite 200
Hood River, OR 97031

Dear Ms. Burditt,

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*. The Commission's action concerned only the General Management Area.

In accordance with Section 6(f) of the National Scenic Area Act, I am submitting these revisions for concurrence by the Secretary of Agriculture that the revisions are consistent with the standards for the Management in the Act (sec. 6(d) and the purposes of the Act (sec. 2). I understand from Robin Shoal in your office that your office will forward this request for concurrence to the Regional Forester as the delegated representative of the Secretary of Agriculture. The National Scenic Area Act allows the Secretary 90 days to concur with these revisions; if the Secretary does not act within 90 days, the National Scenic Area Act specifies, "the Secretary shall be deemed to have concurred on the management plan."

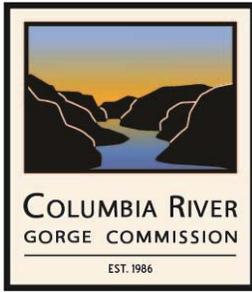
I have enclosed a copy of the staff report to the Gorge Commission summarizing the revisions (dated Feb. 9, 2016). The text of the revisions is attached to the staff report. Please don't hesitate to call the Commission's Counsel, Jeff Litwak (509-493-3323, ext. 222) if you have any questions.

Sincerely,

Krystyna Wolniakowski
Executive Director

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

Enclosure



February 9, 2016

TO: Columbia River Gorge Commission

FROM: Krystyna Wolniakowski and Jeff Litwak

SUBJECT: Final Recommended Plan Text Responding to Oregon Court of Appeals Decision

At the December 2015 Commission meeting, the Commission directed staff to develop new Management Plan language to respond to the Oregon Court of Appeals' decision in *Friends of the Columbia Gorge v. Columbia River Gorge Commission*. The language would include (1) adding the definition of adversely affect from the Act into the Management Plan; (2) crafting language that addresses the Court's question that land division applications that also request approval for ground disturbing development ensure protection of cultural resources; and (3) crafting language similar to SMA language for ensuring no adverse cumulative effect to natural resources.

Attached to this memo is staff's recommended text. The text includes the language for the SMAs that the Forest Service has already given the Commission to incorporate without change (as required sec. 6 of the Act). The SMA language is shown in yellow highlight; the GMA recommended language is shown in green highlight. New language is shown in underline, and language to be deleted is shown in strikeout.

Cultural Resources

Staff recommends text that is a bit broader than just addressing the Court of Appeals' concern whether an application for a land division would be exempt from the requirement for a cultural resources reconnaissance survey if the application also requested approval of residences that would require a reconnaissance survey. Rather than answer only that question, staff is recommending language that codifies the existing practice of requiring a reconnaissance survey if any element of any land use application requires a reconnaissance survey. The recommended language includes an example, specifically addressing the situation the Court identified. Staff also recommends a new provision allowing that a reconnaissance survey may still be conducted even if a proposed use falls within an exemption.

Natural Resources

Staff again recommends text that is slightly broader than just addressing the Court's focus on cumulative effect. Staff's recommended language requires evaluation of applications for "adverse effect, including cumulative effect" and prohibits adverse effect. The Act prohibits "adverse effect" and cumulative effect is one of four elements of adverse effect. Thus this recommended language tracks the terms that the Act uses, whereas the SMA language focuses on "cumulative effects" and prohibits "cumulative effects that are adverse." The new Glossary definition of adverse effect is identical to the definition of adverse effect in the Act, so you can turn back to that definition to see the relationship between the two terms.

Glossary

The definitions listed below apply to both General Management Area and Special Management Area, unless otherwise noted.

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 5 years by a sensitive wildlife species.

Addition: An extension or increase in the area or height of an existing building.

Adversely affect or Adversely affecting (SMA): A reasonable likelihood of more than moderate adverse consequence for the scenic, cultural, recreation or natural resources of the scenic area, the determination of which is based on—

(1) the context of a proposed action;

(2) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence;

(3) the relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts;

(4) and proved mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant effects to an insignificant level.

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, fur-bearing 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:

1. The operation or use of farmland subject to any agriculture-related government program.
2. Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.
3. Land planted in orchards or other perennials prior to maturity.
4. Land under buildings supporting accepted agricultural practices.

Agricultural use does not include livestock feedlots.

Air: The mixture of gases comprising the Earth's atmosphere.

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.

Aquaculture: The cultivation, maintenance, and harvesting of aquatic species.

Aquatic area: The water area of a stream, pond, or lake measured at the ordinary high water mark.

Archaeological resources: See cultural resource.

PART I-Resource Protection & Enhancement

2. Information regarding the nature and location of archaeological resources and cultural resources associated with Native Americans shall be kept confidential to avoid unlawful, malicious, or negligent disturbance.
3. A four-step process shall be used to protect cultural resources: performing cultural resource reconnaissance or historic surveys before proposed uses are authorized; evaluating the significance of cultural resources discovered during surveys; assessing the effects of proposed uses on significant cultural resources; and preparing mitigation plans to avoid or minimize impacts to significant cultural resources.
4. 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 36 Code of Federal Regulations (CFR) Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).
5. Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans.
6. The reconnaissance survey guidelines below shall apply until a cultural resource survey of the GMA is complete.

A. 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. (Added: CRGC adoption _____; U.S. Sec. Ag. concurrence _____)

B. A reconnaissance survey shall be required for all proposed uses, except:
(Renumbered: CRGC adoption _____; U.S. Sec. Ag. concurrence _____)

- (1) The modification, expansion, replacement, or reconstruction of existing buildings and structures.
- (2) 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.

- (3) 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.

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

The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

- (6) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:
 - (a) Residential development that involves two or more new dwellings for the same project applicant.
 - (b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.
 - (c) Public transportation facilities that are outside improved rights-of-way.
 - (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.

- (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archaeologists.

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

BC. A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed above in 6.A(1) through (6). The locations of known cultural resources are shown in the cultural resource inventory prepared by Heritage Research Associates and maintained by the USDA Forest Service for the Columbia River Gorge Commission. *(Renumbered: CRGC adoption _____; U.S. Sec. Ag. concurrence _____)*

D. The Gorge Commission may choose to conduct a reconnaissance survey for proposed uses listed in the exceptions if, in its professional judgment, a reconnaissance survey may be necessary to ensure protection of cultural resources. *(Added: CRGC adoption _____; U.S. Sec. Ag. concurrence _____)*

- 7. A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.
- 8. The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the GMA. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant.

GMA PROVISIONS

Determination of potential natural resources effects shall include consideration of cumulative effects of proposed developments within the following areas: 1) wetlands and their buffer zones; 2) streams, ponds, lakes, riparian areas and their buffer zones; 3) sites within 1,000 feet of sensitive wildlife areas and sites; and 4) sites within 1,000 feet of rare plants. (Added: CRGC adoption 7/13/10; U.S. Sec. Ag. concurrence 11/1/10)

WETLANDS

GMA Goals

1. Achieve no overall net loss of wetlands acreage and functions.
2. Increase the quantity and quality of wetlands.

GMA Objective

Promote public programs that offer incentives to landowners who protect and enhance wetlands. The Gorge Commission shall notify landowners whose property has been designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land or Large or Small Woodland and contains wetlands. It shall inform landowners about the values of wetlands and the rationale for regulating new uses in wetlands and wetlands buffer zones, including cultivation.

GMA Policies

1. The wetlands goals, policies, and guidelines in the Management Plan shall not apply to the main stem of the Columbia River. The Gorge Commission will rely on the applicable federal and state laws to protect wetlands in the Columbia River, including the U.S. Clean Water Act, Washington State Environmental Policy Act, Washington Hydraulic Code, and Oregon Removal-Fill Act.

The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001, and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For the Management Plan, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

2. All wetlands, regardless of their size or functions, warrant protection from new uses that may alter or destroy wetlands functions.

All enhancement plans must be approved by the local government, after consultation with federal and state agencies with jurisdiction over wetlands.

GMA Guidelines

Review Uses

1. The following uses may be allowed in wetlands and wetland buffer zones, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources and "Approval Criteria for Modifications to Serviceable Structures and Minor Water-Dependent and Water-Related Structures in Wetlands" in this section.
 - A. The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not (1) increase the size of an existing structure by more than 100 percent, (2) result in a loss of wetlands acreage or functions, and (3) intrude further into a wetland or wetlands buffer zone.

New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.
 - B. The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.
 - C. The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.
2. Except uses allowed outright and review uses in Guidelines 1A through 1C, above, proposed uses may be allowed in wetlands and wetlands buffer zones subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources and "Approval Criteria for Other Review Uses in Wetlands" in this section.

3. Proposed uses in wetlands and wetland buffer zones shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited. (Added: CRGC adoption _____; U.S. Sec. Ag. concurrence _____)

Site Plans for Review Uses in Wetlands

GMA Guidelines

Review Uses

1. The following uses may be allowed in streams, ponds, lakes, and riparian areas, **and their buffer zones**, subject to compliance with guidelines for the protection of scenic, natural, cultural and recreation resources and "Approval Criteria for Modifications to Serviceable Structures and Minor Water-Dependent and Water-Related Structures in Aquatic and Riparian Areas" in this section. **(Revised: CRGC adoption _____; U.S. Sec. Ag. concurrence _____)**
 - A. The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not (1) increase the size of an existing structure by more than 100 percent, (2) result in a loss of water quality, natural drainage, and fish and wildlife habitat, or (3) intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure.
 - B. The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.
 - C. The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.
2. Except uses allowed outright and review uses in Guidelines 1.A through 1.C, above, proposed uses may be allowed in streams, ponds, lakes, and riparian areas, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources and "Approval Criteria for Other Review Uses in Aquatic and Riparian Areas" in this section.
3. **Proposed uses in streams, ponds, lakes, and riparian areas and their buffer zones shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited. (Added: CRGC adoption _____; U.S. Sec. Ag. concurrence _____)**

Site Plans for Review Uses in Aquatic and Riparian Areas

8. Adequate buffer zones shall be maintained to protect sensitive wildlife areas or sites from new uses. The width of wildlife buffer zones shall be determined on a case-by-case basis and shall reflect the biology of the affected species and the characteristics of the project site and the proposed use.
9. The size, scope, configuration, density, and timing of new uses within wildlife buffer zones shall be regulated to protect sensitive wildlife species.
10. Site-specific management plans shall be required before most new uses will be allowed within wildlife buffer zones.
11. Rehabilitation and/or enhancement shall be required to offset unavoidable impacts to wildlife habitat that result from new uses.

GMA Guidelines

Review Uses

1. Except uses allowed outright, proposed uses may be allowed within 1,000 feet of a sensitive wildlife area or site, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources and "Approval Criteria for Review Uses Near Sensitive Wildlife Areas and Sites" in this section. Updated lists of species included in sensitive wildlife sites can be found on the websites for the Washington Department of Fish and Wildlife (Species of Concern list) and the Wildlife Division of Oregon Department of Fish and Wildlife. A list also is maintained by the USDA Forest Service – Scenic Area Office and available at the Gorge Commission office and on its website.
2. Proposed uses within 1,000 feet of a sensitive wildlife area or site shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited. (Added: CRGC adoption _____; U.S. Sec. Ag. concurrence _____)

Site Plans and Field Surveys for Review Uses Near Sensitive Wildlife Areas and Sites

1. In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
2. A field survey to identify sensitive wildlife areas or sites shall be required for (1) land divisions that create four or more parcels, (2) recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, or visitor information and environmental education facilities, (3) public transportation facilities that are outside improved rights-of-way, (4) electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater, and

Forest Land, or Large or Small Woodland and contains sensitive plant species. It shall inform landowners about the values of sensitive plants and the rationale for regulating new uses near sensitive plant sites, including cultivation.

GMA Policies

1. Newly discovered rare plant sites and plant species that are added to federal or state rare plant lists shall be protected. Species that are deleted from federal or state rare plant lists will not require further protection.
2. The rare plant species inventory shall be used to identify possible conflicts between proposed uses and rare plant sites. Project applicants should consult the local government early in the planning process to help determine if rare plants exist in the project area.
3. When new uses are proposed near a sensitive plant site that appears in the rare plant species inventory, the field survey records shall be used to determine the precise location of the plant population in relation to the proposed use. If the field survey records are inadequate, a field survey shall be conducted to delineate the boundaries of the sensitive plant population.
4. Buffer zones shall be used to ensure that new uses do not adversely affect sensitive plant species.
5. Except for uses allowed outright, new uses shall be prohibited within sensitive plant species buffer zones.
6. Landowners and agency officials shall be encouraged to avoid siting new uses on lands containing plant species listed as "Review," "Watch," or "Monitor" by the Oregon or Washington Natural Heritage Program.

GMA Guidelines

Review Uses

1. Except uses allowed outright, proposed uses may be allowed within 1,000 feet of a sensitive plant, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources and "Approval Criteria for Review Uses Near Sensitive Plants" in this section. Updated lists of sensitive plant species can be found on the websites for the Oregon or Washington Natural Heritage Program. A list also is maintained by the USDA Forest Service – Scenic Area Office and available at the Gorge Commission office and on its website.

2. Proposed uses within 1,000 feet of a sensitive plant shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited. (Added CRGC adoption _____; U.S. Sec. Ag. concurrence _____)

Management Plan. Enhancement efforts shall be conducted pursuant to a mitigation plan, as described in this section.

10. All mitigation plans must be approved by the local government, after consultation with federal and state agencies with jurisdiction over wetlands.
11. Partnerships with public agencies, conservation groups, and individuals are encouraged to increase public awareness, understanding, and stewardship of natural resources.
12. The Special Management Area water resource buffer widths shall be applied to National Forest System lands in the General Management Area.
13. Proposed uses that would adversely affect water resources (wetlands, streams, ponds, lakes, and riparian areas) shall be prohibited. (Added: U.S. Sec. Ag. concurrence)

WILDLIFE AND PLANTS

SMA Goals

1. Protect (ensure that new uses do not adversely affect, including cumulative effects) and enhance the wildlife and plant diversity of the Gorge.
2. Encourage the protection of plant species that are classified as "List 3 (Review)" or "List 4 (Watch)" by the Oregon Natural Heritage Program or "Monitor" by the Washington Natural Heritage Program.
3. Ensure that new uses do not adversely affect natural areas that are potentially eligible for the Oregon Register of Natural Heritage Resources or the Washington Register of Natural Areas Program.

SMA Policies

1. Natural resources existing on a site proposed for a new development or land use, and/or natural resources in danger of degradation or destruction from individual or cumulative off-site impacts, shall be protected from adverse effects.
2. Significant ecosystems such as natural areas, wetlands, ponds, lakes, riparian areas, old growth forests, islands, and areas of special importance such as botanical areas, sensitive wildlife and fishery habitats, or oak woodlands shall be protected from adverse effects.
3. Existing habitat quality, viable populations, and long-term productivity of natural resources and ecosystem diversity shall be maintained.

15. Air quality shall be protected and enhanced, consistent with the purposes of the Scenic Area Act. The States of Oregon and Washington and the U.S. Forest Service shall:
- (1) Continue to monitor air pollution and visibility levels in the Gorge;
 - (2) Conduct an analysis of monitoring and emissions data to identify all sources, both inside and outside the Scenic Area, that significantly contribute to air pollution. Based on this analysis, the States shall develop and implement a regional air quality strategy to carry out the purposes of the Scenic Area Act, with the U.S. Forest Service, the Southwest Air Pollution Control Authority and in consultation with affected stakeholders.

The States and the Forest Service shall together provide annual reports to the Commission on progress made regarding implementation of this policy. The first report shall include a workplan and timeline for gathering/analyzing data and developing and implementing the strategy. The workplan and strategy shall be submitted to the Commission for approval.

SMA Natural Resources Guidelines

1. 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 natural resources are protected from adverse effects. **Cumulative effects analysis is not required for expedited review uses or developments.** Comments from state and federal agencies shall be carefully considered. (Site plans are described under "Review Uses" in Part II, Chapter 7: General Policies and Guidelines.) **(Revised: U.S. Sec. Ag. concurrence _____)**
2. Water Resources (Wetlands, Streams, Ponds, Lakes, and Riparian Areas)
 - A. All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in 2.A.(2)(a) and 2(b) below. These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined below.
 - (1) All buffer zones shall be retained undisturbed and in their natural condition, except as permitted with a mitigation plan.
 - (2) 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. On the main stem of the Columbia River above Bonneville Dam, buffer zones

- E. 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.
- F. The local government 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 local government shall obtain professional services, at the project applicant's expense, or the local government will ask for technical assistance from the Forest Service to render a final delineation.
- G. Buffer zones shall be undisturbed unless the following criteria have been satisfied:

- (1) 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.

- (2) 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:
 - (a) 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, and
 - (b) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project, and
 - (c) The proposed project minimizes the impacts to the wetland.
- (3) 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.

- H. Determination of potential natural resources effects shall include consideration of cumulative effects of proposed developments within the following areas: Proposed uses and development within wetlands, streams, ponds, lakes, riparian areas and their buffer zones shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse shall be prohibited.

(Added: U.S. Sec. Ag. concurrence 7/1/11, revised . . .)

Wetlands	High species density, high species diversity, important breeding habitat and seasonal ranges, limited availability, high vulnerability.
Snags and logs	High fish and wildlife density, species diversity, limited availability, high vulnerability, dependent species.
Talus	Limited availability, unique and dependent species, high vulnerability.
Cliffs	Significant breeding habitat, limited availability, dependent species.
Dunes	Unique species habitat, limited availability, high vulnerability, dependent species.

- E. The wildlife/plant protection process may terminate if the local government, in consultation with the Forest Service and state wildlife agency or Heritage program, determines (1) the sensitive wildlife area or site is not active, or (2) the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site, and (3) 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 local government shall incorporate them into its development review order and the wildlife/plant protection process may conclude.
- F. If the above measures fail to eliminate the adverse affects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.
- G. The local government shall submit a copy of all field surveys (if completed) and mitigation plans to the Forest Service and appropriate state agencies. The local government 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 its development review order.

Based on the comments from the state and federal wildlife agency/heritage program, the local government 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 local government shall justify how it reached an opposing conclusion.

- H. The local government 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.
- I. ~~Determination of potential natural resources effects shall include consideration of cumulative effects of proposed developments within the following areas: 1) sites Proposed uses and developments~~ within 1,000 feet

of sensitive wildlife areas and sites; ~~and 2) 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. (Added: U.S. Sec. Ag. concurrence 7/1/11, revised . . .)

4. Soil Productivity

A. Soil productivity shall be protected using the following guidelines:

- (1) A description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.
- (2) New developments and land uses shall control all soil movement within the area shown on the site plan.
- (3) The soil area disturbed by new development or land uses, except for new cultivation, shall not exceed 15 percent of the project area.
- (4) Within 1 year of project completion, 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil-stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.

Practicable Alternative Test

1. An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:

- A. The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife or plant areas and/or sites.
- B. The basic purpose of the use cannot be reasonably accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife or plant areas and/or sites.
- C. Reasonable attempts were made to remove or accommodate constraints that caused a project applicant to reject alternatives to the proposed use. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a