



December 14, 2021

**TO:** Columbia River Gorge Commission

**FROM:** Krystyna Wolniakowski, Executive Director  
Joanna Kaiserman, Senior Planner  
Jeff Litwak, Counsel

**SUBJECT:** **Action Item\*:** Adopt New Gorge Commission Land Use Ordinance

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### **Actions Requested**

Hold a public hearing on the draft land use ordinance (attached to this staff report) and vote to adopt the land use ordinance. A vote to adopt requires a simple majority.<sup>1</sup>

### **Background**

In October 2020, the Gorge Commission adopted a revised Management Plan for the National Scenic Area and in February 2021, the Secretary of Agriculture concurred on the revised Management Plan. On March 16, 2021, the Gorge Commission transmitted the revised Management Plan to the counties, which started the 270-day clock in the National Scenic Area Act for counties to adopt revisions to their National Scenic Area land use ordinances. In accordance with sections 7(c) and 8(l) of the National Scenic Area Act, the Gorge Commission must enact an ordinance for counties that do not enact their own ordinance. Klickitat County has never enacted its own ordinance, so the Gorge Commission has always enacted an ordinance to apply in Klickitat County. The Gorge Commission observes the same 270-day clock in the National Scenic Area Act for adoption of its ordinance.

The revised Management Plan contains goals, objectives, policies, and guidelines for each resource topic (scenic, cultural, natural, and recreation) and each land use designation. The revised Management Plan also contains some policies and many guidelines for specific types of development and land uses, and application and review process requirements. The ordinance

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<sup>1</sup> The National Scenic Area Act requires the Commission find a county ordinance consistent with the revised Management Plan by a majority vote that also includes at least three members for each state. The Commission adopted its initial land use ordinance in 1993 and its revised land use ordinance in 2005 by only a simple majority, although in both cases, the vote included at least members from each state.

incorporates the guidelines from the revised Management Plan and a few policies that the guidelines reference as approval criteria.

County Ordinance Policy 1 in the revised Management Plan specifies that the counties may adopt provisions that vary from the guidelines in the revised Management Plan so long as those provisions provide greater protection for Gorge resources. The Commission has always allowed counties to make non-substantive text changes to allow the counties to incorporate their National Scenic Area ordinance into their own codes. The Gorge Commission's draft ordinance uses this same approach.

Although the National Scenic Area Act uses the term "land use ordinance," and the Commission and staff refer to the ordinance as an "ordinance," the Commission adopts the ordinance as a "rule" using "rulemaking" procedures in state administrative law parlance. Staff may use the terms "ordinance" and "rule" interchangeably and the terms "adopt" and "rulemaking" interchangeably.

Staff gave a progress report on the draft ordinance for Klickitat County at the Commission's July 2021 meeting and presented a draft at the Commission's September 2021 meeting. The Commission held a public hearing on the draft and voted to authorize staff to start the rulemaking process.

## **Rulemaking Process**

The National Scenic Area Act requires the Gorge Commission use the more restrictive of the states' statutes relating to administrative procedure, which includes rulemaking. The Gorge Compact and Gorge Commission's administrative procedure rule require the Gorge Commission publish its rule in both states prior to enacting the rule. In Oregon, draft rules and rulemaking notices are published in the Oregon Bulletin. In Washington draft rules and rulemaking notices are published in the Washington State Register.

The Commission timely filed its notice of proposed rulemaking and draft rule with the Washington Code Reviser and Oregon Secretary of State. In the Washington State Register, the proposed rulemaking notice appeared in Register No. 21-20-120 on October 20, 2021, and the text appeared in Register No. 21-22 on November 15, 2021. In the Oregon Bulletin, the rulemaking notice and text were published on October 11, 2021.

The Commission may make changes to the draft rule at this rulemaking hearing to correct typos, cross-reference errors, and add clarity to the draft. The Commission may also change substantive provisions that reflect public comment. Any changes to the text of the rule must be consistent with the revised Management Plan.

## **Introduction to the Draft Land Use Ordinance**

Staff provided you a track changes version of the rule for your September 2021 meeting. The draft attached to this staff report is a clean version and includes all attached maps and tables. The draft is bookmarked by rule number, so you can easily navigate through the document.

This staff report incorporates and updates the same tables that staff provided you in September. The first table shows the most significant changes to the development review process *relative to the process in the existing ordinance*. The second table shows *clarifications to the text of the revised*

*Management Plan* that staff proposes for the ordinance to make implementation of the ordinance clearer and more intentional. In both tables, staff has highlighted the entries that are new since September.

The draft text published in Washington differs slightly from the text published in Oregon. This is because Oregon rulemaking requirements differ from Washington. For example, Oregon does not permit numbered or lettered lists within a paragraph of rule text, and Oregon numbering standards are more specific than Washington standards. Thus, after publishing the rule in Washington, staff needed to make a few numbering changes to the rule to satisfy Oregon standards. The tables below highlight these and a couple other changes to satisfy Oregon standards.

Additionally, after publishing both rules, staff did a final review and discovered several typos, mostly adding spaces between, adding commas, fixing parentheticals, and fixing a few cross-references. These typo corrections are not shown in the tables below.

*Important: The draft attached to this staff report incorporates all the above changes to satisfy Oregon standards and the corrected typos. If you adopt the attached draft, you will have adopted the changes the satisfy Oregon standards and the corrected typos. Staff will make these changes in the states' filings when filing the final adopted rule.*

### **Revised Development Review Process**

Staff has made significant changes to the development review process guidelines in addition to incorporating new requirements from the revised Management Plan. Most of the development review process guidelines are not in the revised Management Plan. Consequently, counties and the Gorge Commission have flexibility to create a review process that makes sense for them, provided, of course, that the process uses the minimum procedures in the revised Management Plan.

The development review process in the current land use ordinance (Commission Rule 350-81) was written in 1994 for the first land use ordinance (Commission Rule 350-80). The Commission made small changes to these process provisions over time. The draft ordinance uses the same general process but adds more details to codify current practice. The most significant changes are:

<b>Development Review Process Revisions (Compared to Current Land Use Ordinance)</b>		
<b>Rule No. 350-082-</b>	<b>Page</b>	<b>Explanation</b>
0080(5)	26	Added a new provision that allows the Executive Director to require that applicants revise an application or submit a new application to resolve compliance issues on a parcel, including issues discovered during review of the original application.
0080(8)(b) & (8)(n)	27 & 28	Added holders of easements and partial interests as required signatories on land use applications. This incorporates the decision from a prior Commission appeal decision, <i>GLW Ventures, Inc. v. Skamania County, USDA Forest Service v. Skamania County</i> COA-S-13-02, 13-03 (consolidated cases) (May 14, 2014), and the decision of the Skamania County Superior Court affirming the Commission's appeal decision, <i>GLW Ventures, LLC v. Skamania County</i> , Skamania County Super. Ct. No. 14-2-00071-7 (Dec. 17, 2015).

0080(9)	28	Deleted a long list of additional application requirements that was taken from requirements throughout the land use ordinance (deletion not shown in track changes). Staff uses a checklist for this, so referencing the additional requirements in the rule is unnecessary. This is replaced with a statement that the Executive Director may require certain additional information, such as land surveys, professionally drawn site plans, and proof of prior land use and building permits, which reflects the staff's current practice.
0080(10)	28	Added a requirement that Firewise information be provided in the application handbook, consistent with the new policies in GMA Large Scale Agriculture, Small-Scale Agriculture, and Residential Land Use Designation that says that the reviewing agency shall provide information on Firewise standards to landowners at the time of application.
0090	29	Added a statement that the Executive Director may require a pre-application conference. Staff's experience during the past few years is that applicants submit more complete materials after meeting with staff. In many cases, staff also does a site visit as part of that pre-application conference. This site visit gives staff the opportunity to tell applicants when they need to adjust the location of proposed development to comply with setbacks and to give applicants advice about color, screening, and other aspects of proposed development.
0110(1)(h)	30	Added the revised Management Plan provision specifying that notices of development review sent to the tribal governments shall request comments, recommendations, or concerns relating to the protection of treaty rights, including rights to access, hunt, fish, and gather, and shall include a site plan and may include supplemental information and a proposed treaty rights protection plan.
0110(2)(b)	30	Clarified that notices of development review will be sent to easement holders and other persons with a partial interest in the land; this follows the new provisions in 0080(8) requiring these interests to sign National Scenic Area applications.
0110(3)	30	Added a new provision stating that the Executive Director may require a new notice of a proposed development whenever there is a significant change to the application at any point in the review process. This reflects current law in both states.
0130(1)(d)(B)	33	The revised Management Plan specifies that only the appellants in an appeal to the Gorge Commission may receive confidential information relating to treaty rights and cultural resources. Staff believes the intent was that all parties in an appeal could receive this information if that information was at issue in the appeal. Staff changed the reference to "appeal parties and their representatives."
0140	34	Added a new section clarifying current practice when the Executive Director does not receive comments from resource agencies during a comment period. In this situation, the Executive Director still consults with agencies because their review is necessary to make the findings and conclusion required for a land use decision, and the Executive Director

		sometimes recommends that applicants work directly with the agencies to resolve resource issues.
0150(4) & 0170	35 & 37	Added new provisions on inspections, which reflect current practice. The current rule does not have any provisions relating to inspections.
0150(5)	35	Changed the 72-day time period for the Executive Director to issue a decision on a development review application to 135 days. This reflects the change from “working days” to “calendar days.” This is the same amount of time inclusive of holidays and staff leave allowances.
0150(7)	35	Changed this provision to specify that an Executive Director decision becomes final and that construction may only start after the appeal period has expired and no appeal has been filed. Previously, this provision specified that a decision was final unless appealed. This left a 30-day gap in which the decision might or might not be “final.” Previously, this provision also specified that a landowner who starts construction during the appeal period did so at their own risk. Thus, if an appeal was filed, the landowner might have to restore land or change a land use or development as a result of an appeal. Staff does not believe this will cause delays for landowners. In Klickitat County, landowners must have a National Scenic Area decision before Klickitat County will issue county required permits. In staff’s experience, Klickitat County usually takes between 3 and 6 weeks to issue required permits after the date of an Executive Director decision.
0150(8)	35–36	Added a new section that authorizes the Executive Director to withdraw a decision during the appeal period if they discover a fact or legal issue that would materially change the decision—such as the need to impose new conditions of approval, remove improper conditions of approval, or change a decision from an approval to a denial or vice-versa. The Executive Director has done this infrequently over the past 30+ years—fewer than 10 times.
0180(2) & (3)	37	Clarified the process for reviewing changes to approvals. Changed the descriptor from “minor changes” to “slight changes” to avoid inadvertently linking this use of the term “minor” to the use of the term “minor” in section 4(f) (urban area boundary revisions) in the Act and revised Management Plan. Also, in the past, applicants have asked to use this process for changes after they completed a development, but the Executive Director believes the original intent was to approve minor changes only prior to or during construction.
0220		Deleted the application and procedure section for expedited review uses because it duplicated the standard review process, except for a shorter public comment period, which is incorporated into the standard review process in a new 0120(2) (deletion not shown).

### Clarifications to Revised Management Plan Text

While moving new text into the land use ordinance, staff inserted some clarifications in the draft ordinance to be clearer and more intentional for implementing the revised Management Plan. Many of the clarifications are non-substantive. Below is a description of the clarifications that

substantively change revised Management Plan text. Where the clarification involves SMA provisions, staff has consulted with Forest Service staff, which agrees with those clarifications.

*Important: if staff has misunderstood the Commission’s intent in any of these clarifications, you can adjust the text as needed to reflect your intent prior to adoption.*

<b>Clarifications to the Revised Management Plan Text</b>		
<b>Rule No. 350-082-</b>	<b>Page</b>	<b>Explanation</b>
<b>NEW</b> Throughout		Changed SMA “gorge walls, <u>canyonlands</u> . . .” to “canyons” for consistency in the SMA and the GMA.
<b>NEW</b> Throughout		Renumbered the last two levels of subsections to conform to Oregon rule drafting standards for outlining.
<b>NEW</b> Throughout		Removed or renumbered numbers in lists within a sentence to conform to Oregon rule drafting standards.
Throughout		Removed all uses of “/” ( <i>e.g.</i> , “and/or,” “GMA/SMA”) and changed to “and” or “or.” The use of a “/” is inherently ambiguous because it is used to signal the term is either conjunctive or disjunctive. There are court decisions that discourage use of “/.” The only exception in this ordinance is “emergency/disaster response,” which is a specialized term.
Throughout		Replaced most cross-references described in text with references to rule numbers. Staff has left a few where the text added clarity.
Throughout		Removed duplicative cross-references. For example, 0370(3)(b) referred to standards that were already listed in (3) as applicable to all uses listed in (3). Staff left duplicative cross-references where the duplication showed emphasis ( <i>e.g.</i> , references to protection of cultural and natural resources in 350-082-0240(3)(a) on page 66 of the draft).
Throughout		Clarified guidelines that refer to the Scenic Resources Implementation Handbook to ensure the handbook is used as guidance, not as a standard for new development. One example is in 350-082-0620(3)(a)(B)(iv) on page 156.
Throughout		Corrected references to “wetlands, streams, ponds, lakes and riparian areas” to “water resources,” which is the new term used in the revised Management Plan. Also corrected similar references to wildlife and plants and mitigation plans to use updated terms. Staff missed a few places where these changes should have been made in the revised Management Plan
Throughout 0400-0560, except 0530		Added new lead paragraphs that specify the guidelines apply where a list of allowable uses in the land use designation section. A few of the uses in this section of the ordinance had such a lead paragraph. Most did not. That distinction could be an ambiguity—whether the uses without reference to the land use designation are permitted anywhere in the National Scenic Area.

		For 350-082-0530, the Columbia River Bridge at Hood River/Bingen/White Salmon will terminate in urban areas at both ends. The Columbia River does not have a land use designation.
0050	2	Added a new section clarifying that the ordinance uses calendar days, and calculating due dates when deadlines fall on weekend or legal holiday.
0070		Staff removed the definition of “fire break” because that term is not used in the revised Management Plan (deletion not shown).
<b>NEW</b> 0070(62)	9	Changed the definition of “dwelling unit” to use the term “sleeping areas” instead of “bedrooms” because some dwellings have lofts or other areas that are not technically bedrooms, and removed the word “full” when referring to bathroom to recognize that bathrooms may not be considered full if they have only a stall shower or other variations of bathroom fixtures.
0070(89) & (175)	12 & 22	Added definitions of “general management area” and “special management areas.” This helps clarify the use of the GMA and SMA acronyms.
0070(122)	16	Added “soil productivity” to the definition of natural resources. The SMA provisions for natural resources include soil productivity, so this addition ensures consistency between the definition of natural resources and the SMA natural resource provisions.
<b>NEW</b> 0070(183)	23	Clarified the definition of “suitability” to specify that committed to other uses means committed “by development.” This is the phrase used in the forest land policies and ensures consistency with the section 6(d) standards in the Act that require the revised Management Plan to allow conversion of agricultural land to forest uses and forest land to agricultural use. Without the term “by development,” the definition could suggest that forest land is committed to another use and could not be suitable for agriculture.
0200(2)	39	Added examples of what constitutes a change to an existing structure based on past applications where the Executive Director determined that changes to certain elements of a structure required review.
0210(1)(e)	42	Clarified that only one 60-square foot free-standing renewable energy structure is allowed on a parcel without review. This prevents a situation where a landowner may want to construct multiple 60-square foot structures to create a single larger array. Landowners may apply for additional renewable energy structures as an expedited use or review use.
<b>NEW</b> 0220(2)(a)(B)	53	Changed “square area” to “area in square feet.” This fixes a term that is not commonly used to a common term that needs no further interpretation.
<b>NEW</b> 0220(2)(d)(B) (i)(III)	54	Clarified this provision, which had so many “or” words that it was not clear.
0270(3)(v) & 0310(3)(g)	84 & 102	Removed references to policies for minimum parcel sizes. These policies are used to establish the minimum parcel sizes on the land use designation map, which is part of the revised Management Plan, so the minimum parcel sizes are already established. Reference to these policies is confusing because it suggests that decisions must re-evaluate compliance with those policies and could allow new parcels that differ from the minimum parcel size shown on the land use designation map.

<b>NEW</b> 0270(5) & (6)	86- 88	Moved 0290 and 0300 from September draft into these subsections. The provisions in these sections apply only in the GMA, so we consolidated them into the GMA rule. Renumbered all subsequent rules.
0270(5)(a)	86	In the approval criteria for fire protection in forest designations, the revised Management Plan uses the term “defensible space.” Replaced the term “fuel break” with defensible space and added a requirement to consult with fire professionals to adjust the required defensible space to account for site slope.
0270(5)(i)	87	In the approval criteria for fire protection in forest designations, deleted the sentence, “Structural projections shall be set back from slopes” because the addition in (1)(a) mentioned above requires staff to consult with fire professionals for defensible space requirements as needed on a case-by-case basis.
0270(6)(c)	87	Changed “should” to “shall” to use consistent terms.
0330(3)(t)	108	Added minimum parcel size policies as new guidelines (A) and (B). Here, unlike in the references to policies in 0270 and 0330 that staff removed, there is no minimum parcel size in the Rural Center land use designation, rather minimum parcel sizes are determined on a case-by-case basis, so the policies are the guidelines for determining a parcel size when there is an application for a land division.
<b>NEW</b> 0350(3)(b)	111	Changed “shall be allowed” to “may be allowed” consistent with the same changes made in other sections of the ordinance. In this instance, the use allowed is conditional upon meeting other required criteria.
350(3)(b)	111	This guideline referred to revised Management Plan policies. Added the policies as guidelines (A) and (B) to ensure they can be applied here.
0370(3)(c)	116	Removed reference to “policies, guidelines, and conditional use criteria” in this SMA guideline. Gorge Commission and Forest Service staff could not identify which policies and guidelines would apply in addition to those listed in (3) for all land uses in this section.
0390(5)	118	Clarified existing practice that the Executive Director renews hardship permits that have not expired and requires new applications when an applicant has let a permit expire without renewing it.
<b>NEW</b> 0410(6) & (7)	119	These two provisions are “policies” in the revised Management Plan, but staff believes they are more clearly implemented when included here as approval criteria.
0430(1)(d)	120	Clarified this provision concerning overnight accommodations to mean that the owner need not be present in the rental dwelling during the rental. Staff has received questions from county planners about this. In response to those questions, staff researched the Commission’s intent and could not find that the Commission discussed whether the owner must be present during the rental.  This requirement seems to have been added when staff originally proposed to collapse B & Bs and overnight accommodations into one land use entitled, “overnight accommodations.” The original (and still current) definition of B & B requires the dwelling be owner occupied, so when staff

		<p>proposed to collapse the uses, it transferred that “owner occupied” language into the new “overnight accommodations” guidelines. On August 12, 2020, the Commission voted to retain the “B &amp; B” land use and add the new “overnight accommodations” land use, suggesting that the Commission intended overnight accommodations to operate different from B &amp; Bs.</p> <p>Clarified that “permanent residence” means “principal residence.” The term principal residence is used in other legal situations and the Executive Director and counties may rely on the landowners’ characterization of the residence in those legal situations or may use the factors in those laws for determining “principal residence” for this guideline (<i>e.g.</i>, IRS Pub. 523).</p>
0430(2)	120–21	<p>For overnight accommodations, the provision for renewing permits uses the terms “reapply” and “renewed,” which is confusing because the terms mean different actions required by the applicant and staff. Clarified when a new permit is required and when a renewal may be approved. The clarified approach is consistent with the Executive Director’s existing practice for hardship dwellings, except that the revised Management Plan prohibits granting a new permit or renewing an existing permit for overnight accommodations when the applicant has violated the conditions of approval.</p>
0460(4) & (5)	124	<p>Deleted broadly stated references to the wetlands and water resource provisions of the revised Management Plan as approval criteria for enhancing wetlands and other water resources not associated with a new development or land use. The wetland and water resource provisions apply only to the development or land use in a wetland or water resource. Retained the references to wetland and water resource compensation plans because these are the provisions that apply to the creation, restoration, and enhancement of wetlands and water resources.</p> <p>There is a similar reference in 0480(6) for enhancements in SMAs. Forest Service staff concurred with these changes to the SMA guideline.</p>
<b>NEW</b> 0520(3)(a)	138	<p>Changed “shall be allowed” to “may be allowed” consistent with the same changes made in other sections of the ordinance. In this instance, the use allowed is conditional upon meeting other required criteria.</p>
0570(1)(a)(D)(i)	149	<p>Added a third requirement for lot-line adjustments that resolve boundary disputes. The lot line adjustment must not cause an existing development to become out of compliance with a required setback. This was not added to the revised Management Plan but codifies a prior staff interpretation of the land use ordinance in a recent application.</p>
0580(1)	151	<p>Created a new section on buffer zones in the land use ordinance to bring together many of the buffer zones provisions. However, there are many provisions in the cultural and natural resource chapters and elsewhere in the revised Management Plan that require a buffer zone and bringing those together into this section did not make sense; thus, staff added a new (1) that notes there are other buffer zone requirements not in this section.</p>
0600(1)(b)(D)	155	<p>Added a requirement that new development must be evaluated to be compatible with development approved but not yet constructed. Staff has</p>

		done this in some but not all development review staff reports. This will ensure staff does this analysis in all staff reports.
<b>NEW</b> 0600(2)(k)		Changed “square area” to “area in square feet.” This fixes a term that is not commonly used to a common term that needs no further interpretation.
0610(2)(o)(D) 0610(4)(b)(D)	172 175	Added a requirement that new development must be evaluated to be compatible with development approved but not yet constructed. Staff has done this in some but not all development review staff reports. This will ensure staff does this analysis in all staff reports.
0610(3)	171	Deleted an SMA guideline that would have been numbered 0610(3)(c) that is really a policy for describing required content for the scenic corridor strategies, not an approval criterion for new development and uses. The strategies were completed in the early 2000s.
0620(1)(d) & 0620(2)(a)(C) (vi)	175, 176– 77	Defined “large scale uses” (the uses that an applicant (not the Forest Service) must do a reconnaissance survey) to be the same as the list of uses that the low probability exemption does not require (i.e., uses that require a reconnaissance survey in areas of low probability). The two lists were very similar. Staff used the more inclusive of the two lists to create the new single list. Forest Service cultural resource staff reviewed and concurred with this.
0620(2)(a)(A)	176	Clarified the existing example when a use might require a reconnaissance survey and a historic survey.
0620(2)(e)(B) & (D)	180	Consolidated these provisions into one by adding ethnographic research into (B). The two provisions were similar, except that (B) required redaction of sensitive information and (D) curiously did not.
0620(2)(g)(A) & 0620(4)(c)(A)	180 & 186	Clarified that if the Executive Director would make a finding inconsistent with the comments submitted by a tribal government, they must justify reaching that opposing conclusion. Previously, these provisions only required justification when reaching an opposing conclusion of only the State Historic Preservation Office.
0640(5)(a)	198	Clarified the provisions for uses in wetlands and other water resources to ensure that a use listed in (3) or (4) that can’t meet its approval criteria can’t be allowed by meeting the approval criteria in (5).
<b>NEW</b> 0640(6)(b) & (c)	202	These two provisions were inadvertently left out of the prior draft. Revised (b) to reflect current practice, use consistent terms with 350-10, and for clarity. Revised (c) to use same terms as (b).
<b>NEW</b> 0650(1)(a) & (b)	205	Added references to priority habitat and endemic species tables.
<b>NEW</b> 0660(1)(b)	210	Added reference to endemic species table.
0670(5)(g)	221– 22	Forest Service staff clarified this SMA provision to specify that progress reports on natural resource mitigation need to be submitted until all conditions are met. Without this clarification, the provision did not contain an end date for submitting progress reports.

<b>NEW</b> 0690	225	Added introductory sentence necessary for Oregon filing because Oregon rule drafting standards does not permit a rule with only tables.
0700(3)(d)(E)	228- 29	Added the policies for concession stands referenced in the guideline.
<b>NEW</b> 0700(3)(d)(E) (i)	228- 29	Changed “shall be allowed” to “may be allowed” consistent with the same changes made in other sections of the ordinance. In this instance, the use allowed is conditional upon meeting other required criteria.
0710(1)	231	Deleted an SMA guideline that would have been numbered at 0710(1)(h) because it is really a policy for describing the purpose of recreation intensity classes, not a guideline applicable to proposed new development.

### **Next Steps**

If you adopt the draft ordinance, staff will transmit the ordinance to the Secretary of Agriculture for concurrence that the ordinance is consistent with the SMA provisions in the revised Management Plan. The Secretary has up to 90 days to concur or deny concurrence. If the Secretary does not act within 90 days, the ordinance will be deemed consistent with the revised Management Plan. After concurrence, staff must publish the final rule and final notices of rule adoption in the Oregon Bulletin and Washington State Register. The ordinance can be effective 30 days after publishing the final rule and required notices. Following this schedule, staff expects the ordinance will be effective on May 1, 2022.