

ORDINANCE NO. 2018-03-04

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2  
3 An ordinance relating to land use, regulating the development of lands within the Columbia River  
4 Gorge National Scenic Area (CRGNSA) portion of Clark County, and adopting amendments to the Clark  
5 County Code to amend sections 40.240.040 Definitions, 40.240.820 General Management Area Cultural  
6 Resource Review Criteria, 40.240.840 General Management Area Wetland Review Criteria, 40.240.850  
7 General Management Area Stream, Pond, Lake and Riparian Area Review Criteria, 40.240.860 General  
8 Management Area Sensitive Wildlife Review Criteria, 40.240.870 General Management Areas Rare Plant  
9 Review Criteria and 40.240.880 Special Management Areas Natural Resource Review Criteria.

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11 WHEREAS, the CRGNSA was created in 1986 by the CRGNSA Act; and

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13 WHEREAS, approximately 7,800 acres within Clark County are located inside the boundaries of the  
14 CRGNSA; and

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16 WHEREAS, the CRGNSA Management Plan (Management Plan) was adopted in 1992 to ensure  
17 that land is used consistently with the purposes and standards of the CRGNSA Act; and

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19 WHEREAS, Clark County is subject to the interstate compact regarding the CRGNSA (RCW  
20 Chapter 43.97), which incorporates the CRGNSA into Washington law and gives the Columbia River Gorge  
21 Commission (Gorge Commission) the power to disapprove a county land use ordinance that is inconsistent  
22 with the Management Plan; and

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24 WHEREAS, on February 9, 2016, the Gorge Commission adopted revisions to the Management  
25 Plan in response to the Oregon Court of Appeal's decision in *Friends of the Columbia River Gorge*  
26 *National Scenic Area v. Columbia River Gorge Commission*); and

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28 WHEREAS, on July 20, 2017, the Gorge Commission requested that all six counties in the  
29 CRGNSA amend their development codes to be consistent with the adopted Management Plan; and

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31 WHEREAS, on August 21, 2017, the Clark County Council (Council) directed staff to draft code  
32 amendments to address changes made to the Management Plan; and

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34 WHEREAS, the required sixty day notification of intent to adopt this set of amendments was received  
35 by the State Department of Commerce on September 28, 2017; and

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37 WHEREAS, SEPA determinations of non-significance were published on December 4, 2017; and

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39 WHEREAS, the Clark County Planning Commission held a duly noticed work session on January 4,  
40 2018 to review the staff recommendation on the proposed code amendments; and

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42 WHEREAS, the Planning Commission held a duly noticed public hearing on January 18, 2018, at  
43 which it considered and deliberated on the staff proposal for these code amendments, and recommended  
44 that the Council approve the proposed amendments; and

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46 WHEREAS, the Council held a duly noticed work session on February 14, 2018 to review the  
47 Planning Commission recommendation on the proposed code amendments; and

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49 WHEREAS, the Council at its duly noticed public hearing on March 13, 2018, considered all  
50 comments presented to the Council and the recommendations of the Planning Commission and staff; and

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52 WHEREAS, the Gorge Commission and the Secretary of Agriculture need to find that the  
53 amendments to Chapter 40.240 CCC are consistent with the Management Plan before the ordinance  
54 takes effect; and

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56 WHEREAS, the Council finds that adoption of these code amendments will further the public  
57 health, safety and welfare; now, therefore,

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2 BE IT HEREBY ORDERED, RESOLVED AND DECREED BY THE CLARK COUNTY COUNCIL,  
3 CLARK COUNTY, STATE OF WASHINGTON, as follows:  
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5 **Section 1. Findings.** The Clark County Council finds the following:  
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- 7 1. The recitals above are incorporated into this ordinance as findings.  
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10 **Section 2. Amendatory.** Sec. 1. of Ord 2003-11-01, codified as CCC 40.240.040, and most recently  
11 amended by Sec. 2 (Ex. A) of Ord. 2006-05-04 are each hereby amended as follows:  
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13 **40.240.040 Definitions**

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

Accepted agricultural practice	A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.
Accessory structure/building	A structure or detached building whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use. The term "detached" means that the main building and accessory building do not share a common wall. An accessory building connected to the main building by a breezeway is a detached building.
Active wildlife site	A wildlife site that has been used within the past five (5) years by a sensitive wildlife species.
Addition	An extension or increase in the area or height of an existing building.
<u>Adversely affect or Adversely affecting:</u>	<u>A reasonable likelihood of more than moderate adverse consequences for the scenic, cultural, recreation or natural resources of the scenic area, the determination of which is based on:</u> <ol style="list-style-type: none"> <li>(1) <u>the context of a proposed action;</u></li> <li>(2) <u>the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence;</u></li> <li>(3) <u>the relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts; and</u></li> <li>(4) <u>proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant effects to an insignificant level.</u></li> </ol>
Agency official	The federal, state, or local agency head or designee who has authority over a proposed project.
Agricultural specialist (SMA)	A person such as a county extension agent with a demonstrated knowledge of farming operations, and a demonstrated ability to interpret and recommend methods to implement regulations pertaining to agriculture. Such abilities are usually obtained through a combination of higher education and experience.
Agricultural structure/building	A structure or building located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.
Agricultural use	The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding,

	management, and sale of, or production of, livestock, poultry, furbearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes: <ul style="list-style-type: none"> <li>• The operation or use of farmland subject to any agriculture-related government program.</li> <li>• Land lying fallow for one (1) year as a normal and regular requirement of good agricultural husbandry.</li> <li>• Land planted in orchards or other perennials prior to maturity.</li> <li>• Land under buildings supporting accepted agricultural practices.</li> </ul> Agricultural use does not include livestock feedlots. <i>(Amended: Ord. 2006-08-21)</i>
<u>Air:</u>	<u>The mixture of gases comprising the Earth's atmosphere.</u>
Anadromous fish	Species of fish that migrate upstream to freshwater after spending part of their life in the ocean saltwater.
Anaerobic	A condition in which molecular oxygen is absent (or effectively so) from the environment.
Animal unit	An animal unit consists of one adult horse, or two ponies, or five miniature horses. <i>(Amended: Ord. 2009-03-02)</i>

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

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**Section 3. Amendatory.** Sec. 1. of Ord 2003-11-01, codified as CCC 40.240.820, and most recently amended by Sec. 2 (Ex. A) of Ord. 2006-05-04 are each hereby amended as follows:

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

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

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

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

3. Reconnaissance and Historic Surveys and Survey Reports.

a. Reconnaissance Survey Requirements and Exceptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 d. Reconnaissance Surveys for Small-Scale Uses. Reconnaissance surveys for small-scale  
2 uses shall generally include a surface survey and subsurface testing. They shall meet the  
3 following guidelines:
- 4 (1) A surface survey of the project area shall be conducted, except for inundated areas and  
5 impenetrable thickets.
- 6 (2) Subsurface testing shall be conducted if the surface survey reveals that cultural  
7 resources may be present. Subsurface probes shall be placed at intervals sufficient to  
8 determine the absence or presence of cultural resources.
- 9 e. Reconnaissance Survey Reports for Small-Scale Uses. The results of a reconnaissance  
10 survey for small-scale uses shall be documented in a confidential report that includes:
- 11 (1) A description of the fieldwork methodology used to identify cultural resources, including  
12 a description of the type and extent of the reconnaissance survey.
- 13 (2) A description of any cultural resources that were discovered in the project area,  
14 including a written description and photographs.
- 15 (3) A map that shows the project area, the areas surveyed, the location of subsurface  
16 probes, and, if applicable, the approximate boundaries of the affected cultural resources and  
17 a reasonable buffer zone.
- 18 f. Reconnaissance Surveys for Large-Scale Uses.
- 19 (1) Reconnaissance surveys for large-scale uses shall be designed by a qualified  
20 professional. A written description of the survey shall be submitted to and approved by the  
21 Gorge Commission's designated archaeologist.
- 22 (2) Reconnaissance surveys shall reflect the physical characteristics of the project area and  
23 the design and potential effects of the proposed use. They shall meet the following  
24 guidelines:
- 25 (a) Archival research shall be performed before any field work. It should entail a  
26 thorough examination of tax records; historic maps, photographs, and drawings;  
27 previous archaeological, historic, and ethnographic research; cultural resource  
28 inventories and records maintained by federal, state, and local agencies; and primary  
29 historic accounts, such as diaries, journals, letters, and newspapers.
- 30 (b) Surface surveys shall include the entire project area, except for inundated areas  
31 and impenetrable thickets.
- 32 (c) Subsurface probes shall be placed at intervals sufficient to document the presence  
33 or absence of cultural resources.
- 34 (d) Archaeological site inventory forms shall be submitted to the State Historic  
35 Preservation Officer whenever cultural resources are discovered.
- 36 g. Reconnaissance Survey Reports for Large-Scale Uses. The results of a reconnaissance  
37 survey for large-scale uses shall be documented in a confidential report that includes:
- 38 (1) A description of the proposed use, including drawings and maps.
- 39 (2) A description of the project area, including soils, vegetation, topography, drainage, past  
40 alterations, and existing land use.
- 41 (3) A list of the documents and records examined during the archival research and a  
42 description of any prehistoric or historic events associated with the project area.
- 43 (4) A description of the fieldwork methodology used to identify cultural resources, including  
44 a map that shows the project area, the areas surveyed, and the location of subsurface  
45 probes. The map shall be prepared at a scale of one (1) inch equals one hundred (100) feet  
46 (1:1,200), or a scale providing greater detail.
- 47 (5) An inventory of the cultural resources that exist in the project area, including a written  
48 description, photographs, drawings, and a map. The map shall be prepared at a scale of one  
49 (1) inch equals one hundred (100) feet (1:1,200), or a scale providing greater detail.
- 50 (6) A summary of all written comments submitted by Indian tribal governments and other  
51 interested parties.
- 52 (7) A preliminary assessment of whether the proposed use would or would not have an  
53 effect on cultural resources. The assessment shall incorporate concerns and  
54 recommendations voiced during consultation meetings and information obtained through  
55 archival and ethnographic research and field surveys.
- 56 h. Historic Surveys and Reports.

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

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

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

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

15 5. Cultural resources are significant if one (1) of the following criteria is satisfied:

16 a. The cultural resources are included in, or eligible for inclusion in, the National Register of  
17 Historic Places. The criteria for evaluating the eligibility of cultural resources for the National  
18 Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR  
19 60.4).

20 b. The cultural resources are determined to be culturally significant by an Indian tribal  
21 government, based on criteria developed by that Indian tribal government and filed with the  
22 Gorge Commission.

23 6. The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall  
24 comprise cultural resource professionals, interested individuals, and at least one (1) representative  
25 from each of the four (4) Indian tribes. If a project applicant's and Indian tribal government's  
26 evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the  
27 applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a  
28 recommendation to the responsible official as to whether affected cultural resources are significant.  
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30 (Amended: Ord. 2006-05-04)

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33 **Section 4. Amendatory.** Sec. 1. of Ord 2003-11-01, codified as CCC 40.240.840, amended by Sec. 2  
34 (Ex. A) of Ord. 2006-05-04, and most recently amended by Ord. 2008-06-02 are each hereby amended  
35 as follows:  
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37 **40.240.840 General Management Area Wetland Review Criteria**

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

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

41 a. The approximate location and extent of wetlands in the Scenic Area are indicated on the list  
42 of hydric soils and the soil survey maps and the National Wetlands Inventory (U.S. Department  
43 of the Interior, 1987). Wetlands boundaries shall be delineated using the procedures specified in  
44 the *Corps of Engineers Wetland Delineation Manual* (Wetlands Research Program Technical  
45 Report y-87-1, on-line edition, updated through March 21, 1997).

46 b. All wetlands delineations shall be conducted by a professional who has been trained to use  
47 the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.

48 c. The responsible official may verify the accuracy of, and may render adjustments to, a  
49 wetlands boundary delineation. In the event the adjusted boundary delineation is contested by  
50 the applicant, the responsible official shall, at the applicant's expense, obtain professional  
51 services to render a final delineation.

52 d. Proposed uses within wetlands or wetlands buffer areas shall comply with SEPA, this  
53 section, and Chapter 40.450, as applicable. Chapter 40.240 shall prevail in cases of conflict with  
54 such regulations.

55 2. In addition to the information required in all site plans, site plans for proposed uses in wetlands  
56 or wetlands buffer zones shall include:

- 1 a. A site plan map prepared at a scale of one (1) inch equals one hundred (100) feet (1:1,200),  
2 or a scale providing greater detail;  
3 b. The exact boundary of the wetland and the wetlands buffer zone; and  
4 c. A description of actions that would alter or destroy the wetland.

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

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

14 C. The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant  
15 to the provisions in Section 40.240.840(E), and reviewed under the applicable provisions of Sections  
16 40.240.800 through 40.240.900; provided that proposed uses in wetlands and wetland buffer zones shall  
17 be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited:

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

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35 (Amended: Ord. 2008-06-02)  
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39 **Section 5. Amendatory.** Sec. 1. of Ord 2003-11-01, codified as CCC 40.240.850, and most recently  
40 amended by Sec. 2 (Ex. A) of Ord. 2006-05-04 are each hereby amended as follows:  
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42 **40.240.850 General Management Area Stream, Pond, Lake and Riparian Area Review Criteria**

- 43 A. Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas.  
44 1. If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant  
45 shall be responsible for determining the exact location of the ordinary high water mark or normal pool  
46 elevation.  
47 2. In addition to the information required in all site plans, site plans for proposed uses in streams,  
48 ponds, lakes, and their buffer zones shall include:  
49 a. A site plan map prepared at a scale of one (1) inch equals one hundred (100) feet (1:1,200),  
50 or a scale providing greater detail;  
51 b. The exact boundary of the ordinary high water mark or normal pool elevation and prescribed  
52 buffer zone; and  
53 c. A description of actions that would alter or destroy the stream, pond, lake, or riparian area.

54 B. Uses.

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

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

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

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

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26 **Section 6. Amendatory.** Sec. 1. of Ord 2003-11-01 and codified as CCC 40.240.860, and most recently  
27 amended by Sec. 2 (Ex. A) of Ord. 2006-05-04 are each hereby amended as follows:  
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29 **40.240.860 General Management Area Sensitive Wildlife Review Criteria**

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

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

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

- 36 (1) Bald eagle habitat;
- 37 (2) Deer and elk winter range;
- 38 (3) Elk habitat;
- 39 (4) Mountain goat habitat;
- 40 (5) Peregrine falcon habitat;
- 41 (6) Pika colony area;
- 42 (7) Piloted woodpecker habitat;
- 43 (8) Pine marten habitat;
- 44 (9) Shallow water fish habitat (Columbia R.);
- 45 (10) Special streams;
- 46 (11) Special habitat area;
- 47 (12) Spotted owl habitat;
- 48 (13) Sturgeon spawning area;
- 49 (14) Tributary fish habitat;
- 50 (15) Turkey habitat;
- 51 (16) Waterfowl area;
- 52 (17) Western pond turtle habitat.

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

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

- 1 (2) Listed as endangered, threatened, sensitive, or candidate by the Washington Fish and  
2 Wildlife Commission, considered to be of special interest to the public (limited to great blue  
3 heron, osprey, golden eagle, and prairie falcon).  
4 2. In addition to the information required in all site plans, site plans for uses within one thousand  
5 (1,000) feet of a sensitive wildlife area or site shall include a map prepared at a scale of one (1) inch  
6 equals one hundred (100) feet (1:1,200), or a scale providing greater detail.  
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8 (Amended: Ord. 2006-05-04)  
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10 **Section 7. Amendatory.** Sec. 1. of Ord 2003-11-01, codified as CCC 40.240.870, and most recently  
11 amended by Sec. 2 (Ex. A) of Ord. 2006-05-04 are each hereby amended as follows:  
12

13 **40.240.870 General Management Areas Rare Plant Review Criteria**

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

- 15 1. Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species  
16 that are:  
17 a. Endemic to the Columbia River Gorge and vicinity; or  
18 b. Listed as endangered or threatened pursuant to federal or state endangered species acts;  
19 or  
20 c. Listed as endangered, threatened, or sensitive by the Oregon-Washington Natural Heritage  
21 Program.  
22 2. In addition to the information required in site plans, site plans for uses within one thousand  
23 (1,000) feet of a sensitive plant shall include a map prepared at a scale of one (1) inch equals one  
24 hundred (100) feet (1:1,200), or a scale providing greater detail.  
25 3. Proposed uses within 1,000 feet of a sensitive plant shall be evaluated for adverse effects,  
26 including cumulative effects, and adverse effects shall be prohibited.  
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28 (Amended: Ord. 2006-05-04)  
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32 **Section 8. Amendatory.** Sec. 1. of Ord 2003-11-01, codified as CCC 40.240.880, and most recently  
33 amended by Sec. 2 (Ex. A) of Ord. 2006-05-04 are each hereby amended as follows:  
34

35 **40.240.880 Special Management Areas Natural Resource Review Criteria**

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

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

- 42 1. All water resources shall, in part, be protected by establishing undisturbed buffer zones as  
43 specified in subsections (B)(1)(b)(1) and (2) of this section. These buffer zones are measured  
44 horizontally from a wetland, stream, lake, or pond boundary as defined below.  
45 a. All buffer zones shall be retained undisturbed and in their natural condition, except as  
46 permitted with a mitigation plan.  
47 b. Buffer zones shall be measured outward from the bank full flow boundary for streams, the  
48 high water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the  
49 wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the  
50 wetlands, stream, pond or lake boundary. The following buffer zone widths shall be required:  
51 (1) A minimum two hundred (200) foot buffer on each wetland, pond, lake, and each bank  
52 of a perennial or fish-bearing stream, some of which can be intermittent.  
53 (2) A fifty (50) foot buffer zone along each bank of intermittent (including ephemeral), non-  
54 fish-bearing streams.  
55 (3) Maintenance, repair, reconstruction and realignment of roads and railroads within their  
56 rights-of-way shall be exempted from the wetlands and riparian guidelines upon  
57 demonstration of all of the following:

- 1 (a) The wetland within the right-of-way is a drainage ditch not part of a larger wetland  
2 outside of the right-of-way;  
3 (b) The wetland is not critical habitat; and  
4 (c) Proposed activities within the right-of-way would not adversely affect a wetland  
5 adjacent to the right-of-way.
- 6 c. The buffer width shall be increased for the following:  
7 (1) When the channel migration zone exceeds the recommended buffer width, the buffer  
8 width shall extend to the outer edge of the channel migration zone.  
9 (2) When the frequently flooded area exceeds the recommended riparian buffer zone width,  
10 the buffer width shall be extended to the outer edge of the frequently flooded area.  
11 (3) When an erosion or landslide hazard area exceeds the recommended width of the  
12 buffer, the buffer width shall be extended to include the hazard area.
- 13 d. Buffer zones can be reconfigured if a project applicant demonstrates all of the following:  
14 (1) Integrity and function of the buffer zones is maintained;  
15 (2) Total buffer area on the development proposal is not decreased;  
16 (3) Width reduction shall not occur within another buffer; and  
17 (4) Buffer zone width is not reduced more than fifty percent (50%) at any particular location.
- 18 Such features as intervening topography, vegetation, manmade features, natural plant or wildlife  
19 habitat boundaries, and floodplain characteristics should be considered.
- 20 e. Requests to reconfigure buffer zones shall be considered if an appropriate professional  
21 (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant:  
22 (1) Identifies the precise location of the sensitive wildlife/plant or water resource;  
23 (2) Describes the biology of the sensitive wildlife/plant or hydrologic condition of the water  
24 resource; and  
25 (3) Demonstrates that the proposed use will not have any negative effects, either direct or  
26 indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-  
27 term survival or water resource and its long-term function.
- 28 f. The responsible official shall submit all requests to reconfigure sensitive wildlife/plant or  
29 water resource buffers to the Forest Service and the appropriate state agencies for review. All  
30 written comments shall be included in the project file. Based on the comments from the state and  
31 federal agencies, the responsible official will make a final decision on whether the reconfigured  
32 buffer zones are justified. If the final decision contradicts the comments submitted by the federal  
33 and state agencies, the responsible official shall justify how the opposing conclusion was  
34 reached.
- 35 (1) When a buffer zone is disturbed by a new use, it shall be replanted with only native  
36 plant species of the Columbia River Gorge.  
37 (2) The applicant shall be responsible for identifying all water resources and their  
38 appropriate buffers.  
39 (3) Wetlands boundaries shall be delineated using the following:  
40 (a) The approximate location and extent of wetlands in the Scenic Area as shown on  
41 the National Wetlands Inventory (U.S. Department of the Interior, 1987). In addition, the  
42 list of hydric soils and the soil survey maps shall be used as an indicator of wetlands.  
43 (b) Some wetlands may not be shown on the wetlands inventory or soil survey maps.  
44 Wetlands that are discovered by the local planning staff during an inspection of a  
45 potential project site shall be delineated and protected.  
46 (c) The project applicant shall be responsible for determining the exact location of a  
47 wetlands boundary. Wetlands boundaries shall be delineated using the procedures  
48 specified in the *1987 Corps of Engineers Wetland Delineation Manual* (on-line edition).  
49 (d) All wetlands delineations shall be conducted by a professional who has been  
50 trained to use the federal delineation procedures, such as a soil scientist, botanist, or  
51 wetlands ecologist.
- 52 2. Stream, pond, and lake boundaries shall be delineated using the bank full flow boundary for  
53 streams and the high water mark for ponds and lakes. The project applicant shall be responsible for  
54 determining the exact location of the appropriate boundary for the water resource.
- 55 3. The responsible official may verify the accuracy of, and render adjustments to, a bank full flow,  
56 high water mark, normal pool elevation (for the Columbia River), or wetland boundary delineation. If  
57 the adjusted boundary is contested by the project applicant, the responsible official shall obtain

1 professional services, at the project applicant's expense, or ask for technical assistance from the  
2 Forest Service to render a final delineation.

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

18 5. Proposed uses and development within wetlands, streams, ponds, lakes, riparian areas and their  
19 buffer zones shall be evaluated for cumulative effects to natural resources and cumulative effects  
20 that are adverse effects shall be prohibited.  
21

22 C. Wildlife and Plants.

- 23 1. Protection of sensitive wildlife/plant areas and sites shall begin when proposed new  
24 developments or uses are within one thousand (1,000) feet of a sensitive wildlife/plant site and/or  
25 area. Sensitive wildlife areas and endemic plants are those areas depicted in the wildlife inventory  
26 and listed in the "Types of Wildlife Areas and Sites Inventoried in the Columbia Gorge" and  
27 "Columbia Gorge and Vicinity Endemic Plant Species" tables in the Management Plan including all  
28 priority habitats listed in this chapter. The approximate locations of sensitive wildlife and/or plant  
29 areas and sites are shown in the wildlife and rare plant inventory.  
30 2. The responsible official shall submit site plans (of uses that are proposed within one thousand  
31 (1,000) feet of a sensitive wildlife and/or plant area or site) for review to the Forest Service, the  
32 Washington Department of Fish and Wildlife for wildlife issues and the Washington Natural Heritage  
33 Program for plant issues.  
34 3. The Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state  
35 biologists, shall review the site plan and their field survey records. They shall:  
36 a. Identify/verify the precise location of the wildlife and/or plant area or site;  
37 b. Determine if a field survey will be required;  
38 c. Determine, based on the biology and habitat requirements of the affected wildlife/plant  
39 species, if the proposed use would compromise the integrity and function of or result in adverse  
40 affects (including cumulative effects) to the wildlife or plant area or site. This would include  
41 considering the time of year when wildlife or plant species are sensitive to disturbance, such as  
42 nesting, rearing seasons, or flowering season; and  
43 d. Delineate the undisturbed two hundred (200) foot buffer on the site plan for sensitive plants  
44 and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and  
45 perching sites.  
46 (1) Buffer zones can be reconfigured if a project applicant demonstrates all of the following:  
47 (a) Integrity and function of the buffer zones is maintained;  
48 (b) Total buffer area on the development proposal is not decreased;  
49 (c) Width reduction shall not occur within another buffer; and  
50 (d) Buffer zone width is not reduced more than fifty percent (50%) at any particular  
51 location. Such features as intervening topography, vegetation, manmade features,  
52 natural plant or wildlife habitat boundaries, and floodplain characteristics could be  
53 considered.  
54 (2) Requests to reduce buffer zones shall be considered if an appropriate professional  
55 botanist, plant ecologist, wildlife biologist, or hydrologist, hired by the project applicant:  
56 (a) Identifies the precise location of the sensitive wildlife/plant or water resource;

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

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

6 (3) The responsible official shall submit all requests to reconfigure sensitive wildlife/plant or  
7 water resource buffers to the Forest Service and the appropriate state agencies for review.  
8 All written comments shall be included in the record of application and based on the  
9 comments from the state and federal agencies, the responsible official will make a final  
10 decision on whether the reduced buffer zones is justified. If the final decision contradicts the  
11 comments submitted by the federal and state agencies, the responsible official shall justify  
12 how the opposing conclusion was reached.

13 4. The responsible official, in consultation with the state and federal wildlife biologists and/or  
14 botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the  
15 proposed developments or uses do not compromise the integrity and function of or result in adverse  
16 affects to the wildlife or plant area or site:

17 a. Published guidelines regarding the protection and management of the affected wildlife/plant  
18 species. Examples include: the Washington Department of Fish and Wildlife technical papers  
19 that include management guidelines for a variety of species, including the western pond turtle,  
20 the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).

21 b. Physical characteristics of the subject parcel and vicinity, including topography and  
22 vegetation.

23 c. Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.

24 d. Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful  
25 life of the area or site.

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

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

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

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

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

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

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

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

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

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

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

54 7. The responsible official shall submit a copy of all field surveys (if completed) and mitigation plans  
55 to the Forest Service and appropriate state agencies. The Executive Director shall include all  
56 comments in the record of application and address any written comments submitted by the state and  
57 federal wildlife agency/heritage programs in the final decision. Based on the comments from the state

1 and federal wildlife agency/heritage program, the responsible official shall make a final decision on  
2 whether the proposed use would be consistent with the wildlife/plant policies and guidelines. If the  
3 final decision contradicts the comments submitted by the state and federal wildlife agency/heritage  
4 program, the responsible official shall justify how the opposing conclusion was reached.

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

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

11  
12 (Amended: Ord. 2006-05-04)

13 \*\*\*\*\*

14  
15  
16 **Section 9. Effective Date.**

17 This ordinance shall go into effect thirty (30) days after the Columbia River Gorge Commission and the  
18 Secretary of Agriculture confirm that the amendments to Chapter 40.240 Clark County Code are  
19 consistent with the Columbia River Gorge National Scenic Area Management Plan.

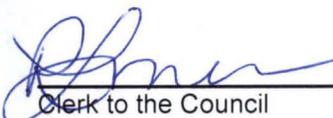
20  
21 **Section 10. Instructions to Clerk.**

22 The Clerk to the Council shall:

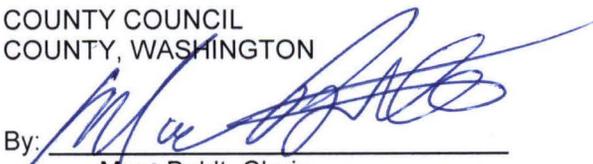
- 23  
24 1. Transmit a copy of this ordinance to the Columbia River Gorge Commission within ten (10)  
25 days of its adoption pursuant to RCW 43.97.015.  
26  
27 2. Transmit a copy of this ordinance to the Washington State Department of Commerce within  
28 ten (10) days of its adoption pursuant to RCW 36.70A.106.  
29  
30 3. Transmit a copy of the adopted ordinance to Code Publishing, Inc. to update the electronic  
31 version of the Clark County Code after receiving notification from the Columbia River Gorge  
32 Commission and the Secretary of Agriculture that the amendments are consistent with the  
33 Columbia River Gorge National Scenic Area Management Plan.  
34  
35 4. Transmit a copy of the adopted ordinance to the Community Development Department  
36 (Debra Webber and Susan Ellinger).  
37  
38 5. Record a copy of this ordinance with the Clark County Auditor.  
39  
40 6. Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW  
41 36.70A.290.  
42

43 ADOPTED this 13th day of March 2018.

44  
45  
46 Attest:

47  
48   
49 \_\_\_\_\_  
50 Clerk to the Council

CLARK COUNTY COUNCIL  
CLARK COUNTY, WASHINGTON

By:   
51 \_\_\_\_\_  
52 Marc Boldt, Chair

53 Approved as to Form Only:  
54 Anthony F. Golik  
55 Prosecuting Attorney

By: \_\_\_\_\_  
56 Julie Olson, Councilor

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By: Christine Cook  
Christine Cook  
Sr. Deputy Prosecuting Attorney

By: \_\_\_\_\_  
Jeanne Stewart, Councilor

By: \_\_\_\_\_  
Eileen Quiring, Councilor

By: \_\_\_\_\_  
John Blom, Councilor

