

HOOD RIVER COUNTY

ORDINANCE NO. 359

AN ORDINANCE TO ADOPT REQUIRED AMENDMENTS TO THE HOOD RIVER COUNTY ZONING ORDINANCE NATIONAL SCENIC AREA PROVISIONS

WHEREAS, on July 20, 2017 the Columbia River Gorge Commission requested Hood River County adopt required revisions to the county's local land use ordinance (Article 75 – National Scenic Area) in light of revisions to the *Management Plan for the Columbia River Gorge National Scenic Area* to respond to an Oregon Court of Appeals decision; and

WHEREAS, on September 18, 2017 the Board initiated an amendment to Article 75 of the Hood River County Zoning Ordinance pursuant to Article 62 (Legislative Amendments) to comply with the Gorge Commission request and as required by law (File #: 415-17-0324); and

WHEREAS, the Planning Director requested and initiated concurrent legislative amendments, in accordance with authority provided in Hood River County Zoning Ordinance Article 62, to make additional amendments to the Hood River County Zoning Ordinance to respond to 2017 legislation and rule making adopted by the Land Conservation and Development Commission; and

WHEREAS, the legislative updates also provided an opportunity to make technical updates to other various Articles of the Hood River County Zoning Ordinance in order to clarify or improve application and administration of various land use provisions to better serve the citizens of the county; and

WHEREAS, the above matter came before the Hood River County Planning Commission at two public hearings conducted on January 24th and February 14th, 2018 and thereupon voted 4 to 2 to refer the proposed changes incorporated in the Staff Report and accompanying Exhibits A-D presented to the Board at the April 16, 2018 Public Hearing for adoption; and

WHEREAS, the above matter came before the Board for a Public Hearing on April 16, 2018 at 6:00 p.m. in the First Floor Conference Room, 601 State Street, Hood River, Oregon to consider the changes to the Hood River County Zoning Ordinance recommended by the County Planning Commission; and

WHEREAS, at the April 16, 2018 Public Hearing the Board bifurcated for review and adoption the National Scenic Area amendments, Article 75 – Exhibit A, from Exhibits B – D, the

mandated legislative updates and other additional technical changes; and

WHEREAS, at the April 16, 2018 Public Hearing the Board conducted the First Reading of this Ordinance, inclusive of Exhibit A only; and

WHEREAS, due notice was given of all the hearings before the County Planning Commission and Board and opportunity provided to allow testimony to all parties; and

NOW, THEREFORE, THE HOOD RIVER COUNTY BOARD OF COMMISSIONERS ORDAINS as follows:

I. **EFFECT.** The Hood River County Zoning Ordinance be amended to incorporate modifications to Article 75 (National Scenic Area) as set forth in Exhibit A, and by this reference incorporated herein.

II. **SEVERABILITY.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

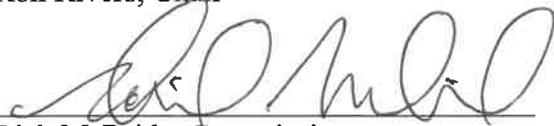
DATED THIS 7th DAY OF MAY, 2018

HOOD RIVER COUNTY BOARD OF COMMISSIONERS

Ron Rivers, Chair



Les Perkins, Commissioner



Rich McBride, Commissioner



Karen Joplin, Commissioner



Robert Benton, Commissioner

Approved as to Form: 
Diana McDougale, County Counsel

Revisions to Article 75

Based on adopted revisions to the *Management Plan for the Columbia River Gorge National Scenic Area*

Sections 7(b) and 8(h) of the National Scenic Area Act require revisions be adopted into local land use ordinances.

Changes Identified in ~~Strikethrough~~ and **Bold Underline**.
Incorrect numbering and references will be revised in the adopted version.

ARTICLE 75

(National Scenic Area Ordinance)

Adopted by Hood River County (Ordinance #268)
June 29, 2005

Acknowledged by the Columbia River Gorge Commission
September 30, 2005

Effective Date: January 1, 2006

Amended: January 20, 2009 (Ordinance #294)
Acknowledged by the Columbia River Gorge Commission: May 12, 2009
Effective Date: July 16, 2009

Amended ?

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040. Definitions

Unless otherwise noted, the following words, terms 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.

Exhibit A: Article 75 – National Scenic Area

- (2) **Accessory building/structure:** A building or structure 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) 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.

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(9) Air: The mixture of gases comprising the Earth’s atmosphere.

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

(Renumber remaining definitions.)

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520. General Management Area Scenic Review Criteria

The following scenic review guidelines shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area:

- (1) All Review Uses:

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Exhibit A: Article 75 – National Scenic Area

(2) Key Viewing Areas:

- (a) The guidelines in this Section shall apply to proposed developments on sites topographically visible from key viewing areas.
- (b) Each development shall be visually subordinate to its setting as seen from key viewing areas.
- (c) Determination of potential visual effects and compliance with visual subordination policies shall **be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.** ~~include consideration of the cumulative effects of proposed developments.~~

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530. Special Management Area Scenic Review Criteria

(1) SMA Design Guidelines Based on Landscape Settings

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(2) SMA Guidelines for Development and Uses Visible from KVAs

- (a) The guidelines in this Section shall apply to proposed developments on sites topographically visible from key viewing areas.
- (b) New developments and land uses shall be evaluated for **adverse effects, including cumulative effects**, to ensure that the required scenic standard is met and that scenic resources are not adversely affected, ~~including cumulative effects~~, based on the degree of visibility from key viewing areas. **Adverse effects shall be prohibited.**
- (c) The required SMA scenic standards for all development and uses are summarized in the following table:

540. 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).

Exhibit A: Article 75 – National Scenic Area

- (b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any interested persons who submit written comments on a proposed use. 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) 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 proposed a land division and a new dwelling would require a reconnaissance survey if a survey would be required for the dwelling.

(B) Reconnaissance survey requirements and exceptions.

(i) 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 Section 540(1)(c)(A)(ii) below.

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

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

(Renumber C – H)

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560. General Management Area Wetland Review Criteria

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(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in Section 560(5), and reviewed under the applicable provisions of Sections 520 through 620:

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

Exhibit A: Article 75 – National Scenic Area

- (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 Section 560(2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to Section 560(6) and reviewed under the applicable provisions of Sections 520 through 620.

(5) Proposed uses in wetlands and wetland buffer zones shall be evaluated for adverse effects, including cumulative effects. Adverse effects shall be prohibited.

(Renumber 5 – 8)

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570. General Management Area Stream, Pond, Lake and Riparian Areas and Their Buffer Zones Review Criteria

- (1) Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas **and their buffer zones.**

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- (3) The following uses may be allowed in streams, ponds, lakes and riparian areas **and their buffer zones** when approved pursuant to Section 570(5), and reviewed under the applicable provisions of Sections 520 through 620:

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Exhibit A: Article 75 – National Scenic Area

- (4) Uses not listed in Section 570(2) and (3) may be allowed in streams, ponds, lakes, and riparian areas **and their buffer zones**, when approved pursuant to Section 570(6) and reviewed under the applicable provisions of Sections 520 through 620.
- (5) Proposed uses in wetlands and wetland buffer zones shall be evaluated for adverse effects, including cumulative effects. Adverse effects shall be prohibited.**
- (6) 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.
- (7) Applications for all other Review Uses in streams, ponds and lakes and riparian areas **and their buffer zones** shall demonstrate that:
- (a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by Section 560(6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.

(Renumber 7 – 8)

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580. 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:

Exhibit A: Article 75 – National Scenic Area

Bald eagle habitat
Deer and elk winter range
Elk habitat
Mountain goat habitat
Peregrine falcon habitat
Pika colony area
Pileated woodpecker habitat
Pine marten habitat
Shallow water fish habitat (Columbia R.)
Special streams
Special habitat area
Spotted owl habitat
Sturgeon spawning area
Tributary fish habitat
Turkey habitat
Waterfowl area
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 sensitive by the Oregon Fish and Wildlife Commission, or
 - (iii) considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, and prairie falcon).

Updated lists of species included in sensitive wildlife sites can be found on the websites for 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.
- (2) Uses allowed outright are listed in Section 070.

(3) Proposed uses within 1,000 feet of a sensitive wildlife area or site shall be evaluated for adverse effects, including cumulative effects. Adverse effects shall be prohibited.

(Renumber 3 – 7)

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Exhibit A: Article 75 – National Scenic Area

590. General Management Area 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 Natural Heritage program.

Updated lists of sensitive plant species can be found on the website for the Oregon Natural Heritage Program. A list also is maintained by the USDA Forest Service – National Scenic Area 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.

(2) Uses allowed outright are listed in Section 070.

(3) Proposed uses within 1,000 feet of a sensitive plant shall be evaluated for adverse effects, including cumulative effects. Adverse effects shall be prohibited.

(4) 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

Exhibit A: Article 75 – National Scenic Area

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.

- (5) Review uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to Section 590(6), and reviewed under the applicable provisions of Sections 520 through 620.

(Renumber 6 - 7)

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600. Special Management Area Natural Resource Review Criteria

A. SMA 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 development.** Comments from state and federal agencies shall be carefully considered. (Site plans are described in Section 080).
- (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.

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(h) 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.

- (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.

Exhibit A: Article 75 – National Scenic Area

Sensitive Wildlife Areas and endemic plants are those areas depicted in the wildlife inventory and listed in Tables 4 and 7 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 sites and plant species can be found on the websites for the Wildlife Division of Oregon Department of Fish and Wildlife and the Oregon Natural Heritage Program. A list also is maintained by the USDA Forest Service – Scenic Area Office and available on the Gorge Commission website.

- (b) The Planning Director shall submit site plans (of uses **or development 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 for wildlife issues and by the Oregon 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.; **Cumulative effects that are adverse shall be prohibited. 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.

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- (i) Proposed uses and development within 1,000 feet of sensitive wildlife areas and sites or within 1,000 feet of rare plants shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse shall be prohibited.**