



July 13, 2021

TO: Columbia River Gorge Commission

FROM: Joanna Kaiserman, Senior Planner
Jeff Litwak, Counsel

SUBJECT: Information Item: Progress Report on new NSA Land Use Ordinance for Klickitat County

Actions Requested

1. Review staff's progress on creating a new National Scenic Area ordinance to use in Klickitat County.
2. Review staff's proposed changes to the current development review process text, which reflect current practice and new revisions to the Management Plan.
3. Review staff's proposed clarifications to various provisions to assist with implementing the Management Plan text.

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 Management Plan. On March 16, 2021, the Gorge Commission transmitted the revised Management Plan to the counties, which starts 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 a National Scenic Area ordinance for counties that do not enact their own ordinance. Klickitat County has never enacted its own National Scenic Area land use ordinance, so the Gorge Commission has always enacted its own land use ordinance for Klickitat County.

The Management Plan contains goals, objectives, policies, and guidelines for each resource topic (scenic, cultural, natural, and recreation) and each land use designation. The Plan also contains some policies and many guidelines for specific types of development and land uses, and application and review process requirements. The land use ordinance incorporates the guidelines from the Management Plan. The guidelines do not need to be verbatim from the Management Plan, but the land use ordinance must be consistent with the Management Plan.

The Commission will need to adopt the ordinance as a new rule chapter. This is because the existing land use ordinance must remain in place while staff completes review of applications submitted before the new land use ordinance becomes effective. For ease of reading, staff is showing only changes to the new land use ordinance text, relative to the existing land use ordinance and the revised Plan provisions. Staff is not showing the changes adopted in the revised Management Plan and is not showing where it reordered the guidelines relative to the prior ordinance.

Progress

Staff began drafting a new National Scenic Area land use ordinance several months ago. The in-progress draft of the new ordinance is attached. The tracked changes shown are changes made after incorporating the revised Management Plan text. This draft does not highlight all the Management Plan revisions; rather, it shows additional edits and clarifications made to the revised Management Plan text or to the rule provisions transferred from the current land use ordinance. Each rule number is bookmarked for easier scrolling and to see the outline. Staff has not completed all the drafting. Some of the significant tasks remaining include:

- Final numbering - the rule numbers in the current draft are mostly the same as in the current land use ordinance (Commission Rule 350-81). A few rule numbers are duplicated, and a few temporary new numbers were inserted to keep the text in the right order.
- Cross-references - all of the cross-references need to be updated to reflect the final numbering. Staff has highlighted many cross references in green highlights as it has worked on the draft text as a reminder.
- Resolving questions and clarifications - there are several comment bubbles with questions and clarifications that staff has not yet resolved.
- Final editing - staff has a long final checklist of grammar, punctuation, word choice, formatting, etc. that it will go through as a final edit.

Staff has made many non-substantive changes to the text from the Management Plan, including:

- Creating cross-references to numbered sections where the Plan uses text descriptions.
- Changing terms like “local government” to “Executive Director”.
- Changing words to use consistent terms where the Management Plan intended (such as changing a few remnant references to “wetlands, streams, lakes, ponds, and riparian areas” to “water resources”).
- Reordering several guidelines to make the ordinance easier to use.
- Added a few new sections and subsections of text so there would be at least two of every section and subsection to comply with Oregon rule drafting requirements (e.g., 0080(2) on page 71 of the draft)
- Adding clarifications to make implementation clearer and more intentional.
- Consolidating a few provisions to eliminate redundancy.
- Changing grammar to remove passive language and to use gender-neutral pronouns (they and their).
- Fixing typos that appear in the Management Plan.

Development Review Process

This section of the draft begins on page 27. The current development review process was written in 1994 for the first land use ordinance (Commission Rule 350-80). Some of the development review process provisions are found in the Management Plan, like minimum standards for site plans, but most of the development review process is found only in the land use ordinance. The Commission has made small changes to these process provisions over time. Staff is now proposing significant changes to these process provisions for the new land use ordinance to reflect current practice. The tracked changes shown are edits made to the existing ordinance text and new language from the revised Management Plan. The most significant changes include:

Rule No.	Page	Explanation
0032(2)	27	A new provision that allows the Executive Director to require applicants revise an application or submit a new application to resolve existing violations.
0032(6)(b) & (6)(n)	28 & 29	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, Skamania County Super. Ct. No. 14-2-00071-7</i> (Dec. 17, 2015).
0032(7)	29	Deleting a long list of additional application requirements that was taken from requirements throughout the land use ordinance. 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 surveys, professionally drawn site plans and proof of prior land use and building permits, which reflects the staff's current practice.
0032(8)	32	Added a requirement that Firewise information be provided in the application packet, consistent with the new policies in GMA Large- and 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.
0034	32	Adding 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 give 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.
0038(2)	34	The notice 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.

0038(6)	34	Adding 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.
0041	37	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.
0045	40	Added a new section on inspections, which reflects current practice. The current rule did not have any provisions relating to inspections.
0046(2) & (3)	41	Clarified the process for reviewing minor changes to approvals. 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.
0050(3)	54	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 0040(1)(c).

Clarifications

While moving new text into the land use ordinance, staff has inserted clarifications in the draft ordinance to be clearer and more intentional for implementing the Management Plan. Below is a description of the most significant clarifications.

Rule No.	Page	Explanation
Throughout		Removed all uses of “/” (e.g., “and/or,” “GMA/SMA”) and changed to “and” or “or.” The use of a “/” is inherently ambiguous because it is used to signal a conjunctive and disjunctive term. There are court decisions that discourage use of “/.” The only exception in this ordinance is “emergency/disaster response,” which is a specialized term. Staff still needs to ask the Forest Service to review instances where staff made this change to SMA provisions.
Throughout		Staff will review provisions that refer to Management Plan goals, objective, and policies and to the Scenic Resources Implementation Handbook and similar documents outside of this land use ordinance to determine whether the rule makes those external sources into approval criteria. If they appear to be approval criteria, staff may recommend different text to implement the Management Plan so that all approval criteria appear in the land use ordinance.
0050	2	Added a new section clarifying that the ordinance uses calendar days, unless otherwise specified and when deadlines fall on weekend or legal holiday.
0084(1)(e)(B)	36	The 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 were at issue in the appeal. Staff changed the reference to “appeal parties and their representatives.”
0074(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.
0082(1)	72	Added examples of what constitutes a change to an existing structure based on past applications where the Executive Director determined changes to certain elements of a structure required review.
099(1)(d)	133	Staff intends to clarify that in an Overnight Accommodation, the owner does not need to be present during the rental, only that the rental is the owner’s primary residence and provide an example of what qualifies as a primary residence.
0126(1)(a)(D)(i)	156	Added a third requirement for lot-line adjustments that resolve boundary disputes based on a lot-line adjustment application that the staff reviewed recently—that 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 Management Plan but codifies a prior staff interpretation of the land use ordinance.
0076(1)	158	Staff has created a new section on buffer zones and variances in the land use ordinance to bring together many of the buffer zones and variance provisions. However, there are many provisions in the cultural and natural resource chapters and elsewhere in the Plan that require a buffer zone and bringing those together into a single section did not make sense. Staff thus added a new subheading (1) that notes there are other buffer zone requirements not in this section.
0520(3)(a)(B)(v)	167	Clarified that the Scenic Resources Handbook is guidance and does not contain approval criteria. There are a few other similar clarifications.

Next Steps and Adoption Timeline

After your review at the July 13 Commission meeting, staff will continue working on the land use ordinance to address issues and concerns that you discuss at the meeting. At your September 14, 2021 meeting, staff will present a final draft ordinance and ask you to approve starting the rulemaking process by publishing the draft in the Oregon Bulletin and Washington State Register. At your December 14, 2021 meeting, you will hold a public hearing and may adopt the ordinance.

After your adoption, staff will transmit the ordinance to the Secretary of Agriculture for concurrence. That process may take up to 90 days. After concurrence, staff must do a final notice of rule adoption in the Oregon Bulletin and Washington State Register, and the ordinance can be effective 30 days after filing that final notice. Following this schedule, staff expects the ordinance will be effective on May 1, 2022.