

Chapter 350 Columbia River Gorge Commission

ADOPTION SYNOPSIS

The Columbia River Gorge Commission is authorized and required to take certain actions relating to interstate land conservation and development by the Columbia River Gorge National Scenic Area Act, Public Law 99-663 and the Columbia River Gorge Compact entered into by the states of Washington and Oregon.

Washington and Oregon statutes and rules relating to the subjects listed in Public Law 99-663 and Chapter 499, Washington Laws of 1987 and Chapter 14, Oregon Laws of 1987 are available for public inspection in most county courthouses and other public law libraries.

The Final Interim Guidelines, Columbia River Gorge National Scenic Area, dated June 30, 1987, and adopted by the United States Secretary of Agriculture, are available for public inspection at the United States Department of Agriculture Forest Service offices at 902 Wasco Avenue, Hood River, OR 97031, and may also be obtained from the Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA 98672.

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DIVISION 11

OPEN MEETINGS

350-011-0001

Definitions for 350-011-0001 to 350-011-0010

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of the commission is required at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of the commission which is closed to certain persons for deliberation on certain matters.

(3) "Commission" means the Columbia River Gorge Commission or any Commission committee which consists of two or more members, with the authority to make decisions for or recommendations to the commission on policy or administration.

(4) "Meeting" means the convening of the commission for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any onsite inspection of any project or program. "Meeting" also does not include the attendance of members of the commission at any national, regional or state association to which the commission or members of the commission belong.

Stat. Auth.: ORS 196.160 & RCW 43.97.015

Stats. Implemented: ORS 196.160, RCW 43.97.015 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98

350-011-0003

Meetings of Commission to Be Open to Public; Location of Meetings

(1) All meetings of the commission shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by 350-011-0001 to 350-011-0010. A member of the public shall not be required, as a condition of attending a meeting, to give his or her name, other information, complete a questionnaire or fulfill any other condition precedent.

(2) No quorum of the commission shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by 350-011-0001 to 350-011-0010.

(3) The commission shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, sexual orientation or national origin is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by the commission if use of a place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the commission shall be held within the geographic boundaries over which the commission has jurisdiction, or at the administrative headquarters of the commission or at the other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographical boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5) Notwithstanding the requirements of section (4) above, committee meetings may be held in any location where the committee deems it useful.

(6) Meetings of the commission shall be held in locations that are accessible to the disabled.

(7) Upon request of a person who is deaf or hard of hearing, the commission shall make a good faith effort to have an interpreter for persons who are deaf or heard of hearing provided at a regularly scheduled meeting. The person requesting the interpreter shall provide the commission at least 48 hours' notice of the request, shall provide the name of the requester, sign language preference and any other relevant information the commission may require. As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission, the Washington Aging and Adult Services Administration, or other state or local government or community service agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.

(8) It shall be considered discrimination on the basis of disability for commission to meet in a place inaccessible to persons with disabilities, or upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in Commission Rule 350-011-0008.

(9) Voting by the commission shall take place in public and each member's vote shall be recorded as it is cast. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.

Stat. Auth.: ORS 196.160 & RCW 43.97.015

Stats. Implemented: ORS 196.160, RCW 43.97.015 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2008, f. 2-21-08, cert. ef. 4-1-08

350-011-0004

Public Notice Required; Special Notice for Executive Sessions, Special or Emergency Meetings

(1) The commission shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by the commission.

(2) The Commission shall file with the Secretary of State in Oregon and the Code Reviser in Washington a schedule of the time and place of such meetings on or before January of each year for publication in the states' registers. Notice of any change from such meeting schedule shall be published in the states' registers for distribution at least twenty days prior to the rescheduled meeting date. For the purposes of this section "regular" meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule.

(3) The commission shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of the commission to consider additional subjects.

(4) If an executive session only will be held, the notice shall be given to the members of the commission, the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(5) No special meeting shall be held without at least 24 hours' notice to the members of the commission, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. The call and notice of the meeting shall specify the time and place of the meeting and the business to be transacted. Notice of a special meeting may be given by delivering written notice personally, by mail, by fax, or by electronic mail. Final disposition

shall not be taken on any other matter at a special meeting of the Commission.

(6) The commission shall not adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.

(7) The commission may adjourn or continue a meeting to a time and place specified in an order of adjournment or continuance. Written notice of the adjournment or continuance shall be provided in accordance with subsection (3) above. A copy of the order of adjournment or continuance shall be conspicuously posted immediately after adjournment or continuance on the door where the meeting was held.

Stat. Auth.: ORS 196.160 & RCW 43.97.015

Stats. Implemented: ORS 196.160, RCW 43.97.015 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

350-011-0005

Written Minutes Required; Content; Content of Minutes for Executive Sessions

Stat. Auth.:

Stats. Implemented:

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87

350-011-0006

Executive Sessions Permitted on Certain Matters; Procedures; News Media Representatives' Attendance; Limits

(1) The commission can hold executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization for the holding of such executive session. Executive session may be held:

(a) To consider the employment of a public officer, employee, staff member or individual agent. The exception contained in this paragraph does not apply to:

(A) The filling of a vacancy in an elective office;

(B) The filling of a vacancy on any public committee, commission or other advisory group;

(C) The consideration of general employment policies;

(D) The employment of the chief executive officer, other public officers, employees and staff members of any public body unless the vacancy in that office has been advertised, regularized procedures for hiring have been adopted by the public body and there has been opportunity for public input into the employment of such an officer. However, the standards, criteria and policy directives to be used in hiring chief executive officers shall be adopted by the commission in meetings open to the public in which there has been opportunity for public comment.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, unless such public officer, employee, staff member or individual agent requests an open hearing;

(c) To conduct deliberations with persons designated by the commission to carry on labor negotiations;

(d) To conduct deliberations with persons designated by the commission to negotiate real property transactions;

(e) To consider information or records that are exempt by law from public inspection;

(f) To consider preliminary negotiations involving matters of trade or commerce in which the commission is in competition with governing bodies in other states or nations;

(g) To consult with counsel concerning the legal rights and duties of the commission with regard to current litigation or litigation likely to be filed;

(h) To review and evaluate, pursuant to standards, criteria and policy directives adopted by the commission, the employment-related performance of the chief executive officer of the commission,

a public officer, employee or staff member unless the person whose performance is being reviewed and evaluated requests an open hearing. The standards, criteria and policy directives to be used in evaluating chief executive officers shall be adopted by the commission in meetings open to comment. An executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member shall not include a general evaluation of any agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs;

(i) To carry on negotiations with private persons or business regarding proposed acquisition, exchange or liquidation of public investments.

(j) To discuss information about the review or approval or programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined by Oregon or Washington state law;

(iv) Petroleum products;

(v) Sewage; or

(vi) Water;

(D) Telecommunications systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(2) Labor negotiations may be conducted in executive session if either side of the negotiators requests closed meetings. Subsequent sessions of the negotiations may continue without further public notice.

(3) Representatives of the news media shall be allowed to attend executive sessions other than those held under paragraph (c) of subsection (1) of this section relating to labor negotiations but no information that is the subject of the executive session shall be disclosed. The Commission shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(4) No executive session may be held for the purpose of taking any final action or making any final decision.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 2-2004, f. 4-28-04 cert. ef. 6-1-04

350-011-0007

Meetings by Means of Telephonic or Electronic Communication

(1) Any meetings, including an executive session, of the commission which is held through the use of telephone or other electronic communication shall be conducted in accordance with 350-011-0001 to 350-011-0010.

(2) When telephone of other electronic means of communication is used and the meeting is not an executive session, the commission shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the commission is present.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-011-0008

Enforcement of 350-011-0001 to 350-011-0007; Effect of Violation on Validity of Decision of the Commission, Liability of Members

(1) Any person affected by a decision of the commission may commence a suit in the circuit court or superior court of the county in which the commission ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of 350-011-0001 to 350-011-0007, by members of the commission, or to determine the applicability of 350-011-0001 to 350-011-0007 to matters or decisions of the commission. The court may order such equitable relief as it deems appropriate in the circumstances. A decision made in violation of 350-011-0001 to 350-011-0007 is voidable.

(2) If the court makes a finding that a violation of 350-011-0001 to 350-011-0007 has occurred under subsection (1) of this section and that the violation is the result of wilful misconduct by any member or members of the commission, that member or members shall be jointly and severally liable to the commission for the amount paid by the commission under subsection (1) of this section.

(3) Each member of the commission who attends a meeting of the commission where action is taken in violation of any provision of this division, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars. The civil penalty shall be assessed by a judge of the circuit court or superior court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(4) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. If the commission prevails in an action in the courts for a violation of this chapter, it may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

(5) The provisions of this section shall be the exclusive remedy for an alleged violation of 350-011-0001 to 350-011-0007.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-011-0009

Prima Facie Evidence of Violation Required of Plaintiff

In any suit commenced under 350-011-0008(1), the plaintiff shall be required to present prima facie evidence of a violation of 350-011-0001 to 350-011-0007 before the commission shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meeting law, the burden to prove that the provisions of 350-011-0001 to 350-011-0007 were complied with shall be on the commission.

Stat. Auth.: ORS 196.160 & RCW 43.97.015

Stats. Implemented: ORS 196.160, RCW 43.97.015 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98

350-011-0010

Smoking in Public Meetings Prohibited

Stat. Auth.:

Stats. Implemented:

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87

350-011-0011

Regular Meetings to Include Time for Public Comment

(1) At all regular meetings of the Commission, the Commission shall provide time for public comment for issues not on the Com-

mission's agenda, and an opportunity for Tribal Nations to address the Commission.

(2) The Commission may limit the time for public comment and opportunity for Tribal Nations to address the Commission in a manner that limits time for each speaker, or the number of speakers.

(3) The Commission may exclude comment that concerns matters likely to come before the Commission in a hearing where the Commission must disclose ex parte communications and comply with the Washington Appearance of Fairness doctrine. The presiding officer may exclude other comment that is inappropriate.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. Sec. 544c(b)

Hist.: CRGC 1-2008, f. 2-21-08, cert. ef. 4-1-08

DIVISION 12

PUBLIC RECORDS

350-012-0002

Right to Inspect Public Records

Every person has a right to inspect any public record of the commission, except as otherwise expressly provided by 350-012-0008.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-012-0005

Forms of Public Records; Fees

(1) The custodian of any public record which a person has a right to inspect shall give the person, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) If a public record is maintained in a machine readable or electronic form, the custodian shall provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-012-0006

Fees

(1) The Commission will establish a schedule of fees to reimburse it for its actual costs in making such records available except for requests from government agencies and the media, and for routine notices and agendas. This applies to both regular and certified copies of records.

(2) If the Commission makes a request available on a partial or installment basis, the Commission may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the Commission is not obligated to fulfill the balance of the request.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 3-2004, f. 4-28-04 cert. ef. 6-1-04; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

350-012-0007

Fulfilling Requests

(1) The Commission shall respond promptly to requests for public records. Within five business days of receiving a public records request, the Commission shall respond by (1) providing the record; (2) acknowledging that the Commission has received the request and providing a reasonable estimate of the time the Commission will require to respond and an estimate of the fees that the requester must pay as a condition of receiving the public records;

or (3) denying the public record request. Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the Commission may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the Commission need not respond to the original request. Denials of requests must be accompanied by a written statement of the specific reasons for denial.

(2) The Commission shall make public records available on a partial or installment basis as records that are part of a larger set of requested records are assembled or make ready for inspection or disclosure.

(3) The Commission shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2008, f. 2-21-08, cert. ef. 4-1-08

350-012-0008

Public Records Exempt From Disclosure

(1) The following public records are exempt from disclosure under 350-012-0001 to 350-012-0008 unless the public interest requires disclosure in the particular instance:

(a) Records of the commission pertaining to litigation to which the commission is a party if the complaint has been filed, or if the complaint has not been filed, if the commission shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purpose of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release;

(D) The identity of and biographical information concerning both complaining party and victim;

(E) The identity of the investigation and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance in apprehending fugitives from justice;

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information relating to the appraisal of real estate prior to its acquisition;

(f) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(g) Investigatory information relating to any complaint filed relating to unlawful employment practices until such time as the complaint is resolved, or a final administrative determination is made;

(h) Investigatory information relating to any complaint filed relating to unfair labor practices;

(i) Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist activity or attraction; and

(j) A personnel discipline action, or materials or documents supporting that action.

(k) Sensitive fish, wildlife, and plant data. Sensitive fish, wildlife, and plant data may be released to the following entities and their agents for fish, wildlife, plant, and land management purposes, or scientific research needs: Governments agencies, public utilities, and accredited colleges and universities. Sensitive fish, wildlife, and plant data may be released to tribal governments. Sensitive fish, wildlife, and plant data may also be released to the owner, lessee, or right-of-way or easement holder of private land to which the data pertains. The release of sensitive fish, wildlife, and plant data may be subject to a confidentiality agreement, except upon release of sensitive fish, wildlife, and plant data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish, wildlife, and plant data does not include data related to reports of predatory wildlife posted on the Washington Department of Fish and Wildlife's internet web site. Sensitive fish, wildlife, and plant data must meet at least one of the following criteria as applied by the Gorge Commission:

(A) The nesting sites or specific locations of endangered, threatened or sensitive species listed in the Management Plan or otherwise designated by the appropriate agencies in Oregon and Washington;

(B) Radio frequencies used in or locational data generated by telemetry studies;

(C) Other location data that could compromise the viability of a specific fish, wildlife or plant population and where one or more of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;

(iii) There is a known demand to visit, take, or disturb the species; or

(iv) The species has an extremely limited distribution and concentration.

(l) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(A) An individual;

(B) Buildings or other property; or

(C) Information processing, communication or telecommunication systems, including the information contained in the systems.

(2) The following public records are exempt from disclosure under 350-012-0001 to 350-012-0008:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the commission shows that in the particular instance the public interest in encouraging frank communication between officials and employees of the commission clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public

disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to the commission in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the commission has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Any public records or information the disclosure of which is prohibited by federal or state law or regulations;

(e) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged;

(f) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(g) Information about review or approval of programs relating to the security of:

(A) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined by Oregon or Washington state law;

(iv) Petroleum products;

(v) Sewage; or

(vi) Water;

(B) Telecommunications systems, including cellular, wireless or radio systems.

(C) Data transmissions by whatever means provided.

(h) Records of mediation communications that are privileged under the Uniform Mediation Act.

(i) Information gathered for the purpose of preparing a small business impact statement or an analysis of significant rules as required by the states' rulemaking requirements that can be identified to a particular business.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the commission shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

(a) A request described in subsection (1) of this section shall remain effective until the public body receives a written request for termination but no later than five years after the date that a public body receives the request.

(b) A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(c) A public body shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address or personal telephone number granted an exemption from disclosure under this section.

(5) Notwithstanding the exemptions in 350-012-0008(1) and (2), public records that are more than 25 years old shall be available for inspection

(6) Notwithstanding 350-012-0001 through 350-012-0008, the Commission shall not disclose records in violation of a user

agreement or license that prohibits the Commission from disclosing such records. The Commission shall refer persons to the creator of the record if the Commission has obtained the records through agreement or license, or for which the Commission was charged a fee, other than a nominal fee for reimbursement of duplicating costs, for the record.

(7) Disclosure of information in violation of Rule 350-012-0006(2) is grounds for assessment of a civil penalty pursuant to Rule 350-30 et seq.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2008, f. 2-21-08, cert. ef. 4-1-08

350-012-0009

Public Records Officer

The Commission's Executive Director or her appointee shall serve as the Commission's public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the Commission's compliance with the public records disclosure requirement of this division.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 USC 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

DIVISION 13

350-013-0001

Financial Disclosure

The members of the commission shall file annual financial disclosure forms with their respective state.

Stat. Auth.:

Stats. Implemented:

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

DIVISION 14

CONFLICT OF INTEREST

350-014-0001

Definitions for 350-014-0001 to 350-014-0005

As used in these rules, unless the context requires otherwise:

(1) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person. "Assist" does not include referring another person to other persons or sources of advice and information, and other non-substantive advice or assistance.

(2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain.

(3) "Business with which the person is associated" means any business of which the person or a member of the person's household is a director, officer, owner or employee, or any corporation in which the person or a member of the person's household owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

(4) "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or a member of the person's household, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of a

state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or a member of the person's household or business with which the person is associated, is a member or is engaged.

(5) "Gift" means something of economic value given to a public official or member of the official's household without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials on the same terms and conditions; and something of economic value given to a public official or member of the official's household for valuable consideration less than that required from others who are not public officials. However, "gift" does not mean:

- (a) Campaign contributions.
- (b) Gifts from relatives.

(c) The giving or receiving of food, lodging and travel when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity.

(6) "Honoraria" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event at which the public official appears in an official capacity.

(7) "Income" means income of any nature derived from any source, including, but not limited to, any salary, wage, advance, payment, dividend, interest, rent, honoraria, return of capital, forgiveness of indebtedness, or anything of economic value.

(8) "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the vote of a person acting in the capacity of a public official.

(9) "Member of household" means the spouse of the public official and any children of either who reside with the public official.

(10) "Public official" means any person who is serving in a governmental capacity for the Columbia River Gorge Commission as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

(11)(a) "Transaction involving the Commission" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that a current or former public official, as defined in this division, believes, or has reason to believe:

- (A) Is, or will be, the subject of Commission action; or
- (B) Is one to which the Commission is or will be a party; or
- (C) Is one in which the Commission has a direct and substantial proprietary interest.

(b) "Transaction involving the Commission" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the Commission that is the basis for the claim, case, or lawsuit.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-014-0002

Application

Nothing in these rules is intended to affect:

(1) Any other statute or rule requiring disclosure of economic interest by a public official or public employee.

(2) Any statute or rule prohibiting or authorizing specific conduct on the part of any public official or public employee.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-014-0003

Code of Ethics

The following actions are prohibited regardless of whether potential conflicts of interest are announced or disclosed pursuant to 350-014-0004:

(1) No public official shall use official position or office to obtain financial gain for the public official, other than official salary, honoraria or reimbursement of expenses, or for any member of the household of the public official, or for any business with which the public official or a member of the household of the public official is associated.

(2) No public official or candidate for office or a member of the household of the public official or candidate shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has any official position or over which the official exercises any authority.

(3) No public official shall solicit or receive, either directly or indirectly, and no person shall offer or give to any public official any pledge or promise of future employment, based on any understanding that such public official's vote, official action or judgment would be influenced thereby.

(4) No public official shall further the personal gain of the public official through the use of confidential information gained in the course of or by reason of the official position or activities of the public official in any way.

(5) No person shall offer during any calendar year any gifts to any public official or candidate therefore or a member of the household of the public official or candidate if the person has a legislative or administrative interest in a governmental agency in which the official has any official position or over which the official exercises any authority.

(6)(a) Except in the course of official duties or incident to official duties, a public official, as defined in this division, may not assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the Commission:

(A) In which the public official has at any time participated; or

(B) If the transaction involving the Commission is or has been under the official responsibility of the public official within a period of two years preceding such assistance.

(b) No public official may share in compensation received by another for assistance that the officer or employee is prohibited from providing under subsection (a) or (c) of this section.

(c) A business entity of which a public official is a partner, managing officer, or employee shall not assist another person in a transaction involving the Commission if the public official is prohibited from doing so by subsection (a) of this section.

(d) This chapter does not prevent a public official from assisting, in a transaction involving the Commission:

(A) The public official's parent, spouse, or child, or a child thereof for whom the public official is serving as guardian, executor, administrator, trustee, or other personal fiduciary, if the public official did not participate in the transaction; or

(B) Another employee involved in disciplinary or other personnel administration proceedings.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-014-0004

Declaration of Potential Conflicts, Methods of Handling Potential Conflicts

(1) When met with a potential conflict of interest, a public official shall:

(a) If the public official is an appointed public official serving on the commission, announce publicly the nature of the potential conflict prior to taking any official action thereon.

(b) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the

public official to office of the nature of the potential conflict, and request that the appointing authority dispose of the matter giving rise to the potential conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

(2) Nothing in subsection (1) of this section requires any public official to announce a potential conflict of interest more than once on the occasion which the matter out of which the potential conflict arises is discussed or debated.

(3) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-014-0005

Recording of Notice of Potential Conflict; Effect of Failure to Disclose Conflict

(1) When a public official gives notice of potential conflict of interest, the potential conflict shall be record in the official records of the public body.

(2) No decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed shall be voided by any court solely by reason of the failure of the public official to disclose a conflict of interest.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-014-0006

Ex Parte Contact

(1) Members of the Commission shall not have ex parte contact, i.e. discussion of specific issues regarding a pending land use permit, with applicants or interested parties seeking a land use permit, or opponents to the permit, while the application or appeal thereto is pending under a land use ordinance for the Scenic Area.

(2) Members of the Commission shall place on the record of the appeal or proceedings under these rules any ex parte contact set forth in subsection (1). The Chair or presiding officer shall notify all parties to the appeal or proceeding. The Chair or presiding officer shall consider the position of the parties and, after review of the matter, make a recommendation to the Commission to ensure the appearance of fairness is maintained. The member of the Commission who was the subject of the ex parte contact may voluntarily step down from hearing the matter. The Commission may also request the member of the Commission to participate in the appeal or proceedings or, the member of the Commission step down from hearing the matter.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98

350-014-0007

Appearance of Fairness

Members of the Commission shall comply with the appearance of fairness in appeals and proceedings under Rules 350-060 et seq. and Rules 350-070 et seq.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98

DIVISION 15

PUBLIC CONTRACTING

350-015-0100

Public Contracting

For reasons of efficiency, and to avoid a piecemeal approach to public contracting administration, the Commission shall conduct

public contracting in accordance with the public contracting law of

the State of Washington. The Commission deems the public con-

tracting law of the State of Washington as a total package to be

equivalent in its degree of restrictiveness to the public contracting

law of the State of Oregon.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.016 & 16 USC 544c(b)

Hist.: CRGC 2-2008, f. 11-4-08, cert. ef. 12-15-08

DIVISION 16

ADMINISTRATIVE PROCEDURES

350-016-0001

Commission Required to Prepare Public Writings in Readable Form

(1) The commission shall when reasonable prepare its public writings in simple language with short, precise, affirmative, active-voice sentences.

(2) As used in this section, “public writing” means any rule, form, license or notice prepared by the commission.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-

8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC

1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-

4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0002

Definitions for 350-016-0002 to 350-016-0018

(1) "Commission" means the Columbia River Gorge Commission or any officer authorized by the commission to make rules or to issue orders.

(2)(a) "Contested case" means a proceeding before the commission:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after a hearing at which such specific parties are entitled to appear and to be heard;

(B) Where the commission has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing.

(b) "Contested case" does not include proceedings in which any commission decision rests solely on the result of a test.

(3) "Economic effect" means the costs of compliance with a rule for businesses including but not limited to the costs of equipment, supplies, labor and administration.

(4) "License" includes the whole or part of any commission permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(5)(a) "Order" means any commission action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of the commission. "Order" includes any commission determination or decisions issued in connection with a contested case proceeding.

(b) "Final order" means final commission action expressed in writing. "Final order" does not include any tentative or preliminary commission declaration or statement that:

(A) Precedes final commission action; or

(B) Does not preclude further commission consideration of the subject matter of the statement or declaration.

(6) "Party" means:

(a) Each person or agency entitled as of right to a hearing before the commission;

(b) Each person or agency named by the commission to be a party; or

(c) Any person requesting to participate before the commission as a party or in a limited party status which the commission determines either has an interest in the outcome of the commission's proceeding or represents a public interest in such result.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the commission.

(8) "Rule" means any commission directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employees; or

(B) Within the commission, between its officers or between employees.

(b) Action by commission directed to other agencies or other units of government which do not substantially affect the interests of the public.

(c) Declaratory rulings.

(d) Intra-agency memoranda.

(9) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses which has 50 or fewer employees.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC

1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0003

Description of Organization; Service of Order; Effect of Not Putting Order in Writing

(1) In addition to other rulemaking requirements imposed by law, the commission shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) The commission shall appoint a rules coordinator and file a copy of that appointment annually with the Oregon Secretary of State and Washington Code Reviser. The rules coordinator shall:

(a) Maintain copies of all rules adopted by the agency and be able to provide information to the public about the status of those rules;

(b) Provide information to the public on all rulemaking proceedings of the agency; and

(c) Keep and make available the mailing list required by 350-016-0004(7).

(3) An order shall not be effective as to a person or party unless it is served upon him either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

(4) An order is not final until it is reduced to writing.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-016-0004

Notice Requirements for Rule Adoption; Temporary Rule Adoption, or Amendment; Substantial Compliance Required

(1) The commission shall prepare a semiannual agenda for rules under development. The commission shall file the agenda with the Oregon Secretary of State and Washington Code Reviser for publication in the states' registers not later than January 31st and July 31st of each year. Not later than three days after its publication in the states' registers, the commission shall send a copy of the agenda to each person who has requested receipt of a copy of the agenda.

(2) When applicable under Washington law, the commission shall prepare a statement of inquiry on the form provided by the Washington Code Reviser, that shall be: filed with the Washington Code Reviser for publication in the state's register at least thirty days before the date the agency files notice of proposed rule making, sent to any party that has requested receipt of the agency's statements of inquiry, and published on the Commission's website or other similar means of electronic communication.

(3) Prior to the adoption, amendment or repeal of any rule, the commission shall give notice of its intended action:

(a) In the manner established by rule adopted by the commission, which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the Oregon bulletin and Washington register at least 21 days prior to the commencement of any commission action;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (9) of this section; and

(d) On its website or other similar means of electronic communication.

(e) Notice of an intended action under subsection (1)(a), (c) and (d) of this section may be given by regular mail or by electronic mail.

(4)(a) The notice required by subsection (3) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The commission shall include with the notice of intended action given under subsection (3) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(C) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the commission in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(D) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected;

(E) A statement of the anticipated effects of the proposed rule;

(F) A statement whether the rule is necessary as a result of federal law or a court decision;

(G) An indication of the person or persons proposing the rule;

(H) The date on which the commission intends to adopt the rule; and

(I) The commission personnel responsible for implementation and enforcement of the rule, with office location and telephone number;

(J) If an advisory committee is not appointed, or an opportunity for interested parties to participate in the rule-making process prior to publication of the proposed rule has not been provided, an explanation as to why no advisory committee or participation by interested persons was used to assist the agency in drafting the rule.

(5) When the commission proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views at a public hearing. The commission shall consider fully any written or oral submissions, including all submissions received by facsimile, telephonic communication, or electronic mail.

(6) Upon request of an interested person received within 15 days after commission notice pursuant to subsection (2) of this section, the commission shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude the commission from adopting a temporary rule pursuant to subsection (7) of this section.

(7) Notwithstanding subsections (1) to (6) of this section, the commission may adopt or amend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the commission prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interests of the parties concerned and the specific reasons of its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need; and

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the commission in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspections.

(8) A rule adopted or amended under subsection (7) of this section is temporary and may be effective for a period of not longer than 120 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (6) of this section.

(9) Any person may request in writing that the commission mail to the person copies of its notice of intended action given pursuant to subsection (3) of this section. Upon receipt of any request the commission shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. The commission may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(10) This section does not apply to public contracts and purchasing.

(11) A rule is not valid unless adopted in substantial compliance with the provisions of this section in effect on the date that the notice required under subsection 3 of this section is delivered to the Oregon Secretary of State and the Washington Code Reviser for the purpose of publication.

(12) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(13) The commission may correct its failure to substantially comply with the requirements of subsections (4) and (7) of this section in adoption of a rule by an amended filing, so long as the non-compliance did not substantially prejudice the interests of persons to be affected by the rule. However, this subsection does not authorize correction of a failure to comply with subsection (3)(b)(D) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.

(14) When the commission establishes a deadline for comment on a proposed rule under the provisions of subsection (4) of this section, the commission may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

350-016-0005

Procedure for Commission Adoption of Federal Rules

(1) Notwithstanding 350-016-0004, when the commission is required to adopt rules or regulations promulgated by an agency of the Federal Government and the Agency has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the agency may adopt those rules or regulations under the procedure prescribed in this section.

(2) Prior to the adoption of a federal rule or regulation under subsection (1) of this section, the commission shall give notice of the adoption of the rule or regulation, the effective date of the rule or regulation and the subject matter of the rule or regulation in the manner established in 350-016-0004(1).

(3) After giving notice the commission may add to the rule or regulation by filing a copy with the Oregon Secretary of State and the Washington Code Reviser. The commission is not required to conduct public hearings concerning the adoption of the rule or regulation.

(4) Nothing in this section authorizes the commission to amend federal rules or regulations or adopt rules in accordance with federal requirements without giving an opportunity for hearings as required by 350-016-0004.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0006

Filing and Taking Effect of Rules; Copies

(1)(a) The commission shall file in the office of the Oregon Secretary of State and Washington Code Reviser a certified copy of each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the commission adopting a rule incorporating published standards of reference is not required to file a copy of those standards with the Oregon Secretary of State or the Washington Code Reviser if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule identifies the location of the standards to be incorporated and the conditions of their availability to the public.

(2) Each rule is effective upon the expiration of 30 days after the date of filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by constitution, statute or court order, the later date is the effective date.

(b) If a different effective date is specified in the rule and the commission finds that action is necessary because of imminent peril to public health, safety or welfare, the specified date is the effective date.

(c) A temporary rule becomes effective upon filing with the Oregon Secretary of State and Washington Code Reviser, or at a designated later date, only if the statement required by 350-016-0004(5) is filed with the rule. The commission shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by the commission, the commission shall file a certified copy of the amendment or notice of repeal with the Oregon Secretary of State and Washington Code Reviser.

(4) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if the commission, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the commission may rely upon such decision in disposition of later cases.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-016-0007

Petitions Requesting Adoption of Rules

An interested person may petition the commission requesting the promulgation, amendment or repeal of a rule. The commission shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 30 days after the date of submission of a petition, the commission shall deny the petition in writing or shall initiate the rulemaking proceedings. If the commission denies the petition it shall set forth in writing its reasons for doing so.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0008

Notice to Party Before Hearing of Rights and Procedure; Legislative Findings; Failure to Provide Notice

(1) Citizens have a right to be informed as to the procedures by which contested cases are heard by the commission, their rights in hearings before the commission, the import and effect of hearings before the commission and their rights and remedies with respect to actions taken by the commission. Accordingly, it is the

purpose of subsections (2) to (4) of this section to set forth certain requirements of the commission so that citizens shall be fully informed as to these matters when exercising their rights before the commission.

(2) Prior to the commencement of a contested case hearing before the commission, the commission shall inform each party to the hearing of the following matters:

(a) If a party is not represented by an attorney, a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(b) The manner of making the record and its availability to the parties.

(c) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the commission.

(d) Whether an attorney will represent the commission in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(e) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, whether the person presiding at the hearing is or is not an employee, officer or other representative of the commission and whether that person has the authority to make a final independent determination.

(f) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(g) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the commission and the hearing reopened.

(h) Whether there exists an opportunity after the hearing and prior to the final determination or order of the commission to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(i) A description of the appeal process from the determination or order of the commission.

(3) The information required to be given to a party to a hearing under subsections (2) and (3) of this section may be given in writing or orally before commencement of the hearing.

(4) The failure of the commission to give notice of any item specified in subsections (2) and (3) of this section, shall not invalidate any determination or order of the commission unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the commission for a reopening of the hearing and shall direct the commission as to what steps it shall take to remedy the prejudice to the rights of the complaining party.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0009

Notice, Hearing and Record in Contested Cases; Informal Dispositions; Hearings Officer

(1) In a contested case hearing, all parties shall be afforded an opportunity for hearing after notice of not less than 20 days, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters asserted or charged, and identifying the issues to be considered at the hearing;

(e) A statement indicating whether and under what circumstances an order by default may be entered;

(f) A statement that a party may be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(g) A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues as allowed by the applicable rules under which the hearing is held.

(h) A statement indicating whether discovery is permitted and, if so, how discovery may be requested.

(i) A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(j) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(k) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(l) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(m) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(n) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(o) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(p) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(q) A description of the appeal process from the determination or order of the agency.

(r) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(s) The official file or other reference number and the name of the proceeding;

(t) The name, official title, mailing address, and telephone number of the presiding officer, if known; and

(u) Any other matters considered desirable by the agency.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) The commission may adopt rules of procedure governing participation in contested cases by person appearing as limited parties.

(5) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the commission. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the commission may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested. The commission shall serve a default order upon the defaulted party or the party's attorney, if any.

(7) Within seven days after service of a default order under subsection (6) of this section, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(8) Testimony shall be taken upon oath or affirmation of the witness form when received. The officer presiding at the hearing shall administer oaths or affirmatives to witnesses.

(9) The officer presiding at the hearing shall insure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case and the correct application of law to those facts.

(10) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the commission or a hearings officer.

(11) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The commission may charge the party requesting transcription, unless the party files an appropriate affidavit of indigency.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2008, f. 2-21-08, cert. ef. 4-1-08

350-016-0010

Presiding Officer — Disqualification, Substitution

(1) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification.

(2) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(3) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the commission.

Stat. Auth.: ORS 196.150
 Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
 Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0011

Interpreter for Handicapped Person in Contested Case

(1) When a handicapped person is a party to a contested case, the handicapped person is entitled to a qualified interpreter to interpret the proceedings to the handicapped person and to interpret the testimony of the handicapped person to the commission.

(2)(a) Except as provided in paragraph (b) of this subsection, the commission shall appoint the qualified interpreter for the handicapped person; and the commission shall fix and pay the fees and expenses of the qualified interpreter if:

(A) The handicapped person makes a verified statement and provides the information in writing under oath showing the inability of the handicapped person to obtain a qualified interpreter, and provides any other information required by the commission concerning the inability of the handicapped person to obtain such an interpreter; and

(B) It appears to the commission that the handicapped person is without means and is unable to obtain a qualified interpreter.

(b) If the handicapped person knowingly and voluntarily files with the commission a written statement that the handicapped person does not desire a qualified interpreter to be appointed for the handicapped person, the commission shall not appoint such an interpreter for the handicapped person.

(3) As used in this section:

(a) "Handicapped person" means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against the handicapped person, or is incapable of presenting or assisting in the presentation of the defense of the handicapped person, because the handicapped person is deaf, or because the handicapped person has a physical hearing impairment or physical speaking impairment.

(b) "Qualified interpreter" means a person who is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the commission.

Stat. Auth.: ORS 196.150
 Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
 Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0012

Depositions or Subpoena of Material Witness; Discovery

(1) On petition of any party to a contested case, the commission may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in Oregon or Washington and is unwilling to appear, the commission may issue a subpoena, requiring his appearance.

(2) On petition of any party to a contested case the commission may order that the party be allowed an opportunity to visit the property that is the subject of a hearing before the commission. The petition shall set forth the name, address and telephone number of the person or persons who will visit the property and a showing of the materiality of the evidence to be obtained from the visit. The applicant, the owner of the property or a representative shall be entitled to accompany the petitioning party while on the property and shall be given access to any written report or notes from the site visit prepared for the petitioning party that is not subject to protection under the attorney-client privilege.

(3) The commission may allow petitions to take depositions, for subpoenas, admissions or other forms of discovery prescribed by law in civil actions upon a showing of necessity and unavailability by other means. In determining whether to allow the discovery the commission shall consider:

(a) Whether all parties are represented by counsel;

(b) Whether undue expense or delay in bringing the matter to hearing will result;

(c) Whether the discovery will promote the orderly and prompt conduct of the proceeding; and

(d) Whether the interests of justice will be promoted.

Stat. Auth.: ORS 196.150
 Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
 Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0013

Subpoenas in Contested Cases

(1) The commission shall issue subpoenas to any party to a contested case upon request upon a showing of general relevance and reasonable scope of the evidence sought. A party, other than the commission, entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the commission, shall receive fees and mileage as prescribed by law for witnesses in civil actions.

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court or superior court of any county, on the application of the commission or of a designated representative of the commission or of the party requesting the issuance of or issuing the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

Stat. Auth.: ORS 196.150
 Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
 Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0014

Evidence in Contested Cases

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude commission action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. The commission shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to an except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the commission.

(4) The commission may take notice of judicially cognizable facts, and may take official notice of general, technical or scientific facts within its specialized knowledge. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and the sources of the

materials and they shall be afforded an opportunity to contest the facts so noticed. The commission may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence.

(6) The commission may, at its discretion, be represented at the hearings by the Attorney General of Washington or Oregon.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-016-0015

Examination of Evidence by Agency in Contested Cases

Whenever in a contested case a majority of the officials of the commission who are to render the final order have not heard the case or considered the record, the order, if adverse to party other than the commission itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0016

Commission Statement of Ex Parte Communications; Notice

(1) A presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any person employed by the agency without notice and opportunity for all parties to participate, except as provided in this subsection:

(a) Where the ultimate legal authority of an agency is vested in a multimember body, and where that body presides at an adjudication, members of the body may communicate with one another regarding the proceeding;

(b) Any presiding officer may receive aid from legal counsel, or from staff assistants who are subject to the presiding officer's supervision; and

(c) Presiding officers may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(d) This subsection does not apply to communications required for the disposition of ex parte matters specifically authorized by statute.

(2) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining an orderly process, a presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(3) Unless necessary to procedural aspects of maintaining an orderly process, persons to whom a presiding officer may not communicate under subsections (1) and (2) of this section may not communicate with presiding officers without notice and opportunity for all parties to participate.

(4) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) of this section.

(5) Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to 350-016-0014.

(6) Any commissioner who receives an ex parte communication during the pendency of a proceeding shall place on the record of the proceeding all written communications received, all written responses to the communications and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the commissioner received an ex parte communication. The commissioner, or the Chair or presiding officer, shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record.

(7) The Chair or presiding officer shall consider the position of the parties and, after review of the matter, make a recommendation to the Commission to ensure fairness and the appearance of fairness is maintained. The member of the Commission who was the subject of the ex parte contact may voluntarily step down from hearing the matter. The Commission may also request the member of the Commission to participate in the appeal or proceedings or the member of the Commission step down from hearing the matter, and the Chair or presiding officer may seal the portions of the record pertaining to the communication by protective order.

(8) The agency shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

350-016-0017

Proposed Order by Hearings Officer; Amendment by Commission; Exemptions

(1) Except as otherwise provided in subsections (1) to (3) of this section, unless a hearings officer is authorized or required by law or commission rule to issue a final order, the hearings officer shall prepare and serve on the commission and all parties to a contested case hearing a proposed order, including recommended findings of fact and conclusions of law. The proposed order shall become final after the 30th day following the date of service of the proposed order, unless the commission within that period issues an amended order.

(2) The commission may by rule specify a period of time after which a proposed order will become final that is different from that specified in subsection (1) of this section.

(3) If the commission determines that additional time will be necessary to allow the commission adequately to review a proposed order in a contested case, the commission may extend the time after which the proposed order will become final by a specified period of time. The commission shall notify the parties to the hearing of the period of extension.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0018

Orders in Contested Cases

(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) A final order shall be accompanied by findings of fact and conclusions of law, and the reasons and basis therefore, on all the material issues of fact, law, or discretion presented on the record,

including the remedy or sanction. Any findings based substantially upon credibility of evidence or demeanor of witnesses shall be so identified. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of facts and as to each ultimate fact required to support the commission's order.

(3) The commission shall serve in writing any final order within 90 days after the hearing or after the submission of any additional memoranda, briefs or proposed findings. The commission shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(4) Every final order shall include a citation of the statutes under which the order may be appealed.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0020

Commission Record of Contested Case

(1) The commission shall maintain an official record of each contested case.

(2) The commission record shall include:

(a) Notices of proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions, requests and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of any matters officially noticed;

(f) Proffers of proof and objections and rulings thereon;

(g) Proposed findings, requested orders and exceptions;

(h) The recording prepared for the commission at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

(i) Any final order, initial order or order on reconsideration;

(j) Staff memoranda or data submitted to the commission; and

(k) Matters placed on the record after an ex parte communication.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0022

Service of Process

A petition for judicial review of a final order in a contested case shall be served upon the commission by delivery of a copy of the petition to the office of the executive director or chairperson of the commission at the principal office of the commission.

Stat. Auth.: ORS 196.150 - 196.165 & 390.500 - 390.515

Stats. Implemented:

Hist.: CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0024

Commission Record for Review

(1) Within thirty days after service of a petition for judicial review, or within further time allowed by the court, the commission shall transmit to the court the original or a certified copy of the commission record specified in 350-016-0020.

(2) The commission may charge a nonindigent petitioner with the reasonable costs of preparing any necessary copies and transcripts for transmittal to the court. A failure by the petitioner to pay this cost to the commission relieves the commission from the responsibility for preparation of the record and transmittal to the court. For the purposes of this paragraph, a nonindigent person is one whose income is more than 130 percent of the poverty income guidelines published in the Federal Register by the U.S. Department of Health and Human Resources.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90

350-016-0025

Appearance of Fairness

Members of the Commission shall comply with Washington's appearance of fairness doctrine in appeals and proceedings under this rule and under Rules 350-060 et seq. and Rules 350-070 et seq.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02

DIVISION 30

ENFORCEMENT

350-030-0005

Purpose

The purpose of this division is to establish procedures and criteria for enforcement of P.L. 99-663 by the Commission as set forth in section 15 of the Scenic Area Act.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95

350-030-0010

Definitions

For the purpose of this division the following definitions apply unless the context requires otherwise:

(1) "Commission" means the Columbia River Gorge Commission established by Chapter 499, Washington Laws of 1987 and Chapter 14, Oregon Laws of 1987.

(2) "Continuing violation" means continuing activity which violates any law, rule, implementation measure, ordinance or order under P.L. 99-663. For example, continued operation of a rock quarry after receipt of a notice of alleged violation is a continuing violation.

(3) "De minimis violation" means a violation of the law that is essentially minor, readily correctable, not repeated and with cooperative parties.

(4) "Director" means the Executive Director of the Columbia River Gorge Commission or staff designee.

(5) "Implementation measure" means any ordinance, regulation or order adopted by the Columbia River Gorge Commission or a county which carries out the Act, the management plan or a land use ordinance.

(6) "Interim guidelines" means the guidelines adopted pursuant to section 10(a) of P.L. 99-663.

(7) "Land use ordinance" means any ordinance adopted by a county or the Commission pursuant to P.L. 99-663, and includes any amendment to, revision of, or variance from such ordinance.

(8) "Management plan" means the scenic area management plan adopted pursuant to section 6 of P.L. 99-663.

(9) "Violation" means failure to comply with any law, rule, implementation measure, ordinance or order under P.L. 99-663.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95

350-030-0015

Civil Penalty

(1) Any person who willfully violates any of the following may incur a civil penalty:

(a) P.L. 99-663;

(b) The management plan;

(c) A land use ordinance;

(d) An implementation measure; or

(e) Any order issued by the Commission or the Director.

(2) The Commission may not assess a civil penalty under section 15(a)(3) of P.L. 99-663 unless it provides notice and an opportunity for a public hearing to the person that the Commission alleges to have violated one of the measures listed in subsection (1) of this section.

(3) Each day of continuing violation is a separate and distinct violation.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-030-0020

Investigation

(1) The Director shall investigate alleged violations of the measures listed in subsection 1 of 350-30-015 of this Division.

(2) The Director may inspect the subject property if necessary to conduct an investigation under subsection (1) of this section.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-030-0025

De Minimis Violation

If the Director believes a violation has occurred but it is of a de minimis nature, readily correctable, not repeated and with cooperative parties, the Director should work with the landowner to resolve the matter through a new development review application, modification or removal of a building or structure, or other appropriate means. The Director shall periodically report to the Commission about resolutions to de minimis violations.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-030-0030

Notice of Alleged Violation

(1) If the violation is not de minimis, the Director shall serve written notice of violation on the alleged violator by personal service or by registered or certified mail. The notice shall include:

(a) A plain statement describing the alleged violation;

(b) The provision of P.L. 99-663, the management plan, the land use ordinance, the implementation measure or the order alleged to have been violated;

(c) The legal and common description of the subject property;

(d) The proposed disposition of the matter through either 350-30-050 through 350-30-060 or 350-30-070 including the recommended penalty to be imposed (if any) and the criteria from 350-30-090 upon which the penalty is based;

(e) A statement that the alleged violator shall file an answer within 14 days after receipt of the notice of violation;

(f) A copy of 350-30-040 which prescribes how to file an answer; and

(g) A statement that if resolution is not reached through 350-30-050 through 350-30-060 the Commission will consider the alleged violation at a contested case hearing which may result in the entry of a final order imposing a civil penalty based upon a prima facie case made on the record, whether or not the alleged violator participates.

(2) Service shall be deemed complete three days after written notice is mailed to:

(a) The alleged violator; or

(b) Any person designated by law as competent to receive service of a summons or notice for the alleged violator.

(3) Notice sent by registered or certified mail to a person at the last known address of the person is presumed to have reached the person within three days after mailing.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-030-0040

Answer

(1) The alleged violator shall file an answer within 14 days of receipt of a notice of violation but it must be received by the Director within the 14 days allowed.

(2) The answer shall agree or disagree with all factual matters and shall affirmatively allege any and all affirmative claims or defenses and the reasoning in support thereof. The answer may include proposed measures for resolution of the matter through 350-030-0050–350-030-0060 or 350-030-0070 and any reason the Commission should modify the penalty recommended.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95

350-030-0050

Resolution through Agreement

The Director may seek to resolve or settle a alleged violation. Any proposed resolution must be presented to and approved by the Commission as provided in 350-030-0060.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95

350-030-0060

Hearing on Proposed Resolution through Agreement

The hearing shall be conducted using the following procedure:

(1) The Director shall provide a brief summary of the nature of the case, the proposed resolution and the key legal issues.

(2) The Director shall provide any other information required along with his recommendation.

(3) The alleged violator or the alleged violator's representative shall be given a reasonable opportunity to be present and to address the Commission.

(4) The Commission may request further information from the Director or the alleged violator.

(5) The Commission shall decide whether to accept, reject or modify the proposed resolution.

(6) If rejected, the matter shall be reset for a contested case hearing under 350-30-070.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-030-0070

Hearing on Contested Case

(1) A violation that is not resolved through 350-030-0050 to 350-030-0060 shall be conducted as a contested case.

(2) The rules governing the Commission's administrative procedure (350-016) shall govern the case.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95

350-030-0080

Order

(1) The Commission shall issue a final order. The order shall be served by personal delivery or certified or registered mail. If served by mail, the order shall be deemed received three days after mailing.

(2) The order shall specify:

(a) The resolution of the violation (including any consent decree);

(b) Whether a penalty is imposed and the amount of such penalty; and

(c) Any other conditions or requirements.

(3) The order shall be final for purposes of judicial review.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-030-0090

Penalty Criteria

(1) In determining the amount of a civil penalty, the following factors shall be considered:

(a) Whether the person or entity has violated the P.L. 99-663 management plan, a land use ordinance, an implementation measure or an order in the past;

(b) Whether the person or entity has undertaken measures to remedy the violation or mitigate harm resulting from the violation;

(c) The nature and seriousness of the violation; and

(d) Whether the violation is repeated or continuous, or the person or entity has had prior violations.

(2) No penalty assessed under this division may exceed \$10,000 for each violation.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95

350-030-0100

Summary Order

Where an imminent threat exists to resources protected under the law and/or to public health, safety or welfare, the Director may issue a summary order requiring the alleged violator to promptly stop work or take other necessary action pending a notice of alleged violation and a contested case hearing before the Commission under 350-030-0070.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95

DIVISION 40

REVISION OF URBAN AREA BOUNDARIES

350-040-0000

Purpose

This division specifies the process of the Columbia River Gorge Commission (Commission) for considering minor revisions to the boundaries of any Urban Area.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99

350-040-0010

Definitions

Reserved

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-040-0020

Authority

(1) Consideration of requests to revise urban area boundaries is a discretionary action authorized by section 4(f) of the Act. The Act does not entitle a county, or any person or entity, to have the Commission review a request to revise any urban area boundary, and does not contain time requirements for consideration of a request. The Commission may make "minor revisions" to the boundaries of an Urban Area.

(2) Three procedural requirements are included in Section 4(f)(1) of the Scenic Area Act:

(a) Requests to revise an Urban Area boundary are submitted to the Commission by a county government;

(b) The Commission must consult the Secretary of Agriculture before revising an Urban Area boundary; and

(c) Two-thirds of the Commission members, including a majority of the members appointed from each state, must approve a

revision of an Urban Area boundary. In the event of recusal, the doctrine of necessity shall apply.

(3) Section 4(f)(2) of the Scenic Area Act allows the Commission to revise the boundaries of an Urban Area only if the following criteria are satisfied:

(a) A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan;

(b) Revision of Urban Area boundaries is consistent with the standards established in Section 6 and the purposes of the Scenic Area Act;

(c) Revision of Urban Area boundaries will result in maximum efficiency of land uses within and on the fringe of existing Urban Areas; and

(d) Revision of Urban Area boundaries will not result in the significant reduction of agricultural lands, forest lands, or open spaces.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2009(Temp), f. & cert. ef. 1-14-09 thru 5-15-09; CRGC 2-2009, f. 3-17-09, cert. ef. 5-1-09; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-040-0030

Application for Revision

Applications to revise the boundaries of any Urban Area shall contain the following information:

(1) A statement from the county sponsoring the Urban Area boundary revision, signed by the county commissioners.

(2) A statement that the senior-elected or appointed official(s) of any affected municipality or special district were provided notice of the application.

(3) A statement that explains why the proposed Urban Area boundary revision is needed. The statement shall describe the anticipated land uses that would occur in the affected area and demonstrate how the proposed revision complies with the criteria in the Scenic Area Act.

(4) A map of the area proposed for revision to the existing Urban Area. The map shall be drawn to scale and shall be prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail. It shall include the following elements:

(a) North arrow;

(b) Map scale;

(c) Boundaries of all parcels within the subject area, with labels showing the name of each property owner and the size of each parcel;

(d) Current municipal zoning designations, where applicable;

(e) Significant terrain features or landforms;

(f) Bodies of water and watercourses;

(g) Existing roads and railroads;

(h) Existing dwellings and other structures; and

(i) Location of existing services, including water systems, sewage systems, and power and telephone lines.

(5) For incorporated areas, a map of the current boundary of the municipality.

(6) A map of adopted land use designations and zoning for the existing Urban Area.

(7) For Oregon applications, a map of currently approved urban growth boundaries.

(8) An analysis based on criteria in the Scenic Area Act. (For guidance see *Urban Areas Boundary Revisions Handbook*, Gorge Commission 1992).

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

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99

350-040-0040

Processing of Application

Applications for revision of urban area boundaries shall be reviewed upon receipt and in the order in which they are received,

except that the Commission may, as part of its work planning, set a limit on the number of urban area boundary revision applications it will process during the biennium and may set its limit at zero.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2009(Temp), f. & cert. ef. 1-14-09 thru 5-15-09; CRGC 2-2009, f. 3-17-09, cert. ef. 5-1-09

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

350-040-0050

Submission and Acceptance of Application

(1) A county government shall submit an application to revise the boundary of an Urban Area to the Commission office. Fifteen copies of each application are required after the Executive Director determines the application is complete. Only two copies of the large scale maps are required.

(2) The Director shall review the application for completeness and adequacy and notify the applicant in writing of any deficiencies.

(3) The Executive Director shall not accept an application as complete until all omissions and deficiencies noted by the Executive Director are corrected.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

Hist.: CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2011, f. 3-23-11, cert. ef.

5-1-11

350-040-0070

350-040-0055

Work Plan

The Commission shall adopt a work plan for each application to revise an urban area boundary. The work plan should contain an estimate of the time and steps needed to review the application, which may vary among applications depending on Commission staffing, budget and resources, and other agency work. At a minimum, the work plan shall include the steps and time periods in sections 060 through 090 in this division. The start date, steps, and time periods shall be set considering commission staffing level, budget and resources, other agency work, and adequate time for public review. The work plan is only an estimate; the Executive Director may require information or procedure not listed in the work plan; skip procedures and information requirements listed in the workplan; or lengthen or shorten time to complete steps in the workplan without permission from the Commission.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

Report of the Executive Director

The Executive Director shall prepare a report analyzing the

proposed Urban Area boundary revision, and which may include

recommendations.

350-040-0060

Notice of Application

(1) The Executive Director shall send electronic or paper notice of the completed application to the U.S. Forest Service-National Scenic Area Office, States of Oregon and Washington, all four Indian tribal governments, the six Gorge county planning offices, appropriate city planning offices, and interested parties who have requested notice.

(2) The Executive Director shall publish notice of the application in local Gorge newspapers serving the National Scenic Area as well as a major newspaper in Portland and a major newspaper in Vancouver.

(3) The complete application shall be available for inspection at the Commission office during normal office hours.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef.

350-040-0065

Public Comment

Interested persons shall have no less than 30 days from the date the notice is sent to submit written comments to the Executive Director. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.

5-8-92; CRGC1-1999, f. & cert. ef. 10-14-99; CRGC 1-2011, f. 3-23-11, cert.

ef. 5-1-11

350-040-0080

Hearings

(1) The Commission will conduct a hearing on every application accepted as complete by the Director.

(2) The Commission shall provide 20 days notice of the hearing to interested parties and the public.

(3) The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues:

(a) The applicant may present the basis for the urban area boundary revision.

(b) Federal, state, county, tribal and other government officials may participate through submission of oral or written comments.

(c) The public may participate through submission of oral or written comments.

(d) After those who participate in the hearing on behalf of the government or the public are finished, the applicant shall have the opportunity to respond to the comments presented.

(e) After all presentations are complete, the Commission shall deliberate on the proposed urban area boundary revisions.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-040-0090

Consultation

In considering amendments to urban area boundaries, the Gorge Commission shall consult with the Forest Service, both states, the six Gorge counties, all four Indian tribal governments and agencies or organizations that have a specific interest.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1999, f. & cert. ef. 10-14-99

DIVISION 50

PLAN AMENDMENT PROCESS

350-050-0010

Purpose

This division specifies the process of the Columbia River Gorge Commission (Commission) for considering amendments to the Management Plan.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99

350-050-0020

Authority

(1) Consideration of amendments to the Management Plan is a discretionary action authorized by section 6(h) of the Act. The Act does not entitle any person or entity to have the Commission review an application to amend the Management Plan, and does not contain time requirements for consideration of a request.

(2) The Act allows only the Commission to adopt a plan amendment:

(a) If the Commission determines at any time that conditions within the Scenic Area have significantly changed; and

(b) If the Commission approves the plan amendment by a majority vote of the members appointed, including approval by at least three members from each state. In the event of recusal, the doctrine of necessity shall apply.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2009(Temp), f. & cert. ef. 1-14-09 thru 5-15-09; CRGC 2-2009, f. 3-17-09, cert. ef. 5-1-09; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0030

Criteria for Plan Amendment Approval

The Commission must find the following criteria are satisfied before it approves an amendment to the Management Plan:

(1) Conditions in the Scenic Area have significantly changed. This means:

(a) Physical changes that have widespread or major impacts to the landforms, resources, or land use patterns in the Scenic Area;

(b) New information or inventory data regarding land uses or resources that could result in a change of a plan designation, classification, or other plan provision;

(c) Changes in legal, social, or economic conditions, including those that affect public health, safety, or welfare, not anticipated in the Management Plan; or

(d) A demonstrable mistake in the Management Plan that has resulted in significant impacts or that involves significant issues, such as, but not limited to, a land use guideline that is less protective of Gorge resources than the policies the guideline was intended to implement; a land use designation that does not conform to the corresponding designation policies; or two or more guidelines that cannot be reasonably reconciled.

(2) The proposed amendment is consistent with the purposes and standards of the Scenic Area Act; and

(3) No practicable alternative to the proposed amendment more consistent with the purposes and standards of the Scenic Area Act exists.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

350-050-0035

Matters Not Constituting a Plan Amendment

(1) The Executive Director and Area Manager may jointly correct any typographical, grammatical, cross-reference, mapping discrepancies (such as land use designation boundaries that differ from property lines when the intent to follow property lines is clear) created by using maps with different and coarse scales, or other similar error contained in the Management Plan that does not change the substantive provisions of the Management Plan.

(2) The Executive Director and Area Manager shall report such changes to the Commission at a regularly noticed meeting. The meeting agenda shall include notice of a report under this section. For such changes, the Commission shall not be required to amend the Management Plan as provided in this division of the Commission's rules, nor seek concurrence by the Secretary of Agriculture.

(3) A correction shall be considered a final action for the purpose of judicial review at the time the Executive Director and Area Manager report the correction to the Commission.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 USC 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0040

Origin of Applications

(1) Any person may request that the Commission initiate a legislative amendment to the Management Plan.

(2) Any person may apply for a quasi-judicial amendment to the Management Plan. All owners of parcels to which the proposal applies shall give written consent to the application.

(3) For the purpose of this division of the Commission Rules, a quasi-judicial amendment shall be one that proposes to change the land use designation, recreation intensity class or landscape setting on one or any clearly identifiable set of parcels that share a similar set of facts, and the change does not establish new policies, or one that proposes to change policy that would apply to one or a small number of clearly identifiable parcels that share a similar set of facts. All other amendments shall be considered a legislative amendment.

(4) The Executive Director shall determine whether the proposal is for a legislative or a quasi-judicial amendment. The Executive Director may make this determination prior to or at the pre-application conference.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0045

Pre-Application Conference Required for Quasi-Judicial Plan Amendment

(1) Prior to submitting any application for a quasi-judicial plan amendment to the Management Plan, an applicant shall attend a pre-application conference with the Executive Director.

(2) The applicant shall submit a statement of the proposed change to the land use designation, landscape setting, or recreation intensity class or policy change and the purpose for which the changes are sought. Proposals for quasi-judicial amendments shall include a list of all parcels to which the proposal applies and the names and addresses of the owners of the parcels. The Executive Director may request the applicant submit additional information about the proposal prior to scheduling a pre-application conference.

(3) The Executive Director shall schedule a pre-application conference after the applicant submits all additional information that the Executive Director requests. The Executive Director shall hold the pre-application conference within a reasonable period of time after receipt of the additional information. The Executive Director shall notify the following persons of the pre-application conference:

(a) The applicant;

(b) For quasi-judicial amendments, the owners of all parcels to which the proposal applies;

(c) Representatives of the USDA Forest Service, the county or counties where the subject parcel or parcels are located, the four Indian Tribes with treaty rights in the National Scenic Area, and appropriate state agencies; and,

(d) Any other person the Executive Director believes may have an interest in the proposal or requests notice of the pre-application conference.

(4) The Commission may charge a fee for holding a pre-application conference. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for pre-application conferences.

(5) The purpose of the pre-application conference is to assist the applicant to complete the Plan Amendment process successfully and expeditiously, identify possible practicable alternatives, identify issues that concern the Commission and other agencies and interested persons, determine what information would be necessary for the Executive Director to review the application, give an estimated schedule for considering the application, and identify possible conditions of approval.

(6) The Executive Director shall issue a pre-application conference report, which shall summarize the discussion at the conference and shall contain a preliminary list of information necessary to review the application. The list of necessary information shall be as comprehensive as reasonably possible, but shall not be exclusive.

(7) The Executive Director may require an applicant to attend a new pre-application conference if the application submitted is materially different from the proposal discussed at the pre-application conference, or conditions in the Scenic Area have materially changed.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 USC 544(c)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0050

Application for Quasi-Judicial Plan Amendments

(1) Applications for quasi-judicial plan amendments shall contain the following:

(a) The land use designation, landscape setting, or recreation intensity class the applicant proposes for the subject parcels;

(b) A statement of the applicant's ultimate development proposal;

(c) An explanation why the proposed change to the land use designation, landscape setting, or recreation intensity class is more appropriate for the parcels than the existing designation, and why the proposed change is necessary to accomplish the applicant's ultimate development proposal;

(d) Information identified at the pre-application conference necessary to demonstrate that the proposed plan amendment complies with the purposes and standards of the Act, the provisions in Section 6(h), and this rule;

(e) The names and addresses of all landowners for parcels that are within 200 feet of the boundaries of all parcels to which the proposal applies;

(f) Other information not identified at the pre-application conference, based on content of information already submitted or changes to the proposal; and

(g) The signature of all owners of the parcels to which the proposal applies, or the owners' representatives.

(2) The Commission may charge a fee for review of quasi-judicial plan amendment applications. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for review of quasi-judicial plan amendment applications.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

350-050-0060

Processing of Applications and Requests

(1) Applications for quasi-judicial amendments shall be reviewed upon receipt and in the order in which they are received, except that the Commission may, as part of its work planning, set a limit on the number of quasi-judicial applications it will process during the biennium and may set its limit at zero. Applications shall be reviewed pursuant to sections 070 through 120 of this division.

(2) The Executive Director shall track requests for legislative amendments. The Commission shall review requested legislative amendments at least once each biennium and determine which, if any, to handle as an application to amend the Management Plan. In determining which legislative amendments to handle, the Commission may consider such factors as: whether the issue has been the subject of appeals, whether the issue has been an implementation problem, whether the issue is a priority of federal, state, local, or tribal governments, and availability of data and resources necessary to analyze the issue. The Commission shall solicit public comment during its work planning concerning legislative amendments to initiate. The decision to initiate a legislative amendment is at the sole discretion of the Commission.

(3) The Executive Director shall process a legislative amendment pursuant to sections 080 through 120 of this division.

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

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2009(Temp), f. & cert. ef. 1-14-09 thru 5-15-09; CRGC 2-2009, f. 3-17-09, cert. ef. 5-1-09; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0070

Acceptance of Quasi-Judicial Plan Amendment Application

(1) The Executive Director shall review the application for completeness and notify the applicant in writing of any deficiencies, and any additional information that is required as provided in 350-050(1)(f).

(2) The Executive Director shall not accept an application as complete until the applicant corrects all deficiencies and submits all additional information noted by the Executive Director.

(3) The applicant shall submit 15 copies of the application after the Executive Director determines the application is complete.

Stat. Auth.: ORS 196.150 & RCW 43.97.015
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0080

Notice of Application for Quasi-Judicial Plan Amendment or Proposal for Legislative Amendment

(1) The Executive Director shall send public notice of a quasi-judicial plan amendment or a proposal for a legislative amendment to the U.S. Forest Service — National Scenic Area Office; appropriate state agencies; all four Indian tribal governments; the six Gorge county planning offices; interested parties who have requested notice; and for quasi-judicial applications, all landowners within 200 feet of the boundaries of all parcels to which the proposal applies. The notice shall specify the due date for comment.

(2) The Executive Director shall publish notice of a quasi-judicial plan amendment application in a newspaper serving the community where the parcels to which the proposal would apply are located. The Executive Director shall publish notice of a legislative plan amendment proposal in one or more local newspapers serving the geographic area(s) that the amendment would affect.

(3) For all plan amendments, the Executive Director shall give electronic notice to all persons that receive electronic notice of commission meetings.

(4) The complete application or proposal shall be available for inspection at the Commission office during normal office hours.

Stat. Auth.: ORS 196.150 & RCW 43.97.015
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0085

Public Comment

(1) Interested persons may submit written comments to the Executive Director within the time specified in the notice. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.

(2) The Commission shall provide copies of the written comments submitted during the comment period to the applicant prior to or with the staff report to enable the applicant to address the comments at the hearing.

Stat. Auth.: ORS 196.150 & RCW 43.97.015
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0090

Report of the Executive Director

(1) The Executive Director shall prepare a staff report, which may include recommendations. The report will analyze the proposed amendment based on the criteria of the Scenic Area Act and Rule 350-50-030.

(2) For legislative amendments, the Executive Director shall include recommended plan amendment language in the staff report.

Stat. Auth.: ORS 196.150 & RCW 43.97.015
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0100

Hearing

(1) The Commission shall conduct a hearing on the proposed plan amendment after the Executive Director issues the report and

there has been a minimum of 30 days for public review of the report.

(2) The Commission shall provide 20 days notice of the hearing to all persons who received the notice of a quasi-judicial plan amendment application, and any person who submitted comment on the application. The notice of the proposed plan amendment may include the notice of hearing.

(3) The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues.

(a) The Executive Director shall present the staff report. The Commission may ask questions concerning the staff report.

(b) The applicant for a quasi-judicial plan amendment shall present the proposed plan amendment.

(c) Interested persons may present oral or written comments.

(d) Following testimony from interested persons, the applicant shall have the opportunity to respond to the comments presented.

(e) After all presentations are complete, the Chair shall close the public hearing, and the Commission shall deliberate and vote on the proposed plan amendment.

(f) The Commission may attach conditions of approval necessary to ensure the proposed plan amendment complies with the criteria for approval.

(g) The Commission shall determine if the amendment as approved is mandatory for counties to adopt into their land use ordinances. Unless otherwise specified by the Commission, amendments to county land use ordinances shall follow the procedures established in Sections 7 and 8 of the Scenic Area Act (16 U.S.C. §§ 544e and 544f).

Stat. Auth.: ORS 196.150 & RCW 43.97.015
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0120

Review by the Secretary of Agriculture

In accord with Sections 6(f) and 6(h) of the Scenic Area Act, an amendment to the Management Plan adopted by the Commission shall be submitted to the Secretary of Agriculture. The Secretary of Agriculture will review the amendment and determine if it is consistent with the purposes and standards of the Scenic Area Act. The Secretary has 90 days from the day the Commission submits an amendment to complete review and make a determination of concurrence or non-concurrence.

Stat. Auth.: ORS 196.150 & RCW 43.97.015
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99

DIVISION 60

APPEALS FROM COUNTY ORDINANCES

350-060-0000

Purpose

The purpose of this division is to define the process and standards used by the Columbia River Gorge Commission in hearing appeals from decisions relating to the implementation of the Columbia River Gorge National Scenic Area Act ("National Scenic Act" or "Act"). The rule applies to appeals from decisions under a county ordinance consistent with the Act.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94

350-060-0010

Authority

The National Scenic Act authorizes appeals to the Gorge Commission by a person or entity adversely affected by a final action or order of a county.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94

350-060-0020

Scope

Scope of Rules: All proceedings commenced by Notice of Appeal shall be governed by these rules. Where this division is silent, divisions 11, 12, 14, and 16 of the Commission's rules shall be applicable provided that the specific provisions are applied in a manner that does not conflict with the provisions of this division.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544(b) et seq. 16, U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

350-060-0030

Application

These rules are intended to promote the efficient review of land use decisions in accordance with the National Scenic Act while affording all interested persons reasonable notice and opportunity to intervene, reasonable time to prepare and submit their cases, and a full and fair hearing. The rules shall be interpreted to carry out these objectives and to promote justice.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94

350-060-0040

Definitions

In these rules, unless the context or subject matter requires otherwise:

(1) "Applicant" means the person who requested that the governing body take an action which resulted in a land use decision.

(2) "Commission" means the Columbia River Gorge Commission.

(3) "Counties" means Multnomah, Hood River and Wasco counties, Oregon; and Clark, Skamania and Klickitat counties, Washington.

(4) "Days" means calendar days.

(5) "File" means to deliver to Commission offices by personal delivery, U.S. Postal mail, or email. Unless otherwise specified, a document shall be considered filed on the date that it is personally delivered, mailed or emailed. A document that is emailed prior to midnight on the due date shall be considered filed on that due date.

(6) "Final decision": A decision is final when it is reduced to writing and bears the necessary signatures of the governing body decisionmaker(s).

(7) "Governing body" means a county governing body.

(8) "Land use decision" means a final decision by the governing body of a county in the National Scenic Area based on the National Scenic Act.

(9) "Notice" means the Notice of Appeal and refers to the document that must be filed with the Commission in order to begin an appeal.

(10) "Party" means the appellant, the governing body, the applicant (if different than the appellant), and any intervenor.

(11) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the Commission. A person shall include the Executive Director of the Gorge Commission in his or her official capacity.

(12) "Serve" or "Service" means to send with the United States Postal Service by first class mail or to deliver in person, or to send by email, a copy of the original to all parties, including intervenors and persons who have a pending motion to intervene before the Commission. All documents served on the other parties shall include a certification that the document was served on the same date that the document was filed. (**Exhibit 4**).

[ED NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0042

Delegation of Authority to the Chair of the Commission

(1) Where these rules refer to the Chair of the Commission, the Commission has delegated authority to the Chair or presiding officer designated by the Chair to act on those matters for the Commission, including but not limited to, procedural orders on behalf of the Commission relating to case setting, requests for intervention, preliminary motions, motions to dismiss, and other procedural matters. The Chair of the Commission may also act on other matters specified for Commission action when the context indicates action by the Chair of the Commission or when action by the full Commission would be impracticable.

(2) The Chair of the Commission shall decide matters without oral argument, unless the Chair desires an oral hearing. The decision of the Chair of the Commission or presiding officer pursuant to this authority shall be final and not reviewable by the full Commission. The Chair of the Commission may also choose, at his or her sole discretion, to bring a matter to the full Commission for decision.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0045

Time

(1) Computation: In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated time period begins to run shall not be included and the last day of the time period shall be included.

(2) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period of time after service of a document, and the service of the document is by mail, three (3) days shall be added to the prescribed time period. This does not apply to documents mailed when filing and service is accomplished by email.

(3) When a deadline for accomplishing some act under these rules falls on a weekend or legal holiday, the deadline shall be the next business day, and all following deadlines shall be calculated from that deadline. A legal holiday shall be any day in which the United States Postal Service does not deliver mail, or when the Gorge Commission is closed for business.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0047

Electronic Filing and Service

(1) The Commission allows filing of all documents by electronic mail (email) to the Commission's Office. All documents shall be emailed to crgc@gorgecommission.org, and shall have a subject heading that clearly identifies the email as filing a document and that clearly identifies the appeal by caption and/or appeal number. The Commission allows email filing even if a party opts out of email service. A party need not file a document by mail if that party has already filed the document by email.

(2) All documents may be served by email to parties and persons that do not opt out of email service (see rules below for Notice of Appeal and Notice of Appearance). Parties filing a Notice of Appeal are encouraged to communicate with parties and persons who are entitled to receive a copy of the Notice of Appeal about electronic service of the Notice of Appeal.

(3) The preferred format for filed and served documents shall be a searchable portable document format (.pdf). Color originals available electronically, or easily able to be scanned in color shall be filed and served in color. Requirements for color covers or fastening of documents shall not apply to documents filed or served by email.

(4) The Commission understands that parties' and persons' computers and internet service may display times that vary by

several minutes, and have different technological capabilities. Parties and persons filing and serving documents by email should communicate with each other to ensure that the documents can be received and read. The Commission will apply the rules in this chapter in the interest of promoting full participation in an appeal, resolving the appeal in an expeditious manner, and to promote justice in disputes concerning email filing and service such as whether a document was timely filed; timely served; should have been filed or served by email; whether and when the document was received; and whether the document was sent in a readable format. In resolving disputes over electronic service, the Commission will consider whether the parties made good faith efforts to communicate about electronic mail service and whether parties attempted to resolve the dispute without involving the Commission.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0050

Notice of Appeal

(1) Filing: Except as provided in 350-060-0240 below, an appellant shall file a Notice of Appeal at the Commission office on or before the 30th day after the date the decision sought to be appealed becomes final. Except as provided in 350-060-0240 below, a Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Appeal: The Notice of Appeal shall be served on the governing body, the governing body's legal counsel, the applicant, the applicant's legal counsel, and all persons identified in the Notice as required by subsection (3)(h) of this rule on or before the date the Notice of Appeal is filed.

(3) Contents of Notice of Appeal: The Notice of Appeal shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as appellant(s); the name of the governing body, identifying the governing body as respondent; and if the appellant is not the applicant, the name of the applicant, identifying the applicant as respondent;

(b) Adjacent to the caption the heading "Notice of Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the decision to be reviewed;

(f) A brief "ADR Statement" stating whether the appellant is willing to attempt to resolve the case through alternative dispute resolution ("ADR"), including but not limited to mediation. This statement shall not be used to argue the merits of the appeal.

(g) A statement whether the appellant is willing to consider a shortened record in accordance with 350-060-0060(f).

(h) The name, address, email address, and telephone number of each of the following:

(A) The Appellant. If the appellant is not represented by an attorney, the appellant's name, address, email address, and telephone number shall be included. If an attorney represents the appellant, the attorney's name, address, email address, and telephone number shall be substituted for that of the appellant.

(B) The governing body and the governing body's legal counsel;

(C) The applicant, if any (and if other than the appellant). If an applicant was represented by an attorney before the governing body, the applicant's contact information may be omitted and the name and contact information of the applicant's attorney shall be included;

(D) Any other person to whom written notice of the land use decision was mailed as shown on the governing body's records. The telephone number and email address may be omitted for any such person.

(i) A statement advising all persons other than the governing body and applicant, that in order to participate in the review proceeding a person must file at the Commission office and serve a motion to intervene pursuant to 350-060-0160.

(j) A statement advising all persons other than the governing body and applicant, that in order to present oral argument at the hearing before the Commission, a person must intervene and file a brief pursuant to 350-060-0120(1).

(k) A statement informing all parties and persons whether the party filing the Notice of Appeal opts out of email service, and a statement informing parties and persons that service of documents may be by email unless a party or person expressly opts out of receiving documents by email.

(l) Proof of service upon all persons required to be named in the Notice. See **Exhibit 1**.

(4) Filing Fee and Deposit for Costs: The Columbia River Gorge Commission may charge a filing fee and deposit. Filing fees and deposits, if any, shall be set by the Gorge Commission's Executive Director and shall not exceed the average cost to the Commission of handling appeals under this rule.

[ED NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0055

Respondents' Notice of Appearance

Within 14 days after filing of a Notice of Appeal, a respondent shall file at the Commission office and serve a "Notice of Appearance" stating whether the respondent is willing to attempt to resolve the case through alternative dispute resolution means, and whether the respondent opts out of email service of all documents. Note that the respondent must affirmatively opt out of email service. This Notice of Appearance shall not be used to argue merits of the appeal.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0060

Record

(1) Contents of Record: The record on appeal from a governing body shall include the following:

(a) The final decision including findings of fact and conclusions of law;

(b) All testimony and all exhibits, maps, documents or other written materials included as part of the record during the course of the governing body's proceeding.

(c) Photos, maps, and exhibits that were presented to the governing body in color shall be provided to the Commission in color in the original or certified copy of the record;

(d) Minutes of the meetings conducted by the governing body as required by law. A verbatim transcript of audiotape recordings shall not be required, but if a transcript has been prepared, it shall be included.

(e) The governing body may retain the audiotape recording, any large maps, or exhibits and documents which are difficult to duplicate, until the date of oral argument. The governing body shall make these items reasonably available for inspection and duplication by the parties during the pendency of the appeal, and shall specify in its filing of the record the available times and procedure for reviewing for these items.

(f) The Gorge Commission encourages parties to stipulate to a shortened record.

(A) A shortened record may eliminate duplicates of documents, letters that do not include substantive information, documents related to issues that are not being appealed, or other documents that the parties do not believe are necessary for the Gorge Commission to decide the issues raised in the appeal.

(B) Notwithstanding subsection (2)(A) above, a shortened record shall include the documents referred to in subsections (1)(a) and (d) above, and any document submitted in a shortened record shall comply with subsection (1)(c) and (e) above.

(C) A shortened record may be submitted only as agreed upon by all parties. The record shall contain any document that one or more parties desires to include in the record.

(D) Any party that desires to refer to a document that was eliminated by agreement of the parties in a shortened record may at any time file at the Commission office and serve a motion to supplement the record with that document, and shall include the document as part of its motion. A motion to supplement the record under this section shall comply with 350-060-0130.

(E) The shortened record shall be considered the complete record before the Gorge Commission for the purpose of any judicial review of the Gorge Commission's decision.

(2) Filing of Record: Within 30 days after the Notice of Appeal is filed, the governing body shall file at the Commission office a certified paper copy or an electronic copy of the record of the proceeding under review. Approximately 30 days prior to the date of oral argument, the Commission will contact the governing body and request paper copies of the record, which the governing body shall provide to the Commission office no later than 14 days prior to the date of oral argument. The number of paper copies of the record will depend on the number of members of the Gorge Commission that request a paper copy.

(3) Service of Record: Contemporaneously with filing the record at the Commission office, the governing body shall serve a copy of the record, exclusive of audiotape recordings, large maps and other exhibits and documents that are difficult to duplicate, on the appellant, the applicant, and all other parties, including intervenors. If intervention is granted after the record is filed and served, then the governing body shall serve a copy of record as soon as possible after intervention is granted. The governing body may provide the record to parties in an electronic form.

(4) Specifications of Record:

(a) The record shall:

(A) Include a cover bearing the title of the case as it appears in the Notice, and the Commission's numerical designation for the case, and shall indicate the numerical designation given the land use decision by the governing body;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see Exhibit 2), and listing each audiotape recording, large map or other exhibit or document retained by the governing body;

(C) Be securely fastened;

(D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item on top.

(F) Indicate whether it is a shortened record. The governing body is not required to indicate documents that were excluded by stipulation of all parties to produce the shortened record.

(b) A record which does not conform to the preceding requirements shall not be accepted by the Commission.

[ED NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0070

Objections to the Record

(1) Before filing an objection to the record, a party shall attempt to resolve the matter with the governing body.

(2) An objection to the record shall be filed at the Commission office and served within 10 days following service of the record on the party filing the objection. The party filing the objection to the record shall certify that the objection is made in good faith, that the objection is material, that the objection was not made for the purpose of delay, and that he or she has contacted the governing body and attempted to resolve the objection. Objections may be made on the following grounds:

(a) The record does not include all materials included as part of the record during the proceedings before the governing body.

The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.

(b) The record contains material not included as part of the record during the proceedings before the governing body. The item(s) not included as part of the record during the proceedings before the governing body shall be specified, as well as the basis for the claim that the item(s) are not part of the record.

(c) The minutes do not accurately reflect the proceedings, or the transcripts of the meetings or hearings are incomplete.

(3) An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Chair of the Commission shall require the governing body to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding contested minutes is in an audiotape recording, a transcript of the relevant portion shall be submitted.

(4) The Chair of the Commission may conduct a telephone conference with the parties to consider any objections to the record.

(5) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Chair of the Commission shall issue a letter or order declaring the record settled and setting forth the schedule for subsequent events. Unless otherwise provided by the Chair of the Commission, the date of the Chair's letter or order shall be deemed the date that the record is settled for purposes of computing subsequent time limits. A letter or an order of the Chair settling the record is not appealable to the full Commission.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0075

Alternative Dispute Resolution and Settlement

The Commission recognizes that: many of the matters that come before the Commission on appeal may be resolved through alternative dispute resolution (ADR), such as mediation; ADR may be a faster and less expensive process than appeal pursuant to these rules and beyond to the states' courts; agreements reached through ADR may be more lasting and acceptable to the parties than a decision on the merits by the Commission or the states' courts; and, ADR is a voluntary process.

(1) The Executive Director of the Commission shall review the parties' ADR statements as soon as practicable.

(2) If, after reviewing the parties' ADR statements, the Executive Director believes that ADR may be successful in resolving or partially resolving the matter, then the Director shall send a letter to the parties and offer assistance to the parties to obtain information about ADR or to identify possible ADR neutrals, specifically the states' and other government-funded dispute resolution programs, community mediation programs, or other qualified neutrals; however, the Commission shall not be required to pay the cost of ADR. This subsection shall not be construed to prevent the parties from requesting the Commission's assistance to resolve the matter through settlement or ADR at any time, or to limit the Commission's authority to recommend to the parties that they attempt to resolve the matter through ADR.

(3) Upon motion, the Chair of the Commission shall place the appeal in abeyance or shall grant all necessary extensions of time to facilitate the parties' attempts to resolve the matter through settlement or ADR. Should settlement or ADR be unsuccessful, any party may file a motion to reinstate the matter and reset the applicable time periods.

(4) Any oral discussion, written documents, or other record produced exclusively for the purpose of settlement or ADR, whether or not pursuant to this section, shall be confidential and not part of the record on appeal from the governing body (to the

Gorge Commission) nor part of the Gorge Commission's record to any reviewing court.

(5) The Commission shall not consider, as a basis for any decision pursuant to this division, a party's decision to not participate in settlement or ADR, or knowledge that the matter was not resolved through settlement or ADR.

(6) Settlement:

(a) If a settlement changes the proposed development or any conditions of approval, the governing body shall provide notice of the changes to all persons entitled to receive notice of the original application. If the changes are substantial, then the governing body shall conduct a complete review of the changes in the same manner as if the settlement was a new land use application.

(b) When an appeal, or any issue in an appeal, is settled by the parties, the Commission shall not be required to review the settlement as a condition of the settlement. The Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

(c) Upon settlement of a case, the appellant shall dismiss the appeal in accordance with 350-060-0205.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

350-060-0080

Appellant's Brief

(1) Filing and Service of Brief: The Appellant's Brief shall be filed at the Commission office and served no later than 30 days after the record is filed, or settled if a party files an objection to the record. Failure to file an Appellant's Brief within the time required by this section shall result in dismissal of the appeal.

(2) Specifications of Brief: The Appellant's Brief shall

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer brief is given by the Chair of the Commission. If a brief exceeding the 50 page limit is filed without permission, the Chair of the Commission shall notify the author and order a time period in which to submit a revised brief satisfying the 50 page limit.

(c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by attorney. If a party is represented by an attorney, the name, address and telephone number of the attorney shall be substituted for the party. An intervenor shall be designated as either appellant or respondent.

(d) If there is more than one appellant, the cover page shall specify the appellant(s) filing the brief.

(e) Be typewritten, in 14-point type in a regularly used font such as Times New Roman, Helvetica, or Calibri, and double spaced;

(f) Be signed on the last page by the author. An electronic brief may contain an electronic signature or other generally accepted substitute.

(3) Contents of Brief: The Appellant's Brief shall

(a) State the facts that establish appellant's standing;

(b) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The nature of the land use decision and the relief sought by the appellant;

(B) A summary of the arguments appearing under the assignments of error in the body of the brief;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found.

(c) State why the challenged decision is a land use decision subject to the Commission's jurisdiction;

(d) Set forth each assignment of error under a separate heading. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;

(e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law;

(f) Contain a copy of any management plan provisions, comprehensive plan provision, ordinance or other provision of local law cited in the brief, unless the provision is quoted verbatim in the brief.

(4) Copies of example Appellant's briefs are available at the Commission office for parties to review for form.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0090

Special Review

(1) Where the appellant contends the land use decision eliminates all economic or beneficial use of the property, the appellant must meet the requirements for the Appellant's Brief in Rule 350-060-0080 and the requirements for Special Review as follows:

(a) Set out the pertinent portions of the ordinance that apply;

(b) Describe how the ordinance impacts the use of the property;

(c) Attach copies of any documents (maps, deeds, easements, etc.) that are relevant; and

(d) Explain why the requested use must be allowed to provide economic or beneficial use of the property.

(2) All other parties shall have the opportunity to specifically respond to the appellant's submittal under this section in their briefs and the Executive Director or his or her designee shall also respond.

(3) The Commission, in its "Final Opinion and Order," shall:

(a) Address the subject of economic or beneficial use in its findings of fact and conclusions.

(b) Specify the factual and/or legal principles relied on in support of the decision.

(c) Where appropriate, propose options for use for the property owner, or other options available to the appellant consistent with the ordinance.

(d) Where the Commission finds that enforcement of the land use ordinance will deprive the landowner of all economic or beneficial use of the property, the Commission shall remand the matter to the county for the county to allow a use as provided for by the order of the Commission. The economic or beneficial use allowed shall be the use that on balance best protects the affected resources. This section applies:

(A) If the Forest Service or the federal government does not provide just compensation for a Special Management Area designation it made; or

(B) For a General Management Area designation made by the Gorge Commission.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

350-060-0100

Respondent's Brief

(1) Filing and Service of Brief: Respondents shall file at the Commission office and serve a Respondent's brief no later than 20 days after the date the Appellant's Brief is filed.

(2) Specifications of Brief: The Respondent's brief shall conform to the specifications of the Appellant's Brief, except that the brief shall have a red cover. If there is more than one respondent, the cover page shall specify which respondent is filing the brief.

(3) Contents of Brief:

(a) The Respondent's brief shall follow the form prescribed for the Appellant's Brief. The respondent shall specifically accept the appellant's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters. The statement shall be in narrative form with

citations to the pages of the record where support for the facts alleged can be found.

(b) The Respondent shall accept or challenge the appellant's statement of the Commission's jurisdiction and the appellant's statement of standing. The basis for any challenge shall be stated. If the respondent contends that the facts alleged by the appellant in support of standing are not true, the respondent shall specify which allegations are contested.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16

U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03,

cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0110

Reply Brief

A reply brief may not be filed.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2011, f. 3-23-11,

cert. ef. 5-1-11

350-060-0120

Oral Argument

(1) The hearing before the Commission shall be on the record submitted by the county, as long as the county has based its decision upon a record made at an adjudicative hearing open to participation by persons adversely affected or aggrieved. Only parties who have submitted briefs shall be allowed to present oral argument to the Commission.

(2) If the county did not base its decision upon a record made in an adjudicated hearing open to participation by persons adversely affected or aggrieved, then anyone adversely affected or aggrieved may participate in a hearing before the Commission.

(3) If a party waives the right to present oral argument, the Commission shall consider the case based on that party's brief and the brief and oral arguments presented by other parties. The parties may, with consent of the Commission, stipulate to submit a case to the Commission on briefs without oral argument.

(4) The Commission shall inform the parties of the time and place of oral argument. Unless the Commission otherwise orders, the procedure for oral argument shall be as follows:

(a) Members of the Commission shall have an opportunity to ask questions that they wish the parties to address in their oral arguments.

(b) The appellant(s) shall be allowed 20 minutes for oral argument, which may be divided between the initial presentation and rebuttal, and which shall be uninterrupted by questions asked by members of the Commission. Multiple appellants shall share the twenty minutes for argument.

(c) The respondent(s) shall be allowed 20 minutes to respond, which shall be uninterrupted by questions asked by members of the Commission. Multiple respondents shall share the twenty minutes for argument.

(d) After the parties' uninterrupted arguments, members of the Commission may ask brief questions of the parties concerning the facts of the case, the arguments made, and applicable law. Appellant(s) and respondent(s) shall each have 2 minutes to answer each question, except that the Chair may allow a longer time provided that both sides are afforded the same time to answer the question. Multiple petitioners or respondents shall share the allotted time to answer a question.

(5) The Commission shall audio record all arguments, but any party may also arrange at its own expense to record the argument in a manner that does not delay or disrupt the proceeding.

(6) The governing body shall ensure that all audio recordings, large maps, or exhibits and documents, which were not included in the duplicated record pursuant to 350-060-0060(1)(d), are present at the oral argument, even if the governing body chooses not to participate in oral argument. All other parties are encouraged to remind the governing body of this requirement. The governing body shall transmit such items to the Commission at the beginning of the hearing. The Commission shall have broad authority to redress a governing body's failure to transmit such items, including but not limited to, postponing the hearing, exclusion of the item from the record before the Commission, or judicial notice of the contents of the record.

(7) The Commission may consult with its staff and counsel regarding facts, legal analysis, issues and matters in the appeal. The Commission may allow, but shall not be required to allow the parties to respond to the staff and counsel's statements to the Commission.

(8) The Commission's rules concerning ex parte contact and appearance of fairness, Commission Rules 350-16-016 and 350-16-017 shall apply.

(9) The Commission shall send a Notice of Hearing in accordance with Commission Rule 350-16, which shall also include a summary of the requirements and procedures for oral argument in this section.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0130

Motions, Generally and Procedural Orders

(1) Any party may submit a motion for action by the Chair of the Commission. For matters not otherwise specified by this division, the Chair of the Commission and all parties shall observe the following procedures for submittal and disposition of motions.

(2) A motion shall be filed at the Commission office by mail, email, or personal delivery.

(3) All contested motions shall be filed not less than 21 days prior to the date of the hearing before the Commission, except for good cause. A party seeking to file a motion less than 21 days prior to the hearing shall consult with all parties about the motion and present with the motion, an agreed schedule for responses. The schedule shall leave no less than 7 days prior to the hearing for the Chair of the Commission to issue an order, unless the Chair of the Commission consents to a shorter period.

(4) The movant shall serve a copy of the motion on all of the parties at the same time that the motion is filed and in the same manner as the motion was filed.

(5) Unless otherwise ordered by the Chair of the Commission, any party has 10 days to file a response to a motion, except that no response shall be filed for uncontested motions. The responding party shall serve a copy of the response on all of the parties at the same time that the response is filed and in the same manner that the response was filed. No party may file a reply to the response(s).

(6) Any motion or response to a motion that does not conform to this subsection shall be rejected.

(7) The Chair of the Commission may provide the parties with a copy of an order on a motion by electronic mail to parties that have not opted out of email service.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0150

Evidentiary Hearings

(1) Grounds for Hearing: The Commission may, upon written motion, conduct an evidentiary hearing in the case of disputed allegations in the parties' briefs concerning standing, ex parte contacts or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. An evidentiary hearing may also be held upon motion or at the direction of the Commission to consider disputes regarding the content of the record or requests for stays.

(2) Motions for Hearings: A motion for an evidentiary hearing shall be filed at the Commission office and served on all parties at least 60 days in advance of oral argument, or less upon a demonstration of good cause. The motion shall contain a statement explaining with particularity what facts the moving party will present at the hearing and how those facts will affect the outcome of the review proceeding. Whenever possible such facts shall be presented by affidavit with the motion.

(3) Conduct of hearing:

(a) Insofar as the Commission finds it practical, the hearing shall be conducted in the following order:

(A) The moving party shall present its evidence including that of any witnesses;

(B) The other party(ies) shall have the opportunity to present evidence disputing that of the moving party;

(C) The moving party shall present rebuttal evidence;

(b) Any witness is subject to cross examination by opposing parties;

(c) Any member of the Commission may question any witness;

(d) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;

(e) The Commission may continue a hearing, and may set time limits for any hearing;

(f) Exhibits shall be marked to identify the party offering the exhibits. The exhibits shall be preserved by the Commission as part of the record.

(4) Evidentiary Rules:

(a) Evidence of a type commonly relied upon reasonably prudent person in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All evidence not objected to, shall be received by the Commission, subject to the Commission's power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the Commission. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.

(5) Prehearing Conference: The Commission, on its own motion or at the request of any party, may call a prehearing conference to consider:

(a) Simplification of the issues;

(b) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

(c) Limitation of the number of witnesses;

(d) The form and substance of any prehearing order;

(e) Such other matters as may aid in the disposition of the appeal.

(6) Proposed Prehearing Order: The Commission with or without a prehearing conference, may require that the parties prepare and sign a proposed prehearing order to be filed with the Commission on or before a date specified by the Commission. The order shall contain:

(a) A statement of contentions of law of each party;

(b) A concise statement of all contentions of fact to be proved by each party;

(c) A statement of all agreed facts;

(d) A list of witnesses and a summary of their testimony;

(e) A list of exhibits and a statement of the contents of each;

(f) Such other matters as the Commission may require in order to expedite the hearing and appeal.

(7) Effect on Time Limits: The filing of a motion for evidentiary hearing shall suspend the time limits for all other events in the review proceedings, including the issuance of the Commission's final order. If the Commission grants an evidentiary hearing, the time limits for other events shall remain suspended until the close of the hearing. Unless the parties agree otherwise, the Commission shall schedule any evidentiary hearing after the order granting the motion for evidentiary hearing is issued. If the Commission denies a motion for an evidentiary hearing, the time for all other events will begin to run on the date the Commission issues its order denying the motion, or on such other date as is specified in that order.

(8) Depositions: On petition of any party at least 14 days before an evidentiary hearing, the Commission may order testimony of any witness to be taken by deposition in the same manner prescribed for depositions in civil actions. Depositions may also be taken by the use of audio or audio visual recordings. The petition for deposition shall set forth:

(a) The name and address of the witness whose testimony is desired;

(b) A showing of relevance and materiality of the testimony;

(c) A request for an order that the testimony of the witness be taken.

(9) Subpoenas: If the Commission orders an evidentiary hearing, the Commission shall issue subpoenas to any party to the appeal upon written request and upon a showing that the witness or the documents to be subpoenaed will provide relevant evidence. Subpoenas may also be issued under the signature of the attorney of record of a party. Witnesses appearing pursuant to subpoena, other than parties or employees of the Commission, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

350-060-0160

Intervention

(1) Standing to Intervene: Any person who appeared before the county may intervene in a review proceeding before the Commission. An intervenor shall be entitled to receipt of all matters requiring service upon the parties beginning on the date the motion to intervene is filed, regardless of whether an objection is filed.

(2) If the county review process is not open to persons adversely affected or aggrieved, any person adversely affected or aggrieved may intervene in a review proceeding before the Commission.

(3) Motion to Intervene: In the interests of promoting timely resolution of appeals, a motion to intervene shall be filed at the Commission office and served within 14 days after the Notice of Appeal is filed. The motion shall be served on all parties to the appeal and, if known, any person who has submitted a motion to intervene as of the date of the motion; the motion need not be served on all persons that the appellant served with the Notice of Hearing. The motion to intervene (exhibit 3) shall:

(a) State whether the party is intervening on the side of the appellant or the respondent;

(b) State the facts which show the party is entitled to intervene, supporting the statement with affidavits, citations to the record or other proof;

(c) Include a brief "Intervenor's ADR Statement" stating whether the proposed intervenor is willing to attempt to resolve the case through alternative dispute resolution means. This statement shall not be used to argue merits of the appeal;

(d) Include a brief statement about whether the proposed intervenor is willing to consider a shortened record in accordance with 350-060-0060(f); and

(e) If applicable, a statement opting out of email service (note that a party must affirmatively opt out of email service).

(4) Objections to a motion to intervene shall be filed and served within 7 days of the motion.

(5) The intervenor shall be entitled to participate in developing the record, including shortening the record and filing objections to the record.

(6) The Chair of the Commission may conduct a telephone conference with the parties to consider an objection to a motion to intervene.

(7) The Chair of the Commission shall issue a written decision on the motion to intervene, which shall be served on all the parties. The Chair of the Commission shall not consider the ADR statement for the purpose of deciding whether to grant the motion to intervene.

(8) Intervenor's Brief:

(a) If intervention is sought as an appellant, the brief shall be filed and served within the time limit for filing the Appellant's Brief, and shall satisfy the requirements for the Appellant's Brief in 350-060-0080.

(b) If intervention is sought as a respondent, the brief shall be filed and served within the time for filing a respondent's brief and shall satisfy the requirements for a respondent's brief in 350-060-0100.

[ED NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0170

Amicus Participation

(1) A person or organization may appear as amicus only by permission of the Commission on written motion. The motion shall set forth the specific interest of the movant and state reasons why a review of relevant issues would be significantly aided by participa-

tion of the amicus. A copy of the motion shall be served on all parties to the proceeding. The motion may include a statement that the amicus party opts out of email service. The Chair of the Commission shall decide motions for amicus participation.

(2) Appearance as amicus shall be by brief only, unless the Commission specifically requests oral argument. An amicus brief shall be subject to the same rules as those governing briefs of parties to the appeal and shall be filed and served within the time required for filing respondent's brief. An amicus brief shall be submitted at the time the respondent's brief is due unless a later date is authorized by the Chair of the Commission. No filing fee is required. An amicus brief shall have a green cover.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0180

Consolidation

The Chair of the Commission, at the request of any party or on its own motion, may consolidate two or more proceedings, provided the proceedings seek review of the same or closely related land use decision(s).

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

350-060-0190

Extensions of Time

(1) In no event shall the time limit for the filing of the Notice of Appeal be extended.

(2) All other time limits may be extended upon written consent of all parties, the Commission's motion or motion of a party.

(3) A motion for extension of time shall state the reasons for granting the extension and must be filed and served within the time required for performance of the act for which an extension of time is requested.

(4) A first motion for extension of time for any act, which requests an extension for no greater than 30 days and is stipulated to by all parties, shall be presumed granted on the date that the motion is filed. The Chair of the Commission shall confirm the extension to the parties.

(5) Any other motion for extension of time that is stipulated to by all parties shall be presumed granted for a period of 14 days, or until the Chair issues an order, whichever is earlier. The Chair of the Commission shall issue an order granting or denying the extension, and may modify the request.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0200

Stays

(1) A motion for a stay of a land use decision shall include:

(a) A statement setting forth movant's right to standing to appeal the decision;

(b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;

(c) A statement of facts and reasons for issuing a stay, demonstrating a claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;

(d) A suggested expedited briefing schedule;

(e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

(2) Unless otherwise ordered by the Chair of the Commission, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any

adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(3) The Chair of the Commission shall base a decision on the stay, including the right to a stay, or conditions of any stay order, upon evidence presented. Evidence may be attached to the motion in the form of affidavits, documents or other materials, or presented at an evidentiary hearing which may be convened at the discretion of the Chair of the Commission and follow the process in 350-060-0150.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2).

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0205

Dismissal by the Commission

(1) Voluntary dismissal: The Chair of the Commission shall dismiss an appeal upon motion by the Appellant filed or expressed orally to the Commission prior to an oral decision. The dismissal shall be considered with prejudice and shall be effective on the date it is filed or expressed orally to the Commission.

(2) Involuntary Dismissal: The Chair of the Commission may dismiss an appeal upon or without motion by any other party when it appears to the Chair that the Appellant and all intervenors on the side of the Appellant have failed to prosecute the appeal diligently; when the appeal is moot, or any other situation in which continuing the case would be manifestly unjust to the responding parties. The Chair of the Commission shall send a Notice of Intent to Dismiss stating the facts and reason for dismissal. The parties shall have 10 days to respond to the notice, unless the Notice of Intent to Dismiss specifies a longer time.

(3) The Chair of the Commission shall issue and serve on the parties an order of dismissal, which shall be an appealable action of the Commission.

(4) When an appeal is dismissed, the Commission shall make no decision on the merits of the appeal. In the event that the parties have entered into any settlement agreement concerning the issues raised in the appeal, the Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0210

Final Order of Commission

(1) An Order of the Commission shall:

(a) Contain the caption of the appeal and state "Final Opinion and Order";

(b) Acknowledge the record and other documents that were present before the Commission, and findings of fact and conclusions of law and/or an incorporation of findings and conclusions from the record below.

(c) Address the Special Review under Rule 350-060-0090, where applicable.

(d) Indicate whether the decision being reviewed is dismissed, affirmed, reversed or remanded;

(e) Contain the date of the final order;

(f) Contain a statement of the right to appeal the Commission's Order in the following or substantially similar form, "NOTICE: You are entitled to judicial review of this order within 60 days of the date of this order, pursuant to section 15(b)(4) of the Scenic Area Act, P.L. 99-663."; and

(g) Be signed by the Chair of the Commission, or his/her delegate.

(2) The final order shall be served on all parties. The parties are not afforded an opportunity to comment on the order before it is made final by the Commission.

(3) When an order of the Commission becomes final it shall be made available to interested members of the public. The Com-

mission may charge a reasonable fee for copies of its final orders or other orders furnished to members of the public.

(4) No dissenting opinions by members of the Commission are allowed.

(5) For the purpose of calculating the time for judicial review of the Commission's order, the date of the order shall be the date the order is served on the parties even if that date is later than the date that the order is signed.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0220

Reversal or Remand of Land Use Decisions

(1) The Commission shall reverse or remand a land use decision for further proceedings when:

(a) The governing body exceeded its jurisdiction;

(b) The decision is unconstitutional;

(c) The decision violates a provision of applicable law and is prohibited as a matter of law; or

(d) The decision was clearly erroneous or arbitrary and capricious.

(e) The findings are insufficient to support the decision;

(f) The decision is not supported by substantial evidence in the whole record;

(g) The decision is flawed by procedural errors that prejudice the substantial rights of the appellant(s);

(h) The decision improperly construes the applicable law; or

(i) A remand is required pursuant to 350-060-0090(3)(d).

(2) The Chair of the Commission may grant a stipulated motion for a voluntary remand of a land use decision, or may order a remand upon motion by the governing body upon finding that all of the following criteria are met. When the Chair orders a remand pursuant to this section, it shall remand back to the last local decision maker that issued the appealed decision.

(a) The governing body shall either rescind the land use decision that is the subject of the appeal or provide that any new or modified land use decision shall supercede the remanded decision;

(b) The governing body shall not be required to issue a subsequent land use decision, but if it does, then it shall agree to address all of the issues raised in the appeal in that subsequent land use decision.

(c) The governing body shall follow all applicable notice and review procedures in modifying the remanded decision or issuing a new land use decision.

(d) An oral decision of the Commission has not been rendered in the matter.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

350-060-0230

Reconsideration

Reconsideration is only permitted as follows:

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested and serving it on the Gorge Commission and all parties to the appeal.

(a) No petition for reconsideration may stay the effectiveness of an order.

(b) If a petition for reconsideration is timely filed, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within thirty days from the date the petition is filed, the agency does not either:

(A) Dispose of the petition; or

(B) Serve the parties with a written notice specifying the date by which it will act on the petition.

(2) Any party to the appeal may file a response within ten days of service of the petition.

(3) The following factors must be present for reconsideration:

(a) An error has been made in the decision; and

(b) New information is now available concerning the error which through due diligence could not have been acquired earlier.

(4) Unless the petition for reconsideration is deemed denied under subsection (a) above, the petition shall be disposed of by the Commissioners who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further consideration without oral argument. Granting the petition for reconsideration shall require approval of two-thirds of the Commissioners who made the original decision. Once granted, subsequent dissolution or modification of the original decision/order requires a majority of the Commissioners who made the original decision.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (b) of this section is not subject to judicial review.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94

350-060-0240

Special Rules for Filing of Appeal After Expiration of Appeal Period

(1) This section is intended to prevent manifest injustice that would result by a local government's failure to comply with all procedural requirements such that an interested person was unable to meaningfully participate in a land use decision process. This section shall not be used to redress problems that may be redressed through a county or Gorge Commission enforcement action, whether or not any enforcement action is actually undertaken.

(2) If the local government approves a development that is materially different from the proposal described in the notice of development to such a degree that a reasonable person could not have understood the notice of development to describe the local government's final actions, then an adversely affected person may file an appeal of the decision within 30 days of actual notice of the decision.

(3) If the development constructed is materially different from the development allowed in the local government's decision to such a degree that a reasonable person could not have understood the decision to allow the actual development constructed, then an adversely affected person may file an appeal within 30 days after actual notice of the material difference, or within 30 days after the person reasonably should have known about the material difference, whichever is sooner.

(4) If the local government fails to provide notice of the proposed development or a copy of the final decision to a person who is legally entitled to the notice or decision, or has requested to receive the notice or decision, then that person may file an appeal within 30 days after actual notice of the approved development.

(5) In no event shall the time for appeal exceed the time period that the local government's decision is valid.

(6) A person intending to file an appeal pursuant to this section shall first attempt to resolve that person's concern with the local government. The local government shall give due consideration to the concerns raised and shall not rely solely on whether the concerns were timely raised. The local government may choose to allow the person to file an appeal with the local government.

(7) If the local government does not allow the appeal to be filed with the local government within 25 days, then the person may file the appeal directly with the Commission. In addition to the requirements for the Notice of Appeal specified in 350-060-0050, the appellant shall file a motion for an evidentiary hearing pursuant to 350-060-0150 to establish standing to maintain the appeal.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03

DIVISION 70

APPEALS FROM DECISIONS UNDER GORGE COMMISSION ORDINANCES

350-070-0000

Purpose

The purpose of this division is to define the process and standards used by the Columbia River Gorge Commission in hearing appeals from decisions relating to the implementation of the Columbia River Gorge National Scenic Area Act ("National Scenic Act" or "Act"). The rule applies to appeals from decisions by the Executive Director under ordinances adopted by the Gorge Commission. This rule is intended to permit the appellant to build a more complete record than was before the Executive Director through briefing, and oral presentation of evidence and argument, and to allow interested persons to participate in that process.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0010

Authority

The National Scenic Act authorizes appeals to the Gorge Commission by a person or entity adversely affected by a final action or order, and this includes decisions by the Executive Director under a land use ordinance for a county adopted by the Gorge Commission.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95

350-070-0020

Scope

Scope of Rules: All proceedings commenced by Notice of Appeal shall be governed by these rules. Where this division is silent, divisions 11, 12, 14 and 16 of the Commission's rules shall be applicable provided that the specific provisions are applied in a manner that does not conflict with the provisions of this division.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0030

Application

These rules are intended to promote the efficient review of land use decisions in accordance with the National Scenic Act while affording all interested persons reasonable notice and opportunity to intervene, reasonable time to prepare and submit their cases, and a full and fair hearing. The rules shall be interpreted to carry out these objectives and to promote justice.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95

350-070-0040

Definitions

In these rules, unless the context or subject matter requires otherwise:

(1) "Applicant" means the person who requested that the Executive Director of the Gorge Commission take an action which resulted in a land use decision.

(2) “Commission” means the Columbia River Gorge Commission.

(3) “Counties” means Multnomah, Hood River and Wasco counties, Oregon, and Clark, Skamania, and Klickitat counties, Washington.

(4) “Days” means calendar days.

(5) “Executive Director” or “Director” means the director of the Gorge Commission.

(6) “File” means to deliver to Commission offices by personal delivery, U.S. Postal mail, or email. Unless otherwise specified, a document shall be considered filed on the date that it is personally delivered, mailed, or emailed. A document that is emailed prior to midnight on the due date shall be considered filed on that due date.

(7) “Final decision”: A decision is final when it is reduced to writing and bears the signature of the Executive Director of the Gorge Commission.

(8) “Land use decision” means a final decision by the Executive Director based on the National Scenic Act.

(9) “Notice” means the Notice of Appeal and refers to the document which must be filed with the Commission in order to begin a review proceeding.

(10) “Person” means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the Commission. A person shall include the Executive Director of the Gorge Commission in his or her official capacity.

(11) “Serve” or “Service” means to send with the United States Postal Service by first class mail or to deliver in person, or to send my email, a copy of the original to all parties, including intervenors. All documents served on the other parties shall include a certification that the document was served on the same date that the document was filed.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0042

Delegation of Authority to the Chair of the Commission

(1) Where these rules refer to the Chair of the Commission, the Commission has delegated authority to the Chair or presiding officer designated by the Chair to act on those matters for the Commission, including but not limited to, procedural orders on behalf of the Commission relating to case setting, preliminary motions, and other procedural matters. The Chair of the Commission may also act on other matters specified for Commission action when the context indicates action by the Chair of the Commission or when action by the full Commission would be impracticable.

(2) The Chair of the Commission shall decide matters without oral argument, unless the Chair desires an oral hearing. The decision of the Chair of the Commission or presiding officer pursuant to this authority shall be final and not reviewable by the full Commission. The Chair of the Commission may also choose, at his or her sole discretion, to bring a matter to the full Commission for decision.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0045

Time

(1) Computation: In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated time period begins to run shall not be included and the last day of the time period shall be included.

(2) Whenever a person has the right or is required to do some act or take some proceedings within a prescribed period of time after service or a document, and the service of the document is by mail, three (3) days shall be added to the prescribed time period.

This does not apply to documents mailed when filing and service is accomplished by email.

(3) When a deadline for accomplishing some act under these rules falls on a weekend or legal holiday, the deadline shall be the next business day, and all following deadlines shall be calculated from that deadline. A legal holiday shall be any day in which the United States Postal Service does not deliver mail, or when the Gorge Commission is closed for business.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0046

Electronic Filing and Service

(1) The Commission allows filing and service of all documents by electronic mail (email) to the Commission’s Office. All documents to be filed or served shall be emailed to crgc@gorgecommission.org, and shall have a subject heading that clearly identifies the email as filing a document or serving a document and that clearly identifies the appeal by caption and/or appeal number. The Commission allows email filing even if a person opts out of email service. A person need not file a document by mail if that person has already filed the document by email.

(2) All documents may be served by email to persons that do not opt out of email service (see rules below for Notice of Appeal and Notice of Appearance). Persons filing a petition for review are encouraged to communicate with persons who are entitled to receive a copy of the Notice of Appeal about electronic service of the Notice of Appeal.

(3) The preferred format for filed and served documents shall be a searchable portable document format (.pdf). Color originals available electronically, or easily able to be scanned in color shall be filed and served in color. Requirements for color covers or fastening of documents shall not apply to documents filed or served by email.

(4) The Commission understands that persons’ computers and internet service may display times that vary by several minutes, and have different technological capabilities. Persons filing and serving documents by email should communicate with each other to ensure that the documents can be received and read. The Commission will apply the rules in this chapter in the interest of promoting full participation in an appeal, resolving the appeal in an expeditious manner, and to promote justice in disputes concerning email filing and service such as whether a document was timely filed; timely served; should have been filed or served by email; whether and when the document was received; and whether the document was sent in a readable format. In resolving disputes over electronic service, the Commission will consider whether persons made good faith efforts to communicate about electronic mail service and whether persons attempted to resolve the dispute without involving the Commission.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0047

Who May Appeal

(1) The applicant, any person who submitted a timely written comment on a land use application, or any person entitled under 350-070-0240 may appeal the final decision of an application.

(2) Notwithstanding subsection (1) above, any person may participate in the appeal as provided in this division.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0050

Notice of Appeal

(1) Filing: A person wishing to appeal a decision by the Director shall file a Notice of Appeal at the Commission office on

or before the 30th day after the date the decision sought to be appealed becomes final. A Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Appeal: The Appellant shall serve a copy of the Notice of Appeal on all persons identified in the Notice as required by subsection (3)(g) of this rule on or before the date the Notice of Appeal is required to be filed.

(3) Contents of Notice of Appeal: The Notice of Appeal shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption, which specifies the title of the appeal as "In the matter of an appeal of Development Review Decision No. [FILE NUMBER] by [APPELLANT'S NAME]."

(b) Adjacent to the caption, the heading "Notice of Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the appellant's reasons for appealing the decision including citations to the findings of fact, conclusions of law and conditions of approval in the decision and to provisions of the land use ordinance, sufficient to permit a person to understand the issues the appellant is raising to the Commission;

(f) A brief "ADR Statement" stating whether the appellant is willing to attempt to settle the case through negotiation with the Executive Director and other interested persons, or through alternative dispute resolution (including but not limited to mediation), and specifying the potentially interested persons (if applicable). This statement shall not be used to argue the merits of the appeal.

(g) The name, address, email address, and telephone number of each of the following:

(A) The Appellant, except that if an attorney represents the appellant, then the attorney's name, address, email address, and telephone number shall be substituted for that of the appellant.

(B) The applicant, if other than the appellant. If the applicant is represented by an attorney, then the applicant's address and telephone number may be omitted and the name, address and telephone number of the applicant's attorney shall be included;

(C) Any other person to whom written notice of the land use decision was mailed as shown on the Executive Director's records. The telephone number and email address may be omitted for any such person.

(h) A statement advising that all persons may give testimony at the hearing on the appeal; however, if a person wishes to receive a copy of the record and/or participate in the proceedings prior to the hearing, then that person must file and serve a Notice of Intervention pursuant to 350-70-170. The applicant is an automatic party to the appeal and need not file a notice of intervention.

(i) A statement that the Commission will set the date, time, and place for a hearing on the appeal and provide notice of the hearing approximately 20 days prior to the date of the hearing.

(j) A statement that written comments on the appeal will be accepted by the Commission until the close of the public hearing, but that persons are encouraged to submit written comments within 60 days from the date of the Notice of Appeal.

(k) A statement informing all persons whether the party filing the Notice of Appeal opts out of email service, and a statement informing persons that service of documents may be by email unless a person expressly opts out of receiving documents by email.

(l) Proof of service upon all persons required to be named in the Notice.

(4) Filing Fee and Deposit for Costs: The Columbia River Gorge Commission may charge a filing fee and deposit. Filing fees and deposits, if any, shall be set by the Gorge Commission's Executive Director and shall not exceed the true cost to the Commission of handling the appeal.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0060**Special Review Process**

(1) In any development review decision by the Executive Director where the applicant contends the result eliminates all beneficial use of the property, the applicant must request special review as follows:

(a) Make the request in writing.

(b) Set out the pertinent portions of the ordinance that apply;

(c) Describe how the ordinance impacts the use of the property;

(d) Attach copies of any documents (maps, deeds, easements, etc.) that are relevant; and

(e) Explain why the requested use must be allowed to provide economic or beneficial use of the property.

(f) The request for special review shall be served, concurrently with the Notice of Appeal, on the Executive Director and all persons entitled to service of the Notice of Appeal. If a person who was not served with a copy of the request for special review intervenes, then the applicant shall, as soon as possible, serve a copy of the request for special review on the intervenor.

(g) An intervenor shall have the opportunity to specifically respond to the request and any response shall be filed and served within 14 days after the applicant serves the request for special review on the intervenor.

(2) The Director, on receipt of a request for special review and intervenors' responses (if any), shall take the following steps:

(a) Evaluate the request for special review and intervenors' responses.

(b) Take one of the following steps:

(A) Where appropriate, recommend options for use of the property that are consistent with the ordinance; or

(B) Where the Director finds that enforcement of the land use ordinance will deprive the landowner of all economic or beneficial use of the property, the Director shall recommend the Commission allow a use for the property. The economic or beneficial use recommended shall be the use that on balance best protects the affected resources. This section applies:

(i) If the Forest Service or the federal government does not provide just compensation for a Special Management Area designation it made; or

(ii) For a General Management Area designation made by the Gorge Commission.

(c) Include proposed findings of fact in the recommendation. This shall be completed within 30 days after the last due date for the filing of an intervenor's response; and

(d) Specify the factual and/or legal principles relied on in support of the recommendations.

(3) The Executive Director shall serve the recommendation on the request for special review on the applicant and all intervenors.

(4) The filing of a request for special review shall toll all subsequent time periods specified in these rules, except for intervention specified in 350-070-0170. The time periods, beginning with the filing of the record pursuant to 350-070-0070 shall begin to run on the date that the Executive Director serves the recommendation on the request for special review.

(5) The recommendation on a request for special review shall not be construed as an approval or denial of any land use. The applicant may continue the appeal or may submit a new land use application for the recommended land use(s).

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0070**Record**

(1) Contents of Record: The record shall include the following:

(a) The final decision including findings of fact and conclusions of law;

(b) All evidence, exhibits, maps, documents or other written materials included in the Executive Director's land use application file; photos, maps, and exhibits that were prepared by or presented to the Executive Director in color shall be provided to the Commission in color in the original or certified copy of the record and all duplicate copies of the record;

(c) Minutes of any meetings conducted by the Executive Director as required by law.

(d) All documents relating to an applicant's request for special review, including the applicant's request, the Executive Director's recommendation, and all documents relied on by the Executive Director in making the recommendation.

(e) The Executive Director may retain any audiotape recording, large maps, or exhibits and documents which are difficult to duplicate, until the date of oral argument. The Executive Director shall make these items reasonably available for inspection and duplication by any person during the pendency of the appeal, and shall specify in its filing of the record the procedure for reviewing for these items.

(2) Preparation and Service of Record: Within 30 days after the Notice of Appeal is filed, the Executive Director shall prepare and serve a copy of the record, exclusive of audiotape recordings, large maps and other exhibits and documents which are difficult to duplicate, on the appellant and intervenors. The Commission may serve the record to persons in an electronic form to persons not opting out of email service.

(3) Specifications of Record:

(a) The record shall:

(A) Include a cover bearing the title of the case as it appears in the Notice;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins and listing each audiotape recording, large map or other exhibit or document retained by the Executive Director;

(C) Be securely fastened;

(D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item on top.

(3) The Commission may charge persons the cost of duplicating and serving paper copies of the record consistent with the Commission's public records rule, 350-12.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0080

Objections to the Record

(1) Before filing an objection to the record, a person shall attempt to resolve the matter with the Executive Director.

(2) An objection to the record shall be filed at the Commission office and served within 10 days following service of the record on the person filing the objection. The person filing the objection to the record shall certify that the objection is made in good faith, that the objection is material, that the objection was not made for the purpose of delay, and that he or she has contacted the Executive Director and attempted to resolve the objection. Objections may be made on the following grounds:

(a) The record does not include all materials in the Executive Director's land use application file. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.

(b) The record contains material not included in the Executive Director's land use application file. The item(s) not included shall be specified, as well as the basis for the claim that the item(s) are not part of the record. A document that is excluded from the record

under this subsection may still be submitted to the Commission as otherwise provided in this division.

(c) The minutes or transcripts of meetings or hearings are incomplete or do not accurately reflect the proceedings. An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Chair of the Commission shall require the Executive Director to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding contested minutes is an audiotape recording, a transcript of the relevant portion shall be submitted.

(3) The Chair of the Commission may conduct a telephone conference to consider and resolve any objections to the record.

(4) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Chair of the Commission shall issue a letter or order settling the record and setting forth the schedule for subsequent events. Unless otherwise provided by the Chair of the Commission, the date of

the letter or order shall be deemed the date that the record is settled for purposes of computing subsequent time limits. A letter or an order of the Chair settling the record is not appealable to the full Commission.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0085

Alternative Dispute Resolution

The Commission recognizes: that many of the matters that come before the Commission on appeal may be resolved through alternative dispute resolution (ADR), such as mediation; that ADR may be a faster and less expensive process than appeal pursuant to these rules and beyond to the states' courts; that agreements reached through ADR may be more lasting and acceptable than a decision on the merits by the Commission or the states' courts; and, that ADR is a voluntary process.

(1) If, after reviewing the ADR statements and evaluating the matter itself, the Executive Director believes that ADR may be successful in resolving or partially resolving the matter, then it shall initiate ADR. This subsection shall not be construed to mean that participation in settlement or ADR is mandatory.

(2) Upon motion by any person or her own motion the Chair of the Commission shall place the appeal in abeyance or shall grant all necessary extensions of time to facilitate resolution through settlement or ADR. Should settlement or ADR be unsuccessful, the Chair of the Commission shall reinstate the matter or reset the applicable time periods.

(3) Any oral discussion, written documents, or other record produced exclusively for the purpose of settlement or ADR, whether or not pursuant to this section, shall be confidential and not part of the record on appeal to the Gorge Commission, nor part of the Gorge Commission's record to any reviewing court.

(4) The Commission shall not consider, as a basis for any decision pursuant to this division, a person's decision to not participate in settlement or ADR, or knowledge that the matter was not resolved through settlement or ADR.

(5) Settlement:

(a) If a settlement changes the proposed development or any conditions of approval, the Executive Director shall provide notice of the changes to all persons entitled to receive notice of the original application. If the changes are substantial, then the Executive Director shall conduct a complete review of the changes in the same manner as if the settlement was a new land use application.

(b) When an appeal, or any issue in an appeal, is settled, the Commission shall not be required to review the settlement as a

condition of the settlement. The Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

(c) Upon settlement of a case, the appellant shall dismiss the appeal in accordance with 350-070-0225.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0090

Appellant's Brief

(1) Filing and Service of Brief: The appellant shall file at the Commission office and serve an Appellant's Brief within 30 days after the date the record is filed or settled if a party files an objection to the record. The Brief shall also be served on intervenors. Failure by the Appellant to file an Appellant's Brief within the time required by this section shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the Gorge Commission.

(2) Specifications of Brief: The Brief shall

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer brief is given by the Chair of the Commission. If an Appellant's Brief exceeding the 50 page limit is filed without permission, the Chair of the Commission shall notify the author, and a revised brief satisfying the 50 pages limit shall be filed and served within three (3) days of notification.

(c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of the appellant and all intervenors. If any of the above is represented by an attorney, the name, address and telephone number of the attorney shall be substituted.

(d) If there is more than one appellant, the cover page shall specify the appellant(s) that are filing the Brief.

(e) Be typewritten, in 14-point type in a regularly used font such as Times New Roman, Helvetica, or Calibri, and double spaced;

(f) Be signed on the last page by the author. An electronic brief may contain an electronic signature or other generally accepted substitute.

(3) Contents of Brief: The Appellant's Brief shall:

(a) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The relief sought by the appellant;

(B) A summary of the arguments;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found, or other documents that the appellant intends to introduce at the hearing.

(b) Set forth each issue under a separate heading. Where several issues present essentially the same legal questions, the argument in support of those issues shall be combined;

(c) Contain, each as separate appendices, copies of all management plan provisions, comprehensive plan provisions, and all local state, regional, and federal laws cited in the brief, unless the provision is quoted verbatim in the Brief.

(d) Contain, each as separate appendices, copies of any documents and evidence, not contained in the record, that are referred to in the Brief.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0110

Response and Reply Briefs

Response and reply briefs shall not be filed.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0120

Motions, Generally and Procedural Orders

For the purpose of this section only, the term "party" shall refer to the appellant and any intervenor.

(1) Any party may submit a motion for action by the Chair of the Commission. For matters not otherwise specified by this division, the Chair of the Commission and all parties shall observe the following procedures for submittal and disposition of motions.

(2) A motion shall be filed at the Commission office by mail, email, or personal delivery.

(3) All contested motions shall be filed not less than 21 days prior to the date of the hearing before the Commission, except for good cause. A party seeking to file a motion less than 21 days prior to the hearing shall consult with all parties about the motion and present with the motion, an agreed schedule for responses. The schedule shall leave no less than 7 days prior to the hearing for the Chair of the Commission to issue an order, unless the Chair of the Commission consents to a shorter period.

(4) The movant shall serve a copy of the motion on all of the parties at the same time that the motion is filed and in the same manner as the motion was filed.

(5) Unless otherwise ordered by the Chair of the Commission, any party has 10 days to file a response to a motion, except that no response shall be filed for uncontested motions. The responding party shall serve a copy of the response on all of the parties at the same time that the response is filed and in the same manner that the response was filed. No party may file a reply to the response(s).

(6) Any motion or response to a motion that does not conform to this subsection shall be rejected.

(7) The Chair of the Commission may provide the parties with a copy of an order on a motion by electronic mail to parties that have not opted out of email service.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0130

Notice of Hearing

(1) The Commission shall send a notice of hearing in accordance with Commission Rule 350-016-0009, and shall also include in the Notice of Hearing the due date and procedure for submitting written comments on the appeal, and the procedure that will be used for the hearing.

(2) The Commission shall provide the Notice of Hearing by first class mail to the appellant, all intervenors, and the applicant (if different from the appellant) at least 20 days prior to the hearing. The Commission shall publish notice of the hearing on or before the date the Notice of Hearing is mailed.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0140

Hearing

(1) The hearing before the Commission shall be "de novo" but shall include the record submitted by the Executive Director.

(2) Conduct of hearing:

(a) The hearing shall be conducted in the following order:

(A) The Executive Director shall briefly summarize the decision on appeal and any recommendation if different from the decision on appeal;

(B) The appellant shall present its evidence including that of any witnesses;

(C) Any person supporting the appellant shall present his or her testimony and evidence in support of the appellant;

(D) Any person opposing the appellant shall present his or her testimony and evidence opposing the appellant;

(E) Any person who wishes to offer evidence or testify but neither supports nor opposes the appellant shall present his or her testimony.

(F) The Executive Director may respond to the testimony and evidence presented raised by the testimony and evidence presented by the written and oral testimony, including exhibits.

(G) The appellant shall be allowed to present rebuttal evidence limited to the specific issues raised by the testimony and evidence presented by the written and oral testimony, including exhibits, and the Executive Director;

(H) The applicant, if different than the appellant and if an intervenor, shall be allowed to present rebuttal evidence limited to the specific issues raised by the testimony and evidence presented by the written and oral testimony, including exhibits, and the Executive Director.

(b) The appellant and members of the Gorge Commission may ask questions orally of the persons testifying. Any other person who desires to ask a question shall submit that question in writing to the Chair of the Commission, who shall ask the question on behalf of the person. The Chair of the Commission may choose not to ask any question that is repetitious, unduly prejudicial, or unrelated to the testimony and issues raised in the appeal. The Chair of the Commission may also limit the number of questions, including from members of the Commission and the appellant to ensure hearings proceed on schedule with the Commission's agenda.

(c) Any member of the Commission may question any person testifying, including witnesses;

(d) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;

(e) The Commission may continue a hearing, may leave open the record for submission of additional evidence necessary to address issues raised at the hearing, and may set time limits for any hearing, including time limits for oral presentations;

(f) Exhibits shall be marked to identify the person offering the exhibits. The Appellant shall mark his or her exhibits as "Appellant's Exhibit (n)." All other participants shall mark their exhibits as "(PARTICIPANT'S NAME'S) Exhibit (n)." The exhibits shall be preserved by the Commission as part of the record.

(3) Evidentiary Rules:

(a) Evidence of a type commonly relied upon by a reasonably prudent person in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All evidence not objected to, shall be received by the Commission, subject to the Commission's power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the Commission. The Chair of the Commission shall rule on all offers of evidence, including objections to testimony. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0150

Depositions

On petition of any person, the Chair of the Commission may order testimony of any witness to be taken by deposition in the same manner prescribed for depositions in civil actions. Depositions may also be taken by the use of audio or audio visual recordings. The petition for deposition shall set forth:

(1) The name and address of the witness whose testimony is desired;

(2) A showing of relevance and materiality of the testimony;

(3) A request for an order that the testimony of the witness be taken.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0160

Subpoenas

The Chair of the Commission shall issue subpoenas to any person upon written request and upon a showing that the witness or the documents to be subpoenaed will provide relevant evidence generally not available without subpoena. Subpoenas may also be issued under the signature of the attorney of record for a person. Witnesses appearing pursuant to subpoena, other than the appellant, any person providing written or oral testimony, or employees of the Commission, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The person requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0170

Intervention

(1) Any person may intervene in an appeal proceeding before the Commission. Status as an intervenor shall be recognized upon filing a Notice of Intervention.

(2) Notice of Intervention: In the interests of promoting timely resolution of appeals, a Notice of Intervention shall be filed at the Commission office within 14 days after the Notice of Appeal is filed pursuant to 350-070-0050. The Notice of Intervention (exhibit 2) shall:

(a) State whether the person supports or opposes the appellant, or whether the person neither supports nor opposes the appellant;

(b) Include a brief statement of the reasons for filing the motion for intervention, including citations to the decision and land use ordinance, if different than the reasons set forth in the Notice of Appeal.

(c) Include a brief "Intervenor's ADR Statement" stating whether the intervenor is willing to attempt to participate in resolving the case through negotiation or alternative dispute resolution, such as mediation. This statement shall not be used to argue merits of the appeal.

(d) Be served on the appellant and all other persons who have filed a Notice of Intervention.

(e) If applicable, a statement opting out of email service (note that a person must affirmatively opt out of email service).

(3) A person who files a Notice of Intervention shall be entitled to receive a copy of all matters that are filed with the Commission.

(4) Intervenor's Brief:

(a) An intervenor who supports the Appellant may file a brief, due at the same time as the appellant's brief, that satisfies the requirements in 350-070-0090, except that the Brief shall be entitled, "Intervenor [NAME]'s Brief in Support of Appellant."

(b) An intervenor who opposes the Appellant may file a brief, due at the same time as the appellant's brief, that satisfies the requirements in 350-070-0090, except that the Brief shall be entitled, "Intervenor [NAME]'s Brief Opposing Appellant", and shall have a red cover.

[ED NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0190

Consolidation

The Commission, at the request of any person or on its own motion, may consolidate two or more proceedings, provided the proceedings seek review of the same or closely related land use decision(s).

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0200

Extensions of Time

(1) In no event shall the time limit for the filing of the Notice of Appeal be extended.

(2) All other time limits may be extended upon written consent of the appellant and participants, the Commission's motion, or the motion of the appellant or a participant.

(3) A motion for extension of time shall state the reasons for granting the extension and must be filed and served within the time required for performance of the act for which an extension of time is requested.

(4) A first motion for extension of time for any act, which requests an extension for no greater than 30 days and is stipulated to by the appellant and all intervenors, shall be presumed granted on the date that the motion is filed. The Chair of the Commission shall confirm the extension to the appellant and all intervenors.

(5) Any other motion for extension of time that is stipulated to by the appellant and all intervenors shall be presumed granted for a period of 14 days, or until the Chair issues an order, whichever is earlier. The Chair of the Commission shall issue an order granting or denying the extension, and may modify the request.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0210

Stays

(1) Only an appellant or intervenor who would have standing to appeal a land use decision may file a motion for a stay. The movant may file a Notice of Intervention concurrently with the motion for a stay. A motion for a stay of a land use decision shall include:

(a) A statement setting forth the movant's right to standing to appeal the decision;

(b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;

(c) A statement of facts and reasons for issuing a stay, demonstrating a colorable claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;

(d) A suggested expedited briefing schedule;

(e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

(2) Unless otherwise ordered by the Chair of the Commission, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(3) The Chair of the Commission shall base a decision on the stay, including the right to a stay, or conditions of any stay order, upon the motion presented. Documents may be attached to the motion in the form of affidavits, maps or other materials, or

presented at a hearing which may be convened at the discretion of the Chair of the Commission and follow the process in 350-70-140.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0220

Final Order of Commission

(1) A Final Order of the Commission shall:

(a) Contain the caption of the appeal and state "Final Opinion and Order";

(b) Acknowledge the record and other documents that were present before the Commission, and findings of fact and conclusions of law and/or an incorporation of findings and conclusions from the record below.

(c) Address the Special Review under Rule 350-060-0090, where applicable.

(d) Contains findings of fact and conclusions of law or incorporates them from the record below.

(e) Indicate the Commission's decision;

(f) Contain the date of the final order; and

(g) Be signed by the Chair of the Commission.

(2) The order shall be served on all parties.

(3) When an order of the Commission becomes final it shall be made available to interested members of the public. The Commission may charge a reasonable fee for copies of its final orders or other orders furnished to members of the public.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0225

Dismissal by the Commission

(1) Voluntary dismissal: The Chair of the Commission shall dismiss an appeal upon motion by the Appellant filed or expressed orally to the Commission prior to an oral decision. The dismissal shall be considered with prejudice and shall be effective on the date it is filed or expressed orally to the Commission.

(2) Involuntary Dismissal: The Chair of the Commission may dismiss an appeal when it appears to the Chair that the Appellant has failed to prosecute the appeal diligently; when the appeal is moot, or any other situation in which continuing the case would be manifestly unjust. The Chair of the Commission shall send a Notice of Intent to Dismiss stating the facts and reason for dismissal. The Appellant and intervenors shall have 10 days to respond to the notice, unless the Notice of Intent to Dismiss specifies a longer time.

(3) The Chair of the Commission shall issue and serve on the Appellant and intervenors an order of dismissal, which shall be an appealable action of the Commission.

(4) When an appeal is dismissed, the Commission shall make no decision on the merits of the appeal. In the event that the Appellant and intervenors have entered into any settlement agreement concerning the issues raised in the appeal, the Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0230

Reversal or Remand of Land Use Decisions

The Chair of the Commission may grant a stipulated motion for a voluntary remand of a land use decision, or may order a remand upon motion by the Executive Director upon finding that all of the following criteria are met.

(1) The Executive Director shall either rescind the land use decision that is the subject of the appeal or provide that any new or modified land use decision shall supercede the remanded decision;

(2) The Executive Director shall not be required to issue a subsequent land use decision, but if he or she does, then he or she shall agree to address all of the issues raised in the appeal in that subsequent land use decision.

(3) The Executive Director shall follow all applicable notice and review procedures in modifying the remanded decision or issuing a new land use decision.

(4) An oral decision of the Commission has not been rendered in the matter.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

350-070-0240

Special Rules for Filing of Appeal After Expiration of Appeal Period

(1) This section is intended to prevent manifest injustice that would result by the Executive Director's failure to comply with all procedural requirements such that an interested person was unable to meaningfully participate in a land use decision process. This section shall not be used to redress problems that may be redressed through an enforcement action, whether or not any enforcement action is actually undertaken.

(2) If the Executive Director approves a development that is materially different from the proposal described in the notice of development to such a degree that a reasonable person could not have understood the notice of development to describe the Executive Director's final actions, then an adversely affected person may file an appeal of the decision within 30 days of actual notice of the decision.

(3) If the development constructed is materially different from the development allowed in the Executive Director's decision to such a degree that a reasonable person could not have understood the decision to allow the actual development constructed, then an adversely affected person may file an appeal within 30 days after actual notice of the material difference, or within 30 days after the person reasonably should have known about the material difference, whichever is sooner.

(4) If the Executive Director fails to provide notice of the proposed development or a copy of the final decision to a person who is legally entitled to the notice or decision, or has requested to receive the notice or decision, then that person may file an appeal within 30 days after actual notice of the approved development.

(5) In no event shall the time for appeal exceed the time period that the Executive Director's decision is valid.

(6) A person intending to file an appeal pursuant to this section shall first attempt to resolve that person's concern with the Executive Director. The Executive Director shall give due consideration to the concerns raised and shall not rely solely on whether the concerns were timely raised. The Executive Director may choose to address that person's concerns administratively.

(7) If the Executive Director does not agree to address the person's concerns administratively within 25 days, then the person may file the appeal directly with the Commission. In addition to the requirements for the Notice of Appeal specified in 350-070-0050, the appellant shall state the relevant facts and argument to establish standing to maintain the appeal.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03

DIVISION 81

LAND USE ORDINANCE

Purposes and Applicability

350-081-0010

Purposes and Applicability

The purpose of this Land Use Ordinance is to implement the Management Plan for the Columbia River Gorge National Scenic Area with revisions adopted on April 27, 2004 and concurred with on August 3, 2004, and as subsequently amended.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0012

Affected Area

Commission Rule 350-081 shall apply to all lands within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act, for which a county does not implement a land use ordinance consistent with the Management Plan. Commission Rule 350-081 becomes effective on July 1, 2005. Those portions of Commission Rule 350-081 pertaining to the General Management Area shall no longer be effective in a county that has adopted and put into effect a land use ordinance which has been found to be consistent by the Columbia River Gorge Commission. Those portions of Commission Rule 350-081 pertaining to the Special Management Area shall no longer be effective in a county that has adopted and put into effect a land use ordinance which has been found to be consistent by the Columbia River Gorge Commission and concurred with by the Secretary of Agriculture.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0014

Maps

The Land Use Designation, Landscape Settings, and Recreation Intensity Classes maps adopted by the Columbia River Gorge Commission as part of the Management Plan for the Columbia River Gorge National Scenic Area are hereby incorporated by reference into this land use ordinance.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0016

Review and Approval Required

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged, including those proposed by state or federal agencies, in the Columbia River Gorge National Scenic Area except for the uses listed in Commission Rule 350-081, when considered under the applicable procedural and substantive guidelines of this Rule.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0017

Advising When Review is Required

(1) When a person inquires from the Commission whether a proposed development requires Scenic Area review and approval, and the Commission must consider whether the proposed development is in an urban area, the landowner or the landowner's representative shall submit to the Commission:

(a) Narrative metes and bounds description of the urban area boundary for the subject parcel;

(b) Survey map showing the subject parcel; the urban area boundary line; and the location of all proposed development, including but not limited to, buildings, other structures, fences, roads, and utilities; and,

(c) Written permission for Gorge Commission staff and persons providing technical assistance to the Commission to access

the subject property to review or conduct surveying activities as needed for review of the survey.

(2) A licensed surveyor shall prepare the metes and bounds description and survey map. The surveyor shall contact the Commission office for a copy of the official maps, other necessary information, and technical assistance. The survey shall be based on official maps and shall not assume the correctness of any prior boundary determination by a non-surveyor. The Commission may require the surveyor to review proposed methodology with a U.S. Forest Service surveyor or another surveyor providing technical assistance to the Commission.

(3) After receipt of the items listed in section (1) above, the Commission will review the items and advise the landowner and county whether the proposed development requires approval under Scenic Area authorities. The Commission may engage a surveyor as needed for its review.

(4) Any disagreement with the landowner's metes and bounds description or survey map shall be handled in a manner common to resolution of surveying disputes generally, and shall not be appealable pursuant to the Scenic Area Act, Management Plan, or Commission Rules.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0018

Uniform Application of Management Plan

(1) The Management Plan shall be applied consistent with and in the spirit of the National Scenic Area Act.

(2) The Gorge Commission, Forest Service, and counties should strive to apply Management Plan provisions uniformly throughout the National Scenic Area, except when a county has adopted a more restrictive provision.

(3) In applying provisions of the Management Plan, the Gorge Commission and Forest Service may consider, but shall not be constrained by, county interpretations, state interpretation and application of state law and administrative regulations, or judicial decisions that do not directly involve the Management Plan.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

Definitions

350-081-0020

Definitions

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

(1) Accepted agricultural practice: A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.

(2) Accessory structure/building: A structure or detached building whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use. The term "detached" means that the main building and accessory building do not share a common wall. An accessory building connected to the main building by a breezeway is a detached building.

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

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

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

(6) 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.

(7) 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.

(8) Agricultural use: The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, livestock, poultry, fur bearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes:

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

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

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

(d) Land under buildings supporting accepted agricultural practices. Agricultural use does not include livestock feedlots.

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

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

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

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

(13) Archaeological resources: See cultural resource.

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

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

(16) Best management practices: Conservation techniques and management measures that (1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; (2) minimize adverse affects to groundwater and surface water flow and circulation patterns; and (3) maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(34) Contiguous land: Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether or not portions of the parcels have separate tax lot numbers, lie in different counties, lie in different sections or government lots, lie in different land use or zoning designations, or are separated by public or private roads. Contiguous land does not include parcels that meet only at a single point.

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

(36) Created opening (SMA): A created forest opening with less than 40 percent average canopy closure of overstory trees and less than 60 percent average canopy closure of understory trees averaging less than 5 inches diameter at breast height for coniferous forests and less than 25 percent total canopy cover for oak woodlands. This definition does not include agricultural fields.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(52) Earth materials: Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials, including, but not limited to, construction debris (e.g.,

concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(81) Historic buildings and structures: See cultural resource.

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

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

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

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

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

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

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

(a) Assembly or manufacture of goods or products,

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

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

(d) Production of electric power for commercial purposes.

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

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

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

(a) Historic Columbia River Highway;

(b) Crown Point;

(c) Highway I 84, including rest stops;

(d) Multnomah Falls;

(e) Washington State Route 14;

(f) Beacon Rock;

(g) Panorama Point Park;

(h) Cape Horn;

(i) Dog Mountain Trail;

(j) Cook Underwood Road;

(k) Rowena Plateau and Nature Conservancy Viewpoint;

(l) Portland Women's Forum State Park;

(m) Bridal Veil State Park;

(n) Larch Mountain;

(o) Rooster Rock State Park;

(p) Bonneville Dam Visitor Centers;

(q) Columbia River;

(r) Washington State Route 141;

(s) Washington State Route 142;

(t) Oregon Highway 35;

(u) Sandy River;

(v) Pacific Crest Trail;

(w) SMA only;

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

(y) Wyeth Bench Road;

(z) Larch Mountain Road;

(aa) Sherrard Point on Larch Mountain.

(92) Land division: The division or redivision of contiguous land(s) into tracts, parcels, sites or divisions, regardless of the pro-

posed parcel or tract size or use. A land division includes, but is not limited to, short subdivisions, partitions, and subdivisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(109) Ordinary high water mark: The mark on all streams, ponds, and lakes that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting upland. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute.

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

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

(112) Parcel:

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

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

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

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

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

(B) Lies in different counties;

(C) Lies in different sections or government lots;

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

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

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

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

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

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

(117) Public use facility: Recreation development(s) that meet the definition of "recreation

facility" in the Management Plan and are open for use by the general public. Private clubs and other facilities limited to members or otherwise restricted in availability shall not be considered public use facilities.

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

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

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

(121) Recreation opportunity spectrum (ROS): A means of classifying areas in relation to the types of recreation opportunities and experiences they provide or are appropriate for. The spectrum

ranges from primitive (wilderness areas) to urban (highly modified areas).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(134) Secretary: The Secretary of Agriculture.

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

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

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

(138) Serviceable: Presently useable.

(139) Shall: Action is mandatory.

(140) Should: Action is encouraged.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(159) Treaty rights or other rights: Rights reserved by the Indian tribes through the Treaties of 1855. These include the right of fishing at all usual and accustomed places, as well as the

privilege of pasturing livestock and hunting and gathering on open and unclaimed lands in common with the citizens of the states.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(174) Wetlands functions: The beneficial roles that wetlands serve, including storage, conveyance, and attenuation of floodwaters and stormwaters; groundwater recharge and discharge; protection

of water quality and reduction of sediment and erosion; production of waterfowl, game and nongame birds, mammals, and other living resources; protection of habitat for endangered, threatened, and sensitive species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

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

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

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11; CRGC 1-2012, f. 4-18-12, cert. ef. 6-1-12

Applications and Procedures

350-081-0030

Standards for Applications

Complete Application Required: Any proposed use, development or structure shall be reviewed according to the standards in effect on the date an applicant submitted a complete land use application. A complete application is one that the Executive Director determines meets this Land Use Ordinance's requirements for:

(1) A complete application form;

(2) A complete site plan; and

(3) All applicable information specified in the various sections of this land use ordinance. Incomplete applications shall not be reviewed.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0032

Application for Review and Approval

(1) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-081-0032.

(2) The Executive Director shall accept and review the application pursuant to 350-081-0030 through 350-081-0046 for consistency with the appropriate guidelines of this rule.

(3) The Commission may charge a fee for review of applications after a public hearing. The Gorge Commission shall set the fee.

(4) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices and the Forest Service.

(5) Applications for the review and approval of a proposed use or development shall provide the following information:

(a) The applicant's name, address and telephone number;

(b) The land owner's name, address and telephone number (if different from applicant's);

(c) The county in which the proposed use or development would be located;

(d) The section, quarter section, township and range in which the proposed development would be located;

(e) The street address of the proposed use or development;

(f) The tax lot number(s) and size in acres of the parcel(s) involved;

(g) A description of the current land use for the parcel(s) involved and adjoining lands;

(h) A written description of the proposed use or development, including details on the height, exterior color(s), and construction materials of the proposed structures.

(i) A list of Key Viewing Areas from which the proposed use would be visible.

(j) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the Executive Director to determine the location and extent of the proposed use or development and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail. If a parcel is very large, the map does not need to show the entire parcel. Rather, it can show only those portions of the parcel affected by the proposed use. The map shall include the following elements:

(A) North arrow.

(B) Map scale.

(C) Boundaries, dimensions, and size of the subject parcel.

(D) Significant terrain features or landforms.

(E) Groupings and species of trees or other vegetation on the parcel.

(F) Location and species of vegetation that would be removed or planted.

(G) Bodies of water and watercourses.

(H) Location and width of existing and proposed roads, driveways, and trails.

(I) Location and size of existing and proposed structures.

(J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting.

(K) Location and depth of all proposed grading and ditching.

(k) Elevation drawings, which shall show the appearance of proposed structures and shall include natural grade, finished grade, and the geometrical exterior of at least the length and width of structures as seen from a horizontal view. Elevation drawings shall be drawn to scale.

(l) A list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in 350-081-0630.

(m) Any additional information that the applicant feels will assist in the evaluation of the proposal, including but not limited to, maps, drawings, and development plans.

(n) The signature of the applicant and property owner or a statement from the property owner indicating that he is aware of the application being made on his property.

(o) The signature of the property owner on a statement that authorizes the Executive Director or the Executive Director's designee reasonable access to the site in order to evaluate the application.

(6) Applications for the following uses or developments shall include additional information as required by the appropriate guidelines in Commission Rule 350-81 or by the Executive Director:

(a) In the General Management Area, for all buildings visible from key viewing areas, pursuant to 350-081-0520(2)(n).

(b) In the General Management Area, production and/or development of mineral resources and expansion of existing quarries pursuant to 350-081-0520(1)(f), (2)(o), and (2)(bb).

(c) A grading plan that complies with the requirements of 350-081-0520(2)(aa)(A) and (B) is required for the following:

(A) In the General Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes over 10 percent shall include a grading plan;

(B) In the General Management Area, all proposed structural development on sites visible from key viewing areas and involving more than 200 cubic yards of grading, regardless of slope; and

(C) In the Special Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes greater than 10 percent (except trails) shall include a grading plan.

(d) In the General Management Area, vegetation management projects in public rights of way along Scenic Travel Corridors, pursuant to 350-081-0520(4)(d).

(e) Large-scale uses as defined by guideline 350-081-0540(1)(c)(C) shall include reconnaissance survey reports, pursuant to 350-081-0540(1)(c)(F), and (G).

(f) Proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings that are 50 years old or older, pursuant to 350-081-0540(1)(c)(H)(iii).

(g) In the General Management Area, new uses located in, or providing recreational access to the Columbia River or its fishbearing tributaries, pursuant to 350-081-0084(1)(a)(A).

(h) In the General Management Area, any review use in a wetland or within a wetland buffer zone, pursuant to 350-081-0560(1)(b).

(i) In the General Management Area, any review use in a stream, pond, lake, or within their buffer zones, pursuant to 350-081-0570(1)(b).

(j) In the General Management Area, any review use within 1000 feet of a sensitive wildlife area or site, pursuant to 350-081-0580(1)(b). Large-scale uses as defined by 350-081-0580(2) shall also include field survey information, pursuant to 350-081-0580(2)(e).

(k) In the General Management Area, any review use within 1000 feet of a sensitive plant, pursuant to 350-081-0590(1)(b). Large-scale uses as defined by 350-081-0590(2) shall also include field survey information, pursuant to Commission Rule 350-081-0590(2)(e).

(l) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, pursuant to 350-081-0190(1)(h), and if applicable, 350-081-0190(1)(i).

(m) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling not in conjunction with agricultural use, pursuant to Commission Rule 350-081-0190(1)(q).

(n) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative, pursuant to Commission Rule 350-081-0190(1)(k).

(o) In the General Management Area, on lands designated Large-Woodland, a single-family dwelling, pursuant to 350-081-0270(1)(a).

(p) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation, a single-family dwelling, pursuant to 350-081-0270(2)(j).

(q) In the Special Management Area, on lands designated Agriculture, Forest, Residential, or Public Recreation, clearing trees for new agricultural use, pursuant to 350-081-0270(2)(x).

(r) In the Special Management Area, on lands designated Agriculture, Forest, Residential, or Public Recreation, forest practices, pursuant to 350-081-0270(2)(y).

(s) In the Special Management Area, on lands designated Open Space, any new use or development, pursuant to 350-081-0340(4).

(t) In the General Management Area, on lands designated Agriculture-Special, a single-family dwelling pursuant to 350-081-0232(1)(g).

(u) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation, a single-family dwelling necessary and accessory to agricultural use, pursuant to 350-081-0190(2)(c).

(v) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation, farm labor housing, pursuant to 350-081-0190(2)(d).

(w) In the General Management Area, on lands designated Small Woodland, a single-family dwelling pursuant to 350-081-0270(1)(b).

(x) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, a single-family dwelling in conjunction with agricultural use pursuant to 350-081-0270(1)(c).

(y) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, agricultural labor housing, pursuant to 350-081-0270(1)(s) and on lands designated Large-Scale Agriculture or Small-Scale Agriculture, pursuant to 350-081-0190(1)(p).

(z) In the General Management Area, on lands designated Agriculture-Special, new livestock grazing, new fences, livestock watering facilities, and corrals; or soil, water, and vegetation conservation activities, pursuant to 350-081-0240.

(aa) In the General Management Area and Special Management Area, agricultural buildings, pursuant to 350-081-0090(2).

(bb) Other uses as deemed necessary by the Executive Director.

(7) Completed application forms shall be submitted directly to the office of the Columbia River Gorge Commission.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0034

Pre-Application Conference

An applicant may request a pre-application conference prior to submitting an application for development review. The purposes of the conference shall be to acquaint the applicant with the substantive and procedural requirements of Commission Rule 350-081, to discuss the principle elements of the proposed action, and to identify guidelines that create opportunities or pose constraints for the proposed action.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0036

Acceptance of Application

Within 14 days of the receipt of an application, the Executive Director shall review the application for completeness and if complete, shall accept the application for review.

(1) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing within 14 days of receipt of the application. The Executive Director shall review supplemental application materials within 14 days after receipt of the materials to determine if the application is complete.

(2) No application for a proposed use, which is explicitly prohibited by this ordinance, shall be accepted.

(a) The application shall be returned to the applicant.

(b) A letter, signed by the Executive Director, stating that the proposed use is prohibited and citing the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.

(c) Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to 350-070.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 2-2011(Temp), f. & cert. ef. 6-16-11 thru 10-12-11; CRGC 3-2011(Temp), f. 10-5-11, cert. ef. 10-13-11 thru 2-9-12; Administrative correction, 2-24-12; CRGC 1-2012, f. 4-18-12, cert. ef. 6-1-12

350-081-0038

Notice of Development Review

(1) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

(a) The name of the applicant;

(b) The general and specific location of the subject property;

(c) A brief description of the proposed action;

(d) The deadline for issuing a decision; and

(e) The deadline for filing comments on the proposed action.

(2) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(4) The notice shall be mailed to:

(a) The Forest Service, the applicable state, the four Indian tribal governments, and the applicable county or city planning office; and

(b) Owners of property within a radius of the subject parcel(s) as determined by 350-081-0630; and

(c) Other agencies and interested parties which request a notice or which the Executive Director determines should be notified.

(5) A copy of the notice shall be posted on the Commission's website.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2012, f. 4-18-12, cert. ef. 6-1-12

350-081-0040

Comment Period

Interested persons shall have 21 days from the date which the notice is sent to submit written comments to the Executive Director relative to the consistency of the proposed actions with the guidelines of Commission Rule 350-081:

(1) Based on comments received and other applicable information, the Executive Director shall determine if a wildlife management plan pursuant to 350-081-0580(5), or a rare plant protection and rehabilitation plan pursuant to Commission Rule 350-081-0590(5) is required.

(2) For proposed uses or developments where a cultural resources survey (reconnaissance or historic) is required and where the Commission is performing the survey, the survey shall be completed by the close of the comment period. Upon receipt of the completed survey, the Executive Director shall forward the survey to the applicable State Historic Preservation Officer, and the four Indian tribal governments pursuant to 350-081-0540(1)(b) and (2)(b)(A).

(3) The State Historic Preservation Officers and the four Indian tribal governments shall have 30 days to submit comments on the cultural resources survey. Based on the survey results, comments received, and other applicable information, the Executive Director shall determine if an evaluation of significance pursuant to 350-081-0540(3) is required.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0042

Decision of the Executive Director

(1) In making a decision on a proposed use or development the Executive Director shall:

(a) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(b) Consider information submitted by the applicant and all other relevant information available;

(c) Consider all comments submitted pursuant to Commission Rule 350-081-0040; and

(d) Solicit and consider the comments of the Forest Service.

(2) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(a) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(b) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(3) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Com-

mission Rule 350-81. As a goal, the Executive Director shall attempt to issue a decision within 72 days after acceptance of the application.

(4) The Executive Director shall send a copy of the decision to the applicant, the Forest Service, the applicable state, the four Indian tribal governments, the applicable county and/or city and each person who submitted comments under Commission Rule 350-081-0040. The decision shall set forth the rights of appeal under Commission Rule 350-70.

(5) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

(6) The 72-day time period in this rule is effective retroactively to all development review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
 Stats. Implemented: ORS 196.150
 Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 2-2011(Temp), f. & cert. ef. 6-16-11 thru 10-12-11; CRGC 3-2011(Temp), f. 10-5-11, cert. ef. 10-13-11 thru 2-9-12; Administrative correction, 2-24-12; CRGC 1-2012, f. 4-18-12, cert. ef. 6-1-12

350-081-0044

Expiration of Approvals

(1) Notice Not Required: Expiration of any land use approval issued pursuant to this Management Plan shall be automatic. Failure to give notice of expiration shall not affect the expiration of a land use approval.

(2) Land Use Approvals without Structures: Any land use approval issued pursuant to this Management Plan for a use or development that does not include a structure shall expire two years after the date the land use approval was granted, unless the use or development was established according to all specifications and conditions of approval in the land use approval. For land divisions, "established" means the final deed or plat has been recorded with the county recorder or auditor.

(3) Land Use Approvals with Structures: Any land use approval issued pursuant to this Management Plan for a use or development that includes a structure shall expire as follows:

(a) When construction has not commenced within two years of the date the land use approval was granted; or

(b) When the structure has not been completed within two years of the date of commencement of construction.

(4) Commencement of Construction: As used in subsection (3)(a) above, commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.

(5) Completion of Structure: As used in subsection (3)(b) above, completion of the structure shall mean (1) completion of the exterior surface(s) of the structure and (2) compliance with all conditions of approval in the land use approval.

(6) Extension of Validity of Land Use Approvals: A request for extension of the time frames in subsections (2), (3)(a) or (3)(b), above, shall be submitted in writing before the applicable expiration date.

(a) A reviewing agency may grant one 12-month extension to the validity of a land use approval if it determines that events beyond the control of the applicant prevented commencement of the use or development (applicable to section (2) above) or commencement of construction (applicable to subsection (3)(a) above) within the original two-year time frame.

(b) An agency may also grant one 12-month extension if it determines that events beyond the control of the applicant prevented

completion of the structure (applicable to subsection (3)(b) above) within the original two-year time frame.

(c) A request for extension shall state the reason why events beyond the control of the applicant warrant an extension.

(d) Approval or denial of a request for extension shall be considered an administrative decision.

(7) Vested Rights: The laws of the states of Oregon and Washington concerning vested rights shall not apply in the National Scenic Area. A person has a vested right for as long as the land use approval does not expire.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
 Stats. Implemented: ORS 196.150
 Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0046

Changes or Alterations to an Approved Action

Any change to a development action approved by the Executive Director shall be processed as a new action, except that the Executive Director may approve minor changes to findings, conclusions, and conditions of approval deemed to be consistent with the guidelines of Commission Rule 350-081 and the findings and conclusions for the original action. If the Executive Director approves a minor change, the Director shall notify all of the parties that would have standing to appeal the change, including the applicant, the Forest Service, the four Indian tribal governments, the county planning department, and anyone who submitted comments during the comment period on the original land use application. The change itself (not the original decision) would be subject to appeal under the same time frames applicable to the original decision.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
 Stats. Implemented: ORS 196.150
 Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 2-2008, f. 11-4-08, cert. ef. 12-15-08

Expedited Development Review Process

350-081-0050

Development Eligible for Expedited Review

The following developments may be reviewed using the expedited development review process, provided they comply with the resource protection and procedural guidelines contained in this section.

(1) Except in Open Space and Agriculture-Special, accessory structures between 60 and 200 square feet in area and 10 feet or less in height. Only one accessory building per parcel may be allowed under this guideline, regardless of whether the parcel already includes an accessory building(s). Additional accessory buildings shall be subject to full review. This category does not include signs, decks, fences, outdoor lights, retaining walls, transportation facilities, or utility facilities.

(2) Additions and covered decks for existing buildings, provided the existing building is at least 500 square feet in area and the addition or covered deck is no larger than 200 square feet in area and no taller than the height of the existing building. Only one addition and one covered deck per parcel may be allowed under this guideline, regardless of whether the parcel already includes an addition or covered deck.

(3) Rail, solid or semi-solid fences accessory to existing dwellings less than or equal to 6 feet in height and less than or equal to 100 feet in length.

(4) Wire-strand fences other than those allowed outright, provided the fence complies with 350-081-0580(6) if it is inside deer and elk winter range as delineated in the Gorge Commission/USDA Forest Service natural resource inventories or determined by an appropriate federal or state agency.

(5) In the General Management Area, woven-wire fences for agricultural use that would enclose 80 acres or less.

(6) Decks that are:

(a) Uncovered;

(b) Attached and accessory to existing dwellings; and

(c) 500 square feet or less in area and 30 inches or less in height above existing grade.

- (6) Road closure gates.
- (7) Signs, other than those allowed outright.
- (8) Outdoor lights.

(9) Air, weather, water and other similar research and monitoring facilities, provided the facilities are attached to existing structures or are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(10) Lot line adjustments in the General Management Area that would not result in the potential to create additional parcels through subsequent land divisions, subject to 350-081-0126(1), except all lot line adjustments for parcels designated Open Space, Agriculture-Special, Public Recreation, or Commercial Recreation shall be reviewed through the full development review process.

(11) Lot line adjustments in the Special Management Area, subject to 350-081-0126(2).

(12) Removal/demolition of structures that are less than 50 years old, including wells, septic tanks and fuel tanks.

(13) Decommission non-paved roads, including ripping the road surface, barriers, and revegetation.

(14) Trail reconstruction involving up to 1,000 feet of trail route.

(15) The following transportation facilities, provided they are not a part of larger construction or reconstruction projects (which shall be reviewed as a whole):

(a) New guardrails and guardrail ends, other than those allowed outright, and new wire-strand and woven-wire access control fences. This category does not include jersey barriers.

(b) New traffic detection devices, vehicle weighing devices, and signal boxes less than or equal to 120 square feet in size and less than or equal to 12 feet in height. This category does not include signs.

(c) Pave existing dirt and gravel roads, provided the activity does not increase the width of the road or disturb the toe of adjacent embankments, slopes or cut banks.

(d) New weather, air, traffic or other monitoring equipment attached to existing structures or that are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(16) Except in Agriculture-Special, the following underground utility facilities:

(a) New underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) No ditch for linear facilities would be more than 36 inches wide and (2) No excavation for non-linear facilities would exceed 20 cubic yards.

(b) The following aboveground and overhead utility facilities:

(A) Modify existing aboveground and overhead utility facilities or, except in Agriculture-Special, develop new aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the development would be less than or equal to 120 square feet in area and less than or equal to 12 feet in height.

(B) Replace existing aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the replacement facilities would be in the same location as and no more than 15 percent larger than the physical size of the existing facilities.

(C) New antennas and associated support structures necessary for public service on existing wireless communication poles and towers other than those allowed outright, provided the size is the minimum necessary to provide the service.

(17) Replace an existing mobile home in a mobile home space within a mobile home park, provided:

(a) The mobile home to be replaced, the mobile home space and the mobile home park shall be existing, lawful uses according to the definition of existing use or structure and 350-081-0082(1)-(4);

(b) The replacement mobile home shall be in the same location as the mobile home to be replaced;

(c) The height of the replacement mobile home shall be no more than 20 percent greater than the mobile home to be replaced; and

(d) The mass and footprint of the replacement mobile home shall be no more than 100 percent greater than a single-wide mobile home to be replaced or no more than 25 percent greater than a double-wide mobile home to be replaced.

(18) Retaining walls accessory to existing dwellings less than or equal to 2 feet in height and less than or equal to 100 feet in length.

(19) In the Special Management Area, wind machines for frost control in conjunction with agricultural use.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0052

Resource and Treaty Rights Protections Guidelines

(1) Proposed developments reviewed using the expedited review process shall comply with the following resource protection guidelines:

(a) Scenic:

(A) In the General Management Area, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.

(B) Except signs, the colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. This guideline shall not apply to additions, which may match the color of existing buildings.

(C) Except signs, structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents, and chimneys.

(D) Outdoor lights shall be directed downward and sited, hooded, and shielded such that they are not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(E) Signs shall comply with 350-081-0112.

(F) Structures within one-half mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and/or designed to achieve the applicable scenic standard (e.g., visual subordination, not visually evident).

(b) Cultural:

(A) The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey, pursuant to 350-081-0540(1)(c)(A) or historic survey, pursuant to 350-081-0540(1)(c)(B).

(B) The GMA guidelines that protect cultural resources and human remains discovered during construction shall be applied as conditions of approval for all development approved under the expedited development review process.

(c) Recreation:

(A) The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.

(d) Natural:

(A) Wetlands, Streams, Rivers, Ponds, and Lakes:

(i) The development is outside buffer zones for wetlands, streams, rivers, ponds, and lakes. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.

(B) Sensitive Wildlife and Sensitive Plants

(i) The development meets one of the following:

(I) The development is at least 1,000 feet from known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range, and turkey habitat) and known sensitive plants; or

(II) The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained; or

(III) For sensitive wildlife, the development is within 1,000 feet of known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range and turkey habitat), but an appropriate federal or state wildlife agency determines (1) the sensitive wildlife area or site is not active or (2) the proposed development would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance. For sensitive plants, the development is within 1,000 feet of known sensitive plants, but the Oregon or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the sensitive plants.

(ii) Development eligible for expedited review shall be exempt from the field survey requirements for sensitive wildlife or sensitive plants.

(2) Proposed developments reviewed using the expedited review process shall comply with the following treaty rights protection guidelines:

(a) Proposed developments shall not affect or modify any treaty or other rights of any Indian tribe.

(b) The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if an Indian tribe submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.

(c) Except as provided in 2.b above, the GMA and SMA treaty rights and consultation goals, policies and guidelines in Chapter 3, Section IV of the Management Plan shall not apply to proposed developments reviewed under the expedited review process.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0054

Procedures for Expedited Review Process

(1) Applications

(a) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-081-0054.

(b) The Executive Director shall accept and review the application pursuant to 350-081-0054 for consistency with the appropriate guidelines of this rule.

(c) The Commission may charge a fee for review of applications after a public hearing. The Gorge Commission shall set the fee.

(d) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices for which this ordinance is effective and the Forest Service.

(e) Applications for uses eligible for expedited review shall include the information required for review uses listed in 350-081-0032(5). They shall also include elevation drawings if the proposed development would be visible from a key viewing area. The drawing shall show natural grade and finished grade.

(2) Acceptance of Application

(a) The Executive Director shall review the application for completeness, and if complete, shall accept the application for review.

(b) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing. The Executive Director shall review supplemental application materials to determine if the application is complete.

(c) As a goal, the Executive Director shall attempt to accept the application as complete or notify the applicant of omissions and deficiencies in writing within 14 days of receipt of the application. The Executive Director shall attempt to review supplemental application materials within 14 days of receipt of the materials.

(3) Notice of Development Review

(a) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

(A) The name of the applicant;

(B) The general and specific location of the subject property;

(C) A brief description of the proposed action;

(D) The deadline for issuing a decision; and

(E) The deadline for filing comments on the proposed action.

(b) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(d) The notice shall be mailed to the Forest Service, the four Indian tribal governments, applicable county or city planning office(s), and other agencies and interested parties that request a notice or that the Executive Director determines should be notified.

(e) A copy of the notice shall be posted on the Commission's website.

(4) Comment Period: Any interested person or party shall submit written comments within 10 days from the date a notice is sent.

(5) Written Decision

(a) In making a decision on a proposed use or development the Executive Director shall:

(A) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(B) Consider information submitted by the applicant and all other relevant information available;

(C) Consider all comments submitted pursuant to 350-081-0054(4); and

(D) Solicit and consider the comments of the Forest Service.

(b) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(A) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(B) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(c) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81. As a goal, the Executive Director shall attempt to issue a decision within 30 days after acceptance of the application.

(d) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

(6) Notice of Decision and Opportunity to Appeal

(a) The Executive Director shall send a copy of a decision issued under the expedited review process to the four Indian tribal governments, the Forest Service, landowners within 200 feet of the perimeter of the subject parcel, and anyone who submitted comments pursuant to 350-081-0054(4).

(b) Any person shall be allowed to appeal a decision issued under the expedited review process in accordance with Commission Rule 350-70.

(7) Expiration of Approvals. Approvals issued under the expedited review process shall expire in accordance with the standards for expiration of approvals for review uses (Commission Rule 350-081-0044, above).

(8) Changes or Alterations to an Approved Action. Changes or alterations to an approval issued under the expedited review process shall be made in accordance with the standards for changes or alterations to approved actions for review uses (Commission Rule 350-081-0046, above).

(9) The time periods in this rule are effective retroactively to all expedited review applications that have been submitted to the

Commission and for which the Executive Director has not made a decision.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
 Stats. Implemented: ORS 196.150
 Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 2-2011(Temp), f. & cert. ef. 6-16-11 thru 10-12-11; CRGC 3-2011(Temp), f. 10-5-11, cert. ef. 10-13-11 thru 2-9-12; Administrative correction, 2-24-12; CRGC 1-2012, f. 4-18-12, cert. ef. 6-1-12

Emergency/Disaster Response Actions

350-081-0060

Emergency/Disaster Response Actions

(1) General Guidelines:

(a) Actions taken in response to an emergency/disaster event, as defined in Commission Rule 350-081-0020(54), are allowed in all GMA/SMA land use designations, subject to the notification requirements in "Notification Requirements" (subsection 2, below).

(b) Following emergency/disaster response actions, best management practices (BMPs) to prevent sedimentation and provide erosion control shall be utilized whenever disaster response actions necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute netting, etc.

(c) Structures or development installed or erected for a temporary use (e.g. sandbags, check dams, plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following an emergency event. If it can be demonstrated that the continued use of these devices is necessary to protect life property, public services or the environment, an extension of no more than two years may be granted by the Executive Director or the Forest Service for federal agency actions.

(d) The new exploration, development (extraction or excavation), and production of mineral resources, used for commercial, private or public works projects, shall not be conducted as an emergency/disaster response activity.

(e) No spoils resulting from grading or excavation activities shall be deliberately deposited into a wetland, stream, pond, lake or riparian area within the National Scenic Area (NSA) as a part of an emergency/disaster response action. The only exception to this is for construction of a fire line during a wildfire, where avoiding the aquatic area or its buffer zone has been considered and determined to not be possible without further jeopardizing life or property.

(2) Notification Requirements:

(a) Actions taken in response to an emergency/disaster event, as defined in Commission Rule 350-081-0020(54), are allowed in all GMA and SMA land use designations, subject to the following notification requirements.

(A) Notification of an emergency/disaster response activity shall be submitted either within 48 hours of the commencement of a response action, or by the next business day following the start of such an action, whichever is sooner. Notification shall be submitted by the party conducting an emergency/disaster response activity or their representatives. In the case of multiple responding parties, the first party to respond shall provide the required notification, unless, upon mutual agreement of responding parties, another responder elects to assume this responsibility.

(B) Notification shall be submitted by mail, fax, telephone, e-mail or in person. If notification occurs by telephone, a hard copy of the notification shall be submitted by mail or in person within 7 days.

(C) Notification shall be furnished to the Executive Director or the Forest Service for federal agency actions.

(D) At a minimum, the following information shall be required at the time of notification:

(i) Nature of emergency/disaster event.

(ii) Description of emergency/disaster response activities and magnitude of response actions to be taken, if applicable (such as extent of earth movement, erection of structures, etc.).

(iii) Location of emergency/disaster response activities.

(iv) Estimated start and duration of emergency/disaster response activities.

(v) Contact person and phone number for the parties conducting emergency/disaster response actions.

(E) Repair and maintenance of an existing serviceable structure to its previously authorized and undamaged condition are not subject to the above referenced notification requirements.

(b) Upon notification of an emergency/disaster response action, the Executive Director, or Forest Service shall, as soon as possible:

(A) Review its natural resource inventory data and notify the contact person for the emergency/disaster response actions of all inventoried natural resource sites and their buffers, that are within or adjacent to the response area or that may be adversely affected by response activities;

(B) Notify the Oregon or Washington Department of Fish and Wildlife of all noticed emergency/disaster response actions, to provide that agency an opportunity to consult with responding agencies during the event; and

(C) Notify the Forest Service, the Oregon Historic Preservation Office or the Office of Washington Office of Archeology and Historic Preservation, and the tribal governments of all emergency/disaster response activities. The Forest Service will review their cultural resource inventory data and notify the contact person for the emergency/disaster response action as soon as possible of all inventoried cultural resource sites, or their buffers, that are within, or adjacent to, emergency/disaster response areas.

(c) Upon notification of a response action, the Forest Service shall, as soon as possible, offer the services of a resource advisor to the agency(ies) conducting the response action. The resource advisor will provide on-site advice to minimize impacts to resources from emergency/disaster response actions.

(3) Post-Emergency/Disaster Response Development Review Application Requirements:

(a) Within 30 days following notification, a post-emergency/disaster response application shall be submitted by the party conducting the response action to the Executive Director, or Forest Service for federal agency actions. In the case of an event with multiple responding parties, the party providing initial notification as required herein shall submit the application. An exception to this may occur if another responding party, by mutual agreement with the other respondents, elects to submit the application. Requests to extend this submittal deadline may be made in writing and shall include the reason why an extension is necessary. Extensions shall not exceed 30 days in duration and not more than two (2) extensions shall be granted.

(b) Post-emergency/disaster response applications shall only address development activities conducted during an emergency/disaster response. Applications shall specify if development placed during an emergency/disaster event is permanent or temporary. The terms "development activities" and "development" include the disposal of any spoil materials associated with an emergency/disaster response action. Applicants shall be responsible for operations under their control and that of other responders, upon mutual agreement. Responders not agreeing to have another responder address their actions shall be responsible to submit an application for those actions.

(c) Emergency/disaster response actions not involving structural development or ground disturbance with mechanized equipment are exempt from these requirements, except for those actions within 500 feet of a known cultural resource (as determined in the notification process).

(d) Applications shall include the following information:

(A) Applicant's name and address.

(B) Location of emergency/disaster response.

(C) A written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.

(D) A map of the project area drawn to scale, at a scale of 1 inch = 200 feet or a scale providing greater detail. The map shall include:

(i) North arrow and scale.

(ii) Boundaries, dimensions and size of subject parcel(s).

- (iii) Bodies of water, watercourses, and significant landforms.
- (iv) Existing roads and structures.
- (v) New structures placed and any vegetation removal, excavation or grading resulting from the response actions.

(E) An exception to the scale requirements in subsection (3)(d)(D) above may be granted for an event encompassing an area greater than one square mile. In such cases, a clear sketch map of the entire response action area shall be provided. In addition, a map of 1 inch = 200 feet or a scale providing greater detail shall be provided that shows a section of the response area exemplifying the specific actions taken.

(e) Emergency/disaster response review uses may be allowed pursuant to a process that provides at minimum the following:

(A) Notice of the application to landowners within 200 feet of the perimeter of the subject parcel, the Forest Service, Gorge Commission, four tribal governments and interested parties.

(B) A written decision with findings of fact and conclusions of law.

(C) An opportunity to request a hearing.

(4) Post-Emergency/Disaster Response Development Review Actions taken in all land use designations within the GMA/SMA that are in response to an emergency/disaster event, as defined, shall be reviewed for compliance with the following guidelines.

(a) Scenic Resources:

(A) Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic resources are not adversely affected. In the GMA, such actions shall be rendered visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable, except for actions located in areas exempted from visual subordination requirements in 350-081-0520(3)(k). In the SMA, such actions shall meet the scenic standard to the greatest extent practicable.

(B) Vegetation shall be used to screen or cover road cuts, structural development, landform alteration, and areas denuded of vegetation, as a result of emergency/disaster response actions.

(C) Areas denuded of vegetation as a result of emergency/disaster response actions shall be revegetated with native plant species, or species commonly found within the applicable landscape setting, to restore the affected areas to its pre-response condition to the greatest extent practicable. Revegetation shall occur as soon as practicable, but no later than one year after the emergency/disaster event. An exception to the one-year requirement may be granted upon demonstration of just cause, with an extension up to one year.

(D) The painting, staining or use of other materials on new structural development shall be used to ensure that the structures are non-reflective, or of low reflectivity, and visually subordinate in their landscape setting as seen from key viewing areas, unless the structure is fully screened from key viewing areas by existing topographic features.

(E) Additions to existing structures, resulting from an emergency/disaster response action, which are smaller in total height, bulk or area than the existing structures may be the same color as the existing development. Additions larger than the existing development shall be visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable.

(F) In the General Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(I) Removed from the NSA;

(II) Deposited at a site within the NSA permitted by an agency administering a Scenic Area land use ordinance; or

(III) (Re)contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.

(ii) The Executive Director shall decide whether an applicant removes the spoil materials, deposits the spoil materials, or (re)contours the spoils materials. The applicant does not make this decision.

(iii) The Executive Director shall select the action in 350-081-0060(4)(a)(F)(i) that, to the greatest extent practicable, best complies with the policies and guidelines in the Management Plan that protect scenic, cultural, recreation, and natural resources.

(iv) Disposal sites created according to 350-081-0060(4)(a)(F)(i)(II) shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from routine road maintenance activities shall not be deposited at these sites.

(G) In the Special Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(I) Removed from the NSA; or

(II) Deposited at a site within the NSA permitted by an agency administering a Scenic Area land use ordinance within two years of the emergency.

(ii) After the spoils materials are removed, the emergency disposal site shall be rehabilitated to meet the scenic standard.

(iii) All grading (i.e., recontouring) shall be completed within 30 days after the spoils materials are removed.

(iv) Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

(v) All revegetation shall take place within one (1) year of the date an applicant completes the grading.

(vi) This provision shall take effect two years after the date of Management Plan concurrence by the U.S. Secretary of Agriculture, or approval of a disposal site, whichever comes first.

(b) Cultural Resources and Treaty Rights:

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources. Emergency/disaster response actions shall not affect tribal treaty rights.

(B) The USDA Forest Service shall determine if a reconnaissance survey or historic survey is necessary within three days after receiving notice that a post-emergency land use application has been received by the Executive Director.

(i) Reconnaissance surveys shall be conducted by the USDA Forest Service and comply with the standards in 350-081-0540(1)(c)(D). Reconnaissance survey reports shall comply with the standards in 350-081-0540(1)(c)(G).

(ii) Historic surveys shall be conducted by the USDA Forest Service and shall describe any adverse effects to historic resources resulting from an emergency/disaster response action. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. Such surveys shall also include original photographs, if available, and maps, and should use archival research, blueprints, and drawings as necessary.

(C) Following the submittal of a post-emergency land use application, in addition to other public notice requirements that may exist, the tribal governments shall be notified by the Executive Director when (1) a reconnaissance survey is required or (2) cultural resources exist in the project area. Notices shall include a site plan. Tribal governments shall have 15 calendar days from the date a notice is sent to submit written comments. Written comments should describe the nature and extent of any cultural resources that exist in the project area or treaty rights that exist in the project area and how they have been affected, and identify individuals with specific knowledge about them.

(D) When written comments are submitted in compliance with 350-081-0060(4)(b)(C) above, the project applicant shall offer to meet within five calendar days with the interested persons. The five day consultation period may be extended upon agreement between the project applicant and the interested persons. A report shall be prepared by the Executive Director following the consultation meeting. Consultation meetings and reports shall comply with the standards in 350-081-0540(2)(a), and 0084(1)(b)(A) and (B).

(E) If cultural resources are discovered within the area disturbed by emergency response actions, the project applicant

shall have a qualified professional conduct a survey to gather enough information to evaluate the significance of the cultural resources and what effects the action had on such resources. The survey and evaluation shall be documented in a report that generally follows the standards in 350-081-0540(1)(c)(G) and 350-081-0540(3)(a).

(F) A mitigation plan shall be prepared by the project applicant if the affected cultural resources are significant. The mitigation plan shall be prepared according to the information, consultation, and report guidelines in 350-081-0540(5)(a).

(G) The Executive Director shall submit a copy of all reconnaissance and historic survey reports and treaty rights protection plans to the SHPO and the tribal governments. Survey reports shall include measures to mitigate adverse effects to cultural resources resulting from emergency/disaster response actions. The SHPO and tribal governments shall have 15 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the final decision.

(H) The Executive Director shall make a final decision on whether the emergency/disaster response actions are consistent with the applicable cultural resource goals, policies, and guidelines. If the final decision contradicts the comments submitted by the SHPO, or those submitted by a tribal government regarding treaty rights, the Executive Director shall justify how the opposing conclusion was reached.

(I) The cultural resource protection process may conclude when it has been determined that tribal treaty rights have not been not affected and one of the following conditions exists:

(i) The emergency/disaster response action does not require a reconnaissance or historic survey, or a reconnaissance survey demonstrates that no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 15 calendar days of the date that a notice was mailed.

(ii) The emergency/disaster response action avoided cultural resources that exist in the project area.

(iii) Adequate mitigation measures to affected cultural resources have been developed and will be implemented.

(iv) A historic survey demonstrates that emergency/disaster response actions, and associated development, had no effect on historic buildings or structures because:

(I) The SHPO concluded that the historic buildings or structures are clearly not eligible, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(II) The emergency/disaster response actions did not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in The Secretary of the Interior's Standards for Rehabilitation and The Secretary of the Interior's Standards for Historic Preservation Projects.

(c) Natural Resources:

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect natural resources.

(B) Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas, and sites containing rare plants, shall be the same as those established in 350-081-0560-0600.

(C) Wetlands, Streams, Ponds, Lakes, Riparian Areas:

(i) Emergency/disaster response actions occurring within a buffer zone of wetlands, streams, pond, lakes or riparian areas shall be reviewed by the Oregon or Washington Department of Fish and Wildlife. These areas are also referred to in this section as aquatic areas. State biologists will help determine if emergency/disaster response actions have affected or have a potential to affect these aquatic areas or their bigger zones. State biologists shall respond within 15 days of the date the application is mailed.

(ii) When emergency/disaster response activities occur within wetlands, streams, ponds, lakes, riparian areas, or the buffer zones of these areas, the applicant shall demonstrate the following:

(I) All reasonable measures have been applied to ensure that the response actions have resulted in the minimum feasible alteration or destruction of the functions, existing contours, vegetation, fish and wildlife resources, and hydrology of wetlands, streams, ponds, lakes or riparian areas.

(II) Areas disturbed by response activities and associated development will be rehabilitated to the maximum extent practicable.

(iii) Impacts to wetlands, streams, ponds, lakes and riparian areas, and their buffers will be offset through mitigation and restoration to the greatest extent practicable. Mitigation and restoration efforts shall use native vegetation, and restore natural functions, contours, vegetation patterns, hydrology and fish and wildlife resources to the maximum extent practicable.

(iv) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response actions had minor effects on the aquatic area or its buffer zone that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state biologist, or a Forest Service natural resource advisor (as available) in consultation with the state biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final order and the aquatic area protection process may conclude.

(v) Unless addressed through subsection (4)(c)(C)(iv) above, mitigation and restoration efforts shall be delineated in a Rehabilitation Plan. Rehabilitation Plans shall satisfy the standards in 350-081-0570(8)(a) and (b). Rehabilitation plans shall also satisfy the following:

(I) Plans shall include a plan view and cross-sectional drawing at a scale that adequately depicts site rehabilitation efforts. Plans will illustrate final site topographic contours that emulate the surrounding natural landscape.

(II) Planting plans shall be included that specify native plant species to be used, specimen quantities and plant locations.

(III) The project applicant shall be responsible for the successful rehabilitation of all areas disturbed by emergency/disaster response activities.

(D) Wildlife Habitat:

(i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive wildlife area or site, shall be reviewed by the Oregon or Washington Department of Fish and Wildlife. State wildlife biologists will help determine if emergency/disaster response actions have affected or have a potential to affect a sensitive wildlife area or site.

(ii) Site plans for emergency/disaster response sites shall be submitted by the Executive Director to the Oregon or Washington Department of Fish and Wildlife for review as prescribed in 350-081-0580(4)(a) and (b). The wildlife agency shall respond within 15 days of the date the application is mailed.

(iii) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines (1) the sensitive wildlife area or site was not active, or (2) the emergency/disaster response did not compromise the integrity of the wildlife area or site or occurred at a time when wildlife species are not sensitive to disturbance.

(iv) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had minor effects on the wildlife area or site that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state wildlife biologist, or a Forest Service natural resource advisor (as available) in consultation with the state wildlife biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife protection process may conclude.

(v) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had adverse effect on a sensitive wildlife area or site, the project applicant shall prepare a Wildlife Management Plan. Wildlife Management Plans shall comply with standards in 350-081-0580(5). Upon completion of the Wildlife Management Plan, the Executive Director shall:

(I) Submit a copy of the Wildlife Management Plan to the state wildlife agency for review. The state wildlife agency will have 15 days from the date that a plan is mailed to submit written comments to the Executive Director;

(II) Record any written comments submitted by the state wildlife agency in its development review order. Based on these comments, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

(III) Require the project applicant to revise the Wildlife Management Plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(E) Deer and Elk Winter Range:

(i) Any fencing permanently erected within deer and elk winter range, as a result of an emergency/disaster response, shall comply with the standards in 350-081-0580(6).

(F) Rare Plants:

(i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive plant, shall be reviewed by the Oregon or Washington Natural Heritage Program. State heritage staff will help determine if emergency/disaster response actions have occurred within the buffer zone of a rare plant.

(ii) Site plans for emergency/disaster response sites shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. State natural heritage staff will, within 15 days from the date the application is mailed, identify the location of the affected plants and delineate a 200 foot buffer zone on the applicant's site plan.

(iii) The rare plant protection process may conclude if the Executive Director, in consultation with the state natural heritage program, determines that emergency/disaster response activities occurred outside of a rare plant buffer zone.

(iv) If the Executive Director, in consultation with the state natural heritage program, determines that the emergency/disaster response activities had minor effects on rare plants or the rare plant buffer zone, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state natural heritage staff, or a Forest Service natural resources advisor (as available) in consultation with the state natural heritage staff, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision order and the rare plant protection process may conclude.

(v) If emergency/disaster response activities occurred within a rare plant buffer zone that had adverse effects on rare plants or their buffer zone, the project applicant shall prepare a protection and rehabilitation plan, that meets the standards in 350-081-0590(5).

(vi) The Executive Director shall submit a copy of all protection and rehabilitation plans to the state heritage program for review. The state natural heritage program will have 15 days from the date the protection and rehabilitation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record any written comments submitted by the state natural heritage program in its development review order. Based on these comments, the Executive Director shall make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the state natural heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(vii) The Executive Director shall require the project applicant to revise the protection and rehabilitation plan as necessary to

ensure that the proposed use would not adversely affect a rare plant site.

(d) Recreational Resources:

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect recreational resources.

(B) Mitigation measures shall be implemented to mitigate any adverse effects on existing recreation resources caused by emergency/disaster response activities to the maximum extent practicable.

(5) Post-Emergency Construction:

(a) The following review uses are allowed in all land use designations in accordance with 350-081-0030-0046, 350-081-0070-0126 (as applicable), and 350-081-0520-0620.

(b) Placement of structures necessary for continued public safety and the protection of private property and essential public services damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use applications shall be submitted within 12 months following an emergency/disaster event.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

General Policies and Guidelines

350-081-0070

Exempt Land Uses and Activities

These policies repeat and respond to direction in Section 17 of the Scenic Area Act that the Management Plan not affect certain uses that take place in the Scenic Area.

(1) The Gorge Commission and Forest Service shall, in the Management Plan and in the implementation actions, protect treaty and other rights of Indian tribes. Nothing plan may interfere with the exercise of those rights.

(2) Lands held in trust by the Secretary of the Interior for Indian tribes or for individual members of Indian tribes, and lands acquired by the U.S. Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes or of individual members of Indian tribes, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act. This exemption shall extend to lands selected by the U.S. Army Corps of Engineers as "in lieu" fishing sites pursuant to Public Law 100-581 before or after the effective date of the Management Plan. For those "in lieu" sites chosen after the effective date of the Management Plan, the exemption shall commence upon selection by the U.S. Army Corps of Engineers.

(3) Rights to surface or ground water shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act.

(4) Water transportation activities on the Columbia River or its tributaries shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act. The term "activities" includes those facilities necessary for navigation.

(5) The operation, maintenance, and modification of existing transmission facilities of the Bonneville Power Administration shall be exempt from regulation under the Management Plan or land use ordinances adopted by the counties or the Gorge Commission pursuant to the Scenic Area Act.

(6) Neither the Management Plan nor land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act may affect laws, rules, or regulations pertaining to hunting or fishing.

(7) Neither the Forest Service nor the Gorge Commission may establish any buffer zones or protective perimeters outside the boundaries of the Scenic Area.

(8) The operation, maintenance, and improvement of navigation facilities at Bonneville Dam pursuant to federal law, except for the

offsite disposal of excavation material, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission under the Scenic Area Act.

(9) In the GMA, the rights and responsibilities of non-federal timber landowners under the Forest Practices Acts of Washington and Oregon, or under county regulations that supersede those acts, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0072

Prohibited Land Uses and Activities

The following land uses and activities shall not be allowed within the Columbia River Gorge National Scenic Area:

(1) Solid waste disposal sites or sanitary landfills within the Special Management Area.

(2) New industrial development in the Scenic Area outside of the Urban Areas.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0074

Uses Allowed Outright

(1) All Land Use Designations Except Open Space and Agriculture — Special:

(a) The following uses may be allowed without review in all GMA and SMA land use designations, except GMA and SMA Open Space and Agriculture — Special:

(A) In the General Management Area, agricultural uses except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation. For this guideline, cultivation and vegetation removal may be allowed in conjunction with a home garden.

(B) In the Special Management Area, agricultural uses within previously disturbed and regularly worked fields or areas.

(C) Forest practices in the General Management Area that do not violate conditions of approval for other approved uses and developments.

(D) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(E) Accessory structures 60 square feet or less in area and 10 feet or less in height, unless within the buffer zone of a wetland, stream, pond, lake or riparian area. This category does not include signs, fences, outdoor lights, retaining walls, flagpoles, transportation facilities, or utility facilities.

(F) Wire-strand or woven-wire fences used for gardens, yards, livestock, and similar uses less than or equal to 500 feet in length and less than or equal to 10 feet in height that are accessory to an existing dwelling, provided woven-wire fences (posts and wire) are brown or black if visible from key viewing areas. Height is measured from the ground to the top wire.

(G) Wire-strand fences less than or equal to 48 inches in height that are outside deer and elk winter range as delineated in the Gorge Commission/USDA Forest Service natural resource inventories or determined by an appropriate federal or state agency. Height is measured from the ground to the top wire. This category does not include fences associated with transportation facilities or utility facilities.

(H) The following transportation facilities:

(i) Replace existing safety or protective structures, including guardrails, access control fences and gates, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are:

(I) The same location and size as the existing structures; and

(II) The same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia

River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled “Scenic Travel Corridors”.

(ii) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are

(I) The same location and size as the existing structures; and

(II) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled “Scenic Travel Corridors”.

(iii) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(iv) Permanent public regulatory, guide, and warning signs, except those excluded below, provided

(II) The signs comply with the Manual for Uniform Traffic Control Devices; and

(II) The support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(v) Extensions of existing guardrails less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are

(I) Located inside rights-of-way that have been disturbed in the past; and

(II) Constructed of materials that match the existing structure, natural wood, weathering steel (e.g., Corten), or materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled “Scenic Travel Corridors”.

(vi) New guardrails and guardrail ends, provided the structures are

(I) Located inside rights-of-way that have been disturbed in the past; and

(II) Constructed of natural wood, weathering steel (e.g., Corten), or materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled “Scenic Travel Corridors”. This category does not include jersey barriers.

(vii) In the General Management Area, replace and/or expand existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(viii) In the Special Management Area, replace and/or expand existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective.

(ix) Resurface or overlay existing paved roads, provided the activity does not:

(I) Increase the width of a road;

(II) Disturb the toe of adjacent embankments, slopes or cut banks; or

(III) Change existing structures or add new structures.

(x) Apply dust abatement products to non-paved road surfaces.

(xi) Grade and gravel existing road shoulders, provided the activity does not

(I) Increase the width of a road;

(II) Disturb the toe of adjacent embankments, slopes or cut banks; or

(III) Change existing structures or add new structures.

(xii) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails or the substructure of bridges (e.g., foundations, abutments). The following underground utility facilities:

(xiii) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(ix) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided

(I) No excavation would extend more than 12 inches beyond the depth and extent of the original excavation;

(II) No ditch for linear facilities would be more than 24 inches wide;

(III) No excavation for non-linear facilities would exceed 10 cubic yards; and

(IV) No recorded archaeological site is located within 500 feet of the development. To comply with (IV), the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation or the Oregon State Historic Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

(J) The following aboveground and overhead utility facilities:

(i) Replace existing aboveground and overhead utility facilities including towers, pole/tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have:

(I) The same location and size as the existing facilities and

(II) The same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors".

(ii) Replace existing utility poles, provided the replacement poles are:

(I) Located within 5 feet of the original poles;

(II) No more than 5 feet taller and 6 inches wider than the original poles; and

(III) Constructed of natural wood, weathering steel (e.g., Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(iii) New whip antennas for public service less than or equal to 8-feet in height and less than or equal to 2 inches in diameter, cables, wires, transformers, and other similar equipment, provided all such structures are on existing utility poles or towers.

(K) Flagpoles that are accessory to the principal building on a parcel, provided the height of the flagpole is less than or equal to the height of the highest ridge line or parapet of the principal building.

(L) The following signs:

(i) Election signs. Removal must be accomplished within 30 days of election day.

(ii) "For sale" signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(iii) Temporary construction site identification, public service company, safety, or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the Manual for Uniform Traffic Control Devices. Removal must be accomplished within 30 days of project completion.

(iv) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet in the General Management Area and 2 square feet in the Special Management Area.

(v) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.

(vi) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(vii) In the General Management Area, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

(M) In the General Management Area, wind machines for frost control in conjunction with agricultural use.

(2) GMA and SMA Open Space:

(a) The following uses may be allowed without review in GMA and SMA Open Space:

(A) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(B) The following transportation facilities:

(i) Replace existing safety or protective structures, including guardrails, access control fences and gates, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are:

(I) The same location and size as the existing structures; and

(II) The same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors".

(ii) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are

(I) The same location and size as the existing structures and

(II) The same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors".

(iii) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(iv) Permanent public regulatory, guide, and warning signs, except those excluded below, provided

(I) The signs comply with the Manual for Uniform Traffic Control Devices; and

(II) The support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(v) Extensions of existing guardrails less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are

(I) Located inside rights-of-way that have been disturbed in the past and

(II) Constructed of materials that match the existing structure, natural wood, weathering steel (e.g., Corten), or materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled “Scenic Travel Corridors”.

(vi) New guardrails and guardrail ends, provided the structures are:

(I) Located inside rights-of-way that have been disturbed in the past and

(II) Constructed of natural wood, weathering steel (e.g., Corten), or materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled “Scenic Travel Corridors”. This category does not include j e r s e y barriers.

(vii) In the General Management Area, replace and/or expand existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(viii) In the Special Management Area, replace and/or expand existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective.

(ix) Resurface or overlay existing paved roads, provided the activity does not:

(I) Increase the width of a road;

(II) Disturb the toe of adjacent embankments, slopes or cut banks; or

(III) Change existing structures or add new structures.

(x) Apply dust abatement products to non-paved road surfaces.

(xi) Grade and gravel existing road shoulders, provided the activity does not:

(I) Increase the width of a road;

(II) Disturb the toe of adjacent embankments, slopes or cut banks; or

(III) Change existing structures or add new structures.

(xii) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails or the substructure of bridges (e.g., foundations, abutments).

(C) The following underground utility facilities:

(i) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(ii) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided:

(I) No excavation would extend more than 12 inches beyond the depth and extent of the original excavation;

(II) No ditch for linear facilities would be more than 24 inches wide;

(III) No excavation for non-linear facilities would exceed 10 cubic yards, and

(IV) No recorded archaeological site is located within 500 feet of the development. To comply with (IV), the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation or the Oregon State His-

toric Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

(D) The following aboveground and overhead utility facilities:

(i) Replace existing aboveground and overhead utility facilities including towers, pole/tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have:

(I) The same location and size as the existing facilities; and

(II) The same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled “Scenic Travel Corridors”.

(ii) Replace existing utility poles, provided the replacement poles are:

(I) Located within 5 feet of the original poles;

(II) No more than 5 feet taller and 6 inches wider than the original poles; and

(III) Constructed of natural wood, weathering steel (e.g., Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(iii) New whip antennas for public service less than or equal to 8-feet in height and less than or equal to 2 inches in diameter, cables, wires, transformers, and other similar equipment, provided all such structures are on existing utility poles or towers.

(E) The following signs:

(i) Election signs. Removal must be accomplished within 30 days of election day.

(ii) “For sale” signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(iii) Temporary construction site identification, public service company, safety, or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the Manual for Uniform Traffic Control Devices. Removal must be accomplished within 30 days of project completion.

(iv) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet in the GMA and 2 square feet in the SMA.

(v) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.

(vi) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(vii) In the General Management Area, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0076

Agricultural Buffer Zones in the General Management Area

(1) All new buildings in the GMA shall comply with the following guidelines when proposed to be located on a parcel adjacent to lands that are designated Large-Scale or Small-Scale Agriculture and are currently used for or are suitable for agricultural use: [Table not included. See ED. NOTE.]

(2) Earth berms may be used to satisfy, in part, the setback guidelines. The berm shall be a minimum of 8 feet in height, and

contoured at 3:1 slopes to look natural. Shrubs, trees, and/or grasses shall be employed on the berm to control erosion and achieve a finished height of 15 feet.

(3) The planting of a continuous vegetative screen may be used to satisfy, in part, the setback guidelines. Trees shall be at least 6 feet high when planted and reach an ultimate height of at least 15 feet. The vegetation screen shall be planted along the appropriate parcel line(s), and shall be continuous.

(4) The necessary berming and/or planting shall be completed during the first phase of development and maintained in good condition.

(5) If several crops or crop rotation is involved in the adjacent operation, the greater setback shall apply.

(6) A local government may grant a variance to the buffer guidelines upon a demonstration that the variance guidelines in 350-081-0078 have been satisfied.

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0078

Variances

(1) In the GMA, when setbacks or buffers specified in the guidelines for the protection of scenic, cultural, natural, recreation, agricultural, or forestry resources overlap or conflict, the setbacks or buffers may be varied upon a demonstration that both of the following conditions exist:

(a) A setback or buffer specified in Commission Rule 350-081 to protect one resource would cause the proposed use to fall within a setback or buffer specified in the plan to protect another resource.

(b) Variation from the specified setbacks or buffer would, on balance, best achieve the protection of the affected resources.

(2) In the GMA, a setback or buffer specified in the guidelines for protection of scenic, cultural, natural, recreation, agricultural, or forestry resources may be varied to allow a residence to be built on a parcel of land upon a demonstration that all of the following conditions exist:

(a) The land use designation otherwise authorizes a residence on the tract.

(b) No site exists on the tract (all contiguous parcels under the same ownership) on which a residence could practicably be placed in full compliance with the setback or buffer.

(c) The variance from the specified setback or buffer is the minimum necessary to allow the residence.

(3) In the GMA, the Executive Director may grant a variance to the setback and buffer requirements contained in 350-081-0610 upon a finding that all of the following conditions exist:

(a) The proposed project is a public-use, resource-based recreation facility providing or supporting either recreational access to the Columbia River and its tributaries, or recreational opportunities associated with a scenic travel corridor.

(b) All reasonable measures to redesign the proposed project to comply with required setbacks and buffers have been explored, and application of those setbacks and buffers would prohibit a viable recreation use of the site as proposed.

(c) Resource impacts have been mitigated to less than adverse levels through design provisions and mitigation measures.

(d) The variance is the minimum necessary to accommodate the use.

(4) In the GMA, the Executive Director may grant a variance of up to 10 percent to the guidelines of Recreation Intensity Class 4 for parking and campground units upon demonstration that all of the following conditions exist:

(a) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from Scenic Area recreation demand studies shall be relied upon to meet this criterion in the absence of current applicable studies.

(b) The proposed use is dependent on resources present at the site.

(c) Reasonable alternative sites offering similar opportunities, including those in nearby Urban Areas, have been evaluated, and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.

(d) The proposed use is consistent with Chapter 4, Part I of the Management Plan.

(e) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural, or cultural resources and adjacent land uses.

(f) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0080

Applying New Less-Stringent Regulations to Development Approved Under Prior Scenic Area Regulations

A landowner may submit a land use application to alter conditions of approval for an existing use or structure approved under prior Scenic Area regulations (e.g., *Columbia River Gorge National Scenic Area Final Interim Guidelines, original Management Plan*), subject to the following standards:

(1) The applicant shall apply for the same development that was reviewed in the original decision.

(2) The development shall remain in its current location.

(3) The agency that currently has jurisdiction over the applicant's property shall review the application and send notice of the application to agencies and other parties entitled to receive notice under the current rules.

(4) The agency shall review the entire development to ensure that it would fully comply with all the current guidelines (i.e., land use, treaty rights, scenic resources, cultural resources, recreation resources and natural resources).

(5) The agency shall issue a new decision that supersedes the original decision.

(6) The new decision may remove or revise original conditions of approval or add new conditions of approval to ensure full compliance with all the current guidelines.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0082

Existing Uses and Discontinued Uses

(1) Right to Continue Existing Uses and Structures

(a) Except as otherwise provided, any existing use or structure may continue as long as it is used in the same manner and for the same purpose.

(2) Replacement of Existing Structures Not Damaged or Destroyed by Disaster

(a) Except as provided in 350-081-0082(3), an existing structure may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply with the following standards:

(A) The replacement structure shall be used in the same manner and for the same purpose as the original structure.

(B) The replacement structure may have a different size and/or location than the original structure. An existing mobile home may be replaced with a framed residence and an existing framed residence may be replaced with a mobile home.

(C) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.

(D) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one year time frame.

(3) Replacement of Existing Structures Damaged or Destroyed by Disaster

(a) An existing structure damaged or destroyed by fire, flood, landslide or other similar disaster may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards:

(A) The replacement structure shall be used in the same manner and for the same purpose as the original structure. An existing mobile home may be replaced with a framed residence.

(B) The replacement structure shall be in the same location as the original structure. An exception may be granted and the replacement structure may be sited in a different location if the following conditions exist:

(i) A registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the disaster made the original building site physically unsuitable for reconstruction.

(ii) The new building site is no more visible from key viewing areas than the original building site. An exception may be granted if a registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the subject parcel lacks alternative building sites physically suitable for construction that are no more visible from key viewing areas than the original building site.

(iii) The new building site complies with the cultural resources, natural resources, and treaty rights protection guidelines.

(C) The replacement structure shall be the same size and height as the original structure, provided:

(i) The footprint of the replacement structure may be up to 10 percent larger than the footprint of the original structure.

(ii) The walls of the replacement structure shall be the same height as the walls of the original structure unless a minor increase is required to comply with standards in the current jurisdictional building code.

(D) The replacement structure shall only be subject to the following scenic resources standards:

(i) The replacement structure shall comply with the scenic resources guidelines regarding color and reflectivity. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable.

(ii) Decks, verandas, balconies and other open portions of the original structure shall not be rebuilt as enclosed (walls and roof) portions of the replacement structure.

(iii) In the General Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate) to the maximum extent practicable, provided:

(I) Except as provided in 350-081-0082(3)(a)(D)(iii)(II), the percent of the replacement structure screened by vegetation as seen from key viewing areas shall not exceed the percent of the original structure that was screened by vegetation as seen from key viewing areas. Coniferous vegetation shall be replaced with coniferous vegetation and deciduous vegetation shall be replaced with deciduous vegetation unless the applicant chooses to use all coniferous vegetation.

(II) In situations where the original structure was approved under Scenic Area regulations (e.g., Final Interim Guidelines, land use ordinance), the percent of the replacement structure screened by vegetation shall comply with any conditions of approval that required a landowner to preserve existing vegetation and/or plant and maintain new vegetation to screen the original structure as seen from key viewing areas.

(III) To help determine how much vegetation may be required under 350-081-0082(3)(a)(D)(iii)(I) and (II), land use applications shall include all available documentation (photographic or otherwise) on the amount and type of vegetation that screened the original structure from key viewing areas. At a minimum, development review decisions shall include findings that address the following:

(1) The percent of original structure facing each key viewing area that was screened by coniferous vegetation, for each key viewing area from which the structure was visible.

(2) The percent of original structure facing each key viewing area that was screened by deciduous vegetation, for each key viewing area from which the structure was visible.

(3) Elevation drawings showing the replacement structure and the amount of coniferous and deciduous vegetation that would screen the structure from key viewing areas in 10 years.

(IV) The height of any new trees shall not be required to exceed 5 feet.

(V) The time frame for achieving visual subordination shall be 10 years or less from the commencement of construction.

(iv) In the Special Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable, provided:

(I) The Scenic Resources Implementation Handbook shall be utilized to determine approvable species and minimum approvable sizes of new trees planted (based on average growth rates expected for approvable species).

(II) The height of any new trees shall not be required to exceed 5 feet.

(III) The time frame for achieving the applicable scenic standard (visually subordinate or not visually evident) shall be 10 years.

(E) The replacement structure shall be subject to 350-081-0082(2)(a)(A), (B), and (C) above if it would not comply with 350-081-0082(3)(a)(B) and (C).

(F) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the two year time frame.

(4) Changes to Existing Uses and Structures

(a) Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to Commission Rule 350-81.

(A) Conversion of Existing Industrial Uses in the GMA: In the GMA, existing industrial uses may convert to less intensive uses. For this section, a less intensive use is a commercial, recreation, or residential use with fewer adverse effects upon scenic, cultural, natural, and recreation resources.

(B) Existing Development or Production of Mineral Resources in the GMA: In the GMA, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural, or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to land use ordinances under the Management Plan if any of the following conditions exist:

(i) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as grazing. Mined land shall not include terrain that was merely leveled or cleared of vegetation.

(ii) The site has not maintained a required state permit.

(iii) The site has not operated legally within 5 years before October 15, 1991.

(C) Existing Development or Production of Mineral Resources in the SMA: Uses involving the exploration, development, or production of sand, gravel, or crushed rock in the SMA may continue if both of the following conditions exist:

(i) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the SMA.

(ii) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural, or recreation resources.

(5) Discontinuance of Existing Uses and Structures

(a) Except as provided in 350-081-0082(3)(a) and (3)(a)(F), any use or structure that is discontinued for one (1) year or more shall not be considered an existing use or structure. Proof of intent to abandon is not required to determine that an existing use or use of an existing structure has been discontinued.

(A) Multiple Uses: An existing use or structure with more than one legally established use may discontinue one of the uses without discontinuing the others.

(B) Change in Use: An existing use or structure shall become discontinued if the use or use of the structure changes.

(6) Discontinued Uses and Structures:

(a) Re-establishment or replacement of any use or structure that has been discontinued shall be subject to all applicable policies and guidelines in the Management Plan, including, but not limited to, guidelines for land use designations and scenic, cultural, recreation and natural resources.

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11; CRGC 1-2012, f. 4-18-12, cert. ef. 6-1-12

350-081-0084

Indian Tribal Treaty Rights and Consultation

Indian Tribal Treaty Rights and Consultation in the General Management Area.

(1) Tribal Government Notice:

(a) New uses located in, or providing recreation river access to, the Columbia River or its fishbearing tributaries shall include the following supplemental information:

(A) The site plan map shall show adjacent river areas at least 1/2 mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.

(B) The site plan text shall include an assessment of the potential effects that new uses may have on Indian treaty rights. The assessment shall:

(i) Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use (people, boats, and other uses) during peak-use periods.

(ii) List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.

(iii) List tribal ceremonial fishing seasons in the project vicinity.

(iv) Based on the above factors, assess the potential effects that the proposed uses may have on Indian treaty rights.

(b) Notices shall include a treaty rights protection plan if new uses may affect Indian treaty rights. The protection plan shall specify measures that will be used to avoid effects to Indian treaty rights. These measures may include reducing the size and modifying the location or design of the proposed uses, seasonal closures, stringent onsite monitoring, information signs, and highly visible buoys or other markers delineating fishing net locations.

(c) Indian tribal governments shall have 20 calendar days from the date a notice is mailed to submit substantive written comments to the Executive Director. Indian tribal governments must identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the new uses.

(2) Tribal Government Consultation:

(a) When substantive written comments are submitted to the Executive Director in a timely manner, the project applicant shall offer to meet with the Executive Director and the Indian tribal government that submitted comments within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the Indian tribal government. Consultation meetings should provide an opportunity for the project application and tribal representatives to identify potential conflicts and explore options to eliminate them. The project applicant must demonstrate that the proposed use would not affect or modify treaty or other rights of any Indian tribe.

(b) Any substantive comments, recommendations, or concerns expressed by Indian tribal governments during the consultation meeting shall be recorded and addressed by the project applicant in a treaty rights protection plan. The protection plan shall include measures to avoid effects to treaty and other rights of any Indian tribe.

(c) The Executive Director shall submit all protection plans to the Indian tribal governments. Indian tribal governments shall have 30 calendar days from the date a protection plan is mailed to submit written comments to the Executive Director.

(3) Conclusion of the Treaty Rights Protection Process:

(a) The Executive Director shall decide whether the proposed uses would affect or modify any treaty or other rights of any Indian tribe. The final decision shall integrate findings of fact that address any substantive comments, recommendations, or concerns expressed by Indian tribal governments. If the final decision contradicts the comments, recommendations, or concerns of Indian tribal governments, the Executive Director must justify how it reached an opposing conclusion.

(b) The treaty rights protection process may conclude if the Executive Director determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.

(c) A finding by the Executive Director that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as provided in these guidelines, in no way shall be interpreted as a waiver by the Indian tribe of a claim that such uses adversely affect or modify treaty or other tribal rights.

(4) Indian Tribal Treaty Rights and Consultation in the Special Management Area. For new development and uses in the Special Management Area, the Forest Service shall determine effects on treaty rights and shall notify the Executive Director of the determination.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0086

Buffers from Existing Recreation Sites

If new buildings or structures may detract from the use and enjoyment of established recreation sites, an appropriate buffer shall be established between the building/structure and the parcel.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

Uses and Structures Allowed in Various Land Use Designations

350-081-0090

Agricultural Buildings

(1) The size of proposed agricultural buildings shall not exceed the size needed to serve the current agricultural use and, if applicable, the proposed agricultural use.

(2) To satisfy 350-081-0090(1), applicants shall submit the following information with their land use application:

(a) A description of the size and characteristics of current agricultural use.

(b) An agricultural plan for any proposed agricultural use that specifies agricultural use (e.g., crops, livestock, products), agricultural areas and acreages (e.g., fields, pastures, enclosures), agricultural structures (e.g., irrigation systems, wind machines, storage bins) and schedules (e.g., plowing, planting, grazing).

(c) A floor plan showing intended uses of the agricultural building (e.g., space for equipment, supplies, agricultural products, livestock).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0092

Temporary Use — Hardship Dwelling

(1) A permit for the temporary placement of a mobile home may be granted under the following circumstances:

(a) A family hardship exists where conditions relate to the necessary care for a member of the family occupying the principal dwelling and where medical conditions relate to the infirm or aged.

(b) The hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling, if the system is adequate to accommodate the additional dwelling, unless the additional dwelling can use an existing public sanitary sewer system.

(c) The hardship dwelling is found to be consistent with the guidelines for protection of scenic, cultural, natural, and recreation resources.

(2) A permit may be issued for a 2-year period, subject to annual review for compliance with the provisions of this section and any other conditions of approval.

(3) Upon expiration of the permit or cessation of the hardship, whichever comes first, the mobile home shall be removed within 30 days.

(4) A new permit may be granted upon a finding that a family hardship continues to exist.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0094

Sewer and Water Services

(1) Sewer lines may be extended from an Urban Area into a rural area to serve:

(a) Areas with a documented health hazard.

(b) Recreation uses open to the public, only upon a demonstration by the local government that there is no practicable alternative to providing service to the area. In such cases, the lines shall be engineered and sized solely to serve the defined area or use. Such lines shall not be relied upon as the sole justification for revision to an Urban Area boundary.

(2) New uses authorized in Commission Rule 350-081 may hook up to existing sewer and water lines in rural areas.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0096

Docks and Boathouses

(1) New, private docks and boathouses serving only one family and one property shall be allowed, up to 120 square feet in size.

(2) New, private docks and boathouses serving more than one family and property shall be allowed, up to 200 square feet in size.

(3) Public docks open and available for public use shall be allowed.

(4) Boathouses may be allowed under 350-081-0096(1) and (2) only when accessory to a dwelling and associated with a navigable river or lake.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0098

Home Occupations and Cottage Industries

Home occupations and cottage industries may be established as authorized in specified land use designations consistent with the following guidelines:

(1) A home occupation may employ only residents of the home.

(2) A cottage industry may employ up to three outside employees.

(3) No more than 25 percent of the total actual living space of the dwelling may be used for the home occupation or cottage industry.

(4) No more than 500 square feet of an accessory structure may be used for a home occupation or cottage industry.

(5) There shall be no outside, visible evidence of the home occupation or cottage industry, including outside storage.

(6) Exterior structural alterations to the residence for the home occupation or cottage industry shall not be permitted. New structures shall not be constructed for the primary purpose of housing a home occupation or cottage industry.

(7) No retail sales may occur on the premises, except incidental sales at lodging establishments authorized in this chapter.

(8) One non-animated, non-illuminated sign, not exceeding 2 square feet in area, may be permitted on the subject structure or within the yard containing the home occupation or cottage industry.

(9) Parking not associated with residential use shall be screened so it is not visible from key viewing areas.

(10) In the General Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of 350-081-0098 and 350-081-0100.

(11) In the Special Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of 350-081-0098 and 350-081-0100, except 350-081-0100(1)(d).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0100

Bed and Breakfast Inns

Bed and breakfast inns may be established as authorized in specified land use designations, consistent with the following conditions:

(1) Guests may not occupy a facility for more than 14 consecutive days.

(2) One non-animated, non-illuminated sign, not exceeding 4 square feet in area, may be permitted on the structure or within the yard containing the structure.

(3) Parking areas shall be screened so they are not visible from key viewing areas.

(4) In the SMA, bed and breakfast inns associated with residential use shall be allowed only in structures that are included in, or eligible for inclusion in, the National Register of Historic Places.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0102

Small-Scale Fishing Support and Fish Processing Operations

Small-scale fishing support and fish processing operations in conjunction with a family-based commercial fishing business may be allowed on parcels designated GMA Residential, GMA Small Woodland, or GMA Small-Scale Agriculture, subject to the following conditions:

(1) The operation shall comply with 350-081-0084(1). In addition, if the operation will be located on land designated Small Woodland, then it shall also comply with 350-081-0300, and 350-081-0310.

(2) The following fishing support activities may be allowed: maintenance, repair, and storage of boats, nets, fish totes and other commercial fishing equipment that is used in the family-based commercial fishing business; and garaging of fish hauling trucks, trailers and all other related equipment that is used in the family-based commercial fishing business.

(3) The following fish processing activities may be allowed: cleaning, gutting, heading, and icing or freezing of fish that is caught by the family-based commercial fishing business. Other fish processing activities shall not be allowed, including, but not limited to, canning, smoking, salting or brining for wholesale or retail sale.

(4) The operation shall be located on a lawful parcel that is contiguous with and has direct access to the Columbia River.

(5) The subject parcel shall include a lawful dwelling, and the permanent resident of the dwelling shall participate in the fishing support and fish processing operation.

(6) The operation may only employ residents of the dwelling and up to three outside employees.

(7) No more than 25 percent of the total actual living space of the dwelling may be used for the fishing support and fish processing operation.

(8) The operation may take place in an existing or new lawful accessory building or an existing agricultural building on the subject parcel. A new building constructed for the purpose of housing a fishing support and fish processing operation shall be considered an accessory building. An existing agricultural building shall not be expanded and a new agricultural building shall not be constructed for the purpose of housing a fishing support and fish processing operation.

(9) An accessory building used in the fishing support and fish processing operation may be allowed up to 2,500 square feet.

(10) Docks may be allowed as follows:

(a) One dock serving a parcel with an approved fishing support and fish processing operation may be allowed up to 500 square feet in size.

(b) For multiple contiguous parcels each with an approved fishing support and fish processing operation, the area of the docks authorized in 350-081-0102(1)(j)(A) above may be combined into one dock, provided the total size of the dock shall not exceed 2,000 square feet.

(11) There shall be no outside visible evidence of the fishing support and fish processing operation, including storage, other than boats and docks.

(12) No retail sales may occur on the parcel.

(13) The operation shall only support and process fish caught by residents of the dwelling and up to three outside employees.

(14) Before beginning the operation, applicants shall demonstrate that they have obtained and complied with federal, state and/or local water quality and wastewater permits.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0104

Resource Enhancement Projects

(1) Applications for resource enhancement projects must describe the goals and benefits of the proposed enhancement project. They must also thoroughly document the condition of the resource before and after the proposed enhancement project.

(2) In addition to other guidelines that protect scenic, cultural, recreation, and natural resources, quarry enhancement projects shall comply with the following guidelines:

(a) Application Requirements. In addition to other applicable requirements, land use applications for quarry enhancement projects shall include perspective drawings of the site as seen from key viewing areas as specified in 350-081-0520(2)(o) and a reclamation plan that provides all the applicable information specified in 350-081-0520(1)(f)(A)–(E), except:

(A) The words “pre-reclamation” and “post-reclamation” should replace the words “pre-mining” and “post-mining,” respectively; and

(B) The appropriate state agency or local government does not have to approve the reclamation plan.

(b) Scenic Resource Standard. Quarry enhancement projects shall restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable.

(c) Natural Resource Standard. Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

(d) Time Frames. The following time frames shall apply to quarry enhancement projects:

(A) All grading (e.g., excavating, filling and re-contouring) shall be completed within one (1) year of the date an applicant begins on-the-ground work.

(B) All landscaping shall be planted within one (1) year of the date an applicant completes the grading.

(C) An applicant may request one one-year extension to the one year grading time frame if a project is unexpectedly delayed by

adverse weather or emergency/disaster. Such requests shall be considered an administrative action. An applicant shall submit such a request to the reviewing agency after grading has commenced and before the one year grading time frame has expired.

(D) An applicant may also request one six-month extension to the one (1) year landscaping time frame if a project is unexpectedly delayed by adverse weather or emergency/disaster. Such requests shall be considered an administrative action. An applicant shall submit such a request to the reviewing agency after landscaping has commenced and before the one-year landscaping time frame has expired.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0106

Disposal Sites for Spoil Materials from Public Road Maintenance Activities

(1) Application Requirements. In addition to other applicable requirements, land use applications for disposal sites shall include the same information that applicants are required to submit for expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

(a) A reclamation plan that provides all the applicable information specified in 350-081-0520(1)(f)(A)–(E), except:

(A) The words “pre-disposal” and “post-disposal” should replace the words “pre-mining” and “post-mining” and

(B) The appropriate state agency or local government does not have to approve the reclamation plan.

(b) Perspective drawings of the site as seen from key viewing areas as specified in 350-081-0520(2)(o).

(c) Cultural resource reconnaissance and historic surveys, as required by 350-081-0540(1)(c)(A) and (B), respectively. Disposal sites shall be considered a “large-scale use” according to 350-081-0540(1)(c)(C).

(d) Field surveys to identify sensitive wildlife areas or sites and sensitive plants as described in 350-081-0580(2) and 350-081-0590(2).

(2) Siting Standard. The proposed disposal site shall only be approved if the applicant demonstrates it is not practicable to locate the disposal site outside the Scenic Area or inside an Urban Area. At a minimum, the applicant shall submit a feasibility and suitability analysis that compares the proposed disposal site to existing or potential disposal sites located both outside the Scenic Area and inside an Urban Area.

(3) Scenic Resource Standards. Disposal sites shall comply with the same scenic resources protection standards as expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

(a) Sites more than 3 miles from the nearest key viewing area shall be visually subordinate as seen from any key viewing area, according to 350-081-0520(2)(bb). An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the start of on-the-ground activities.

(b) Sites less than 3 miles from the nearest key viewing area shall be fully screened from any key viewing area, according to 350-081-0520(2)(cc). An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the start of on-the-ground activities. Disposal activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(c) Reclamation plans shall restore the site to a natural appearance that blends with and emulates surrounding landforms and vegetation patterns to the maximum extent practicable.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0108

Commercial Events

(1) Commercial events include weddings, receptions, parties and other small-scale gatherings that are incidental and subordinate to the primary use on a parcel.

(2) Commercial events may be allowed in the GMA except on lands designated Open Space, Commercial Forest, or Agriculture-Special, subject to compliance with the following conditions and the scenic, cultural, natural and recreation resources guidelines:

(a) The use must be in conjunction with a lawful winery, wine sales/tasting room, bed and breakfast inn, or commercial use. If the use is proposed on a property with a building on or eligible for the National Register of Historic Places, it shall be subject to the guidelines in "Special Uses in Historic Buildings" (350-081-0114), and not the guidelines of this section.

(b) The owner of the subject parcel shall live on the parcel and shall operate and manage the use.

(c) A single commercial event shall host no more than 100 guests.

(d) The use shall comply with the following parking requirements:

(A) A single commercial event shall include no more than 50 vehicles for guests.

(B) All parking shall occur on the subject parcel.

(C) At least 200 square feet of parking space shall be required for each vehicle.

(D) Parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other imperious materials shall be prohibited.

(E) All parking areas shall be fully screened from key viewing areas.

(e) The owner of the subject parcel may conduct 18 single events up to one day in length per year.

(f) The owner of the subject parcel shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject parcel of each planned event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.

(g) Tents, canopies, portable restrooms and other similar temporary structures necessary for a commercial event may be allowed, provided all such structures are erected or placed on the subject parcel no more than two days before the event and removed no more than two days after the event. Alternatively, temporary structures may remain in place for up to 90 days if they are fully screened from key viewing areas.

(h) The use may be allowed upon demonstration that the following conditions exist to protect any nearby agricultural and forest operations:

(A) The use would not force a change in or increase the cost of accepted agricultural practices on surrounding lands.

(B) The use would be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required in 350-081-0076 or designated Commercial Forest Land or Large or Small Woodland, as required in 350-081-0310.

(C) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland.

(D) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision.

(i) Counties may impose additional requirements to address potential impacts to surrounding neighbors. For example, they may limit noise, lighting and operating hours.

(j) Land use approvals for commercial events shall not be valid for more than two years. Landowners must reapply for the use after a land use approval expires.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 2-2006, f. 6-22-06, cert. ef. 8-1-06; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0110

Columbia River Bridge Replacement

(1) Visual Quality: A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall be visually unobtrusive and harmonious with the surrounding Gorge landscape and the Columbia River. A replacement bridge shall:

(a) Utilize recessive dark natural or earth-tone colors for steel components of the bridge, a thin and open structural design that allows views through it to the extent practicable, and consistent design character and ornamental elements;

(b) Employ lighting that provides a safe and pleasant atmosphere for bicycles and pedestrians while not casting glare directly into the sky or onto the river.

(2) Historic Design Elements:

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall incorporate elements that reflect historic design features of Scenic Area roadways and bridges. The historic themes should be an integral component of the design of the bridge structure, incorporated from "shore to shore."

(b) A replacement bridge should include:

(A) Arches and/or other traditional structural forms in the bridge;

(B) Historic style benches, lighting, other pedestrian furnishings, and signage/graphic materials consistent with the USFS Graphic Signing System for the Scenic Area;

(C) Ornamental concrete or steel railings.

(3) Recreation and Pedestrian/Bicycle Access:

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall encourage and promote pedestrian and bicycle use, for recreational enjoyment and to enhance multi-modal transportation connections between the Urban Areas it connects.

(b) The bridge shall include facilities for pedestrians and bicyclists that:

(A) Are permanent;

(B) Are wide enough to safely accommodate and encourage walking, bicycling, and other uses;

(C) Meet safety standards to prevent conflicts among automobiles, trucks, pedestrians, bicyclists, and other users;

(D) Provide multiple sitting and viewing areas with significant upstream and downstream views;

(E) Are safe to approach from both the north and south ends of the bridge and provide strong multi-modal connections, both east-west and to the nearby Urban Areas.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0112

Signs

(1) GMA Sign Provisions:

(a) Except for signs allowed without review pursuant to 350-081-0074, all new signs must meet the following guidelines unless these guidelines conflict with the Manual for Uniform Traffic Control Devices for public safety, traffic control or highway construction signs. In such cases, the standards in the Manual for Uniform Traffic Control Devices shall supersede these guidelines.

(A) The support structure shall be unobtrusive and have low visual impact.

(B) Lettering colors with sufficient contrast to provide clear message communication shall be allowed. Signs shall be colored to blend with their setting to the maximum extent practicable.

(C) Backs of all signs shall be unobtrusive, nonreflective, and blend in with the setting.

(D) Spot lighting of signs may be allowed where needed for night visibility. Backlighting is not permitted for signs.

(E) Except for signs along public highways necessary for public safety, traffic control, or road construction and consistent with the Manual for Uniform Traffic Control Devices, the following signs are prohibited:

(i) Luminous signs or those with intermittent or flashing lights. These include neon signs, fluorescent signs, light displays, and other signs that are internally illuminated, exclusive of seasonal holiday light displays.

(ii) New billboards.

(iii) Signs with moving elements.

(iv) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle.

(b) Any sign that does not conform with a provision of these guidelines and has existed before their adoption is subject to the following provisions:

(A) Alteration of existing nonconforming signs shall comply with these guidelines.

(B) Any nonconforming sign used by a business must be brought into conformance concurrent with any expansion or change in use that requires a development permit.

(2) SMA Sign Provisions:

(a) New signs shall be allowed as specified in the applicable land use designation.

(b) No sign shall be erected or placed in such a manner that it may interfere with, be confused with, or obstruct the view of any traffic sign, signal, or device.

(c) Preexisting signs are allowed to continue, provided no changes occur in size, structure, color, or message.

(d) Except for signs allowed without review pursuant to 350-081-0074, all new signs shall meet the following guidelines and be consistent with the Manual for Uniform Traffic Control Devices:

(A) Signs shall be maintained in a neat, clean, and attractive condition.

(B) The character and composition of sign materials shall be harmonious with the landscape and/or related to and compatible with the main structure upon which the sign is attached.

(C) Signs shall be placed flat on the outside walls of buildings, not on roofs or marquees.

(D) Signs shall be unobtrusive and have low contrast with the setting.

(E) The visual impact of the support structure shall be minimized.

(F) Outdoor sign lighting shall be used for purposes of illumination only, and shall not be designed for, or used as, an advertising display, except for road safety signs.

(G) The backs of all signs shall be visually unobtrusive, non-reflective, and blend in with the setting.

(H) Internal illumination or backlighting of signs shall not be permitted except for highway construction, warning, or safety.

(e) Public signs shall meet the following standards in addition to 350-081-0112(2)(a)–(d):

(A) The Columbia River Gorge National Scenic Area Graphic Signing System provides design standards for public signs in and adjacent to public road rights-of-way. All new and replacement public signs, except those transportation regulatory, guide, and warning signs allowed outright shall conform to the guidelines in this system. Types of signs addressed include recreation site entry, interpretive, specific service signs, destination and distance signs, variable message signs, or signs that bridge or are cantilevered over the road surface.

(B) Signs located outside public road rights-of-way are encouraged to be designed in a way that is consistent with similar-purpose signs described in the Graphic Signing System.

(C) Signs posted by governmental jurisdictions giving notice to the public shall be no larger than that required to convey the intended message.

(f) Signs for public and commercial recreation facilities, home occupations, cottage industries, and commercial uses shall meet the following guidelines in addition to 350-081-0112(2)(a)–(d) and 350-081-0112(2)(g):

(A) Any sign advertising or relating to a business that is discontinued for a period of 30 consecutive days shall be presumed to be abandoned and shall be removed within 30 days thereafter, unless permitted otherwise by the jurisdictional authority.

(B) Any signs relating to or advertising for a business shall be brought into conformance with these sign guidelines before any expansion or change in use that is subject to review by the counties.

(C) Offsite and onsite directional signs on approach roads to recreational facilities may be permitted. Name and interpretive signs may be permitted onsite, but should be kept to the minimum required to achieve the purpose(s) of the facilities.

(D) Commercial recreation businesses approved in conjunction with a recreational facility may have a name sign not exceeding 16 square feet.

(E) Recreation developments may have one on-premise name sign at each principal entrance. Such signs are encouraged to be of a low profile, monument type, and shall conform to the Graphic Signing System.

(g) The following signs are prohibited:

(A) Advertising billboards.

(B) Signs that move or give the appearance of moving, except signs used for highway construction, warning, or safety.

(C) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle, except for signs used for highway construction, warning, or safety.

(h) Sign clutter and other negative visual effects from excessive signs along all roads and highways, and at parking lots and recreation facilities, shall be reduced.

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0114

Special Uses in Historic Buildings

(1) Special uses in historic buildings may be allowed as follows and subject to “Additional Resource Protection Guidelines for Special Uses in Historic Buildings” (350-081-0114(2)).

(a) Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places shall be permitted to be open for public viewing, interpretive displays, and an associated gift shop that is no larger than 100 square feet and incidental and subordinate to the primary use of the property, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and the following sections of the “Additional Resource Protection Guidelines for Special Uses in Historic Buildings”: Cultural Resources Guidelines (350-081-0114(2)(a)(B)(i) and (ii), and 350-081-0114(2)(a)(C)–350-081-0114(2)(a)(E)); and all Scenic, Recreation, Agriculture and Forest Lands Guidelines (350-081-0114(2)(b)–350-081-0114(2)(d)). Voluntary donations and/or fees to support maintenance, preservation and enhancement of the cultural resource may be accepted by the landowner.

(b) Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places, and which were former restaurants and/or inns shall be permitted to re-establish these former uses, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and the following sections of the “Additional Resource Protection Guidelines for Special Uses in Historic Buildings”: Cultural Resources Guidelines (350-081-0114(2)(a)(B)(i) and (ii), and 350-081-0114(2)(a)(C)–350-081-0114(2)(a)(E)); and all Scenic, Recreation, Agriculture and Forest Lands Guidelines (350-081-0114(2)(b)–350-081-0114(2)(d)). The capacity of restaurant use and overnight accommodations shall be limited to that existing in the former use, and

the former use shall be contained within the limits of the building as of January 1, 2006. Banquets, private parties and other special events that take place entirely within an approved restaurant facility shall be considered a restaurant use allowed under this section.

(c) Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places shall be permitted to hold commercial events, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and the following sections of the "Additional Resource Protection Guidelines for Special Uses in Historic Buildings": Cultural Resources Guidelines 350-081-0114(2)(a)(B)–(E); and all Scenic, Recreation, Agriculture and Forest Lands Guidelines (350-081-0114(2)(b)–350-081-0114(2)(d)).

(d) The following additional review uses may be allowed in all GMA land use designations except Open Space and Agriculture-Special on a property with a building either on or eligible for the National Register for Historic Places and that was 50 years old or older as of January 1, 2006, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and "Additional Resource Protection Guidelines for Special Uses in Historic Buildings":

(A) Establishments selling food and/or beverages, limited to historic buildings that originally had kitchen facilities. The seating capacity of such establishments shall be limited to the building, as the building existed as of January 1, 2006, including any decks, terraces or patios also existing as of that date. Banquets, private parties and other special events that take place entirely within approved establishments selling food and/or beverages shall be considered a part of the approved use.

(B) Overnight accommodations. The room capacity of such accommodations shall be limited to the total number of existing rooms in the historic building as of January 1, 2006.

(C) Commercial events in the building or on the subject property, incidental and subordinate to the primary use of the property.

(D) Wineries upon a showing that processing of wine is from grapes grown on the subject parcel or the local region, within a historic building, as the building existed as of January 1, 2006.

(E) Sales/tasting rooms in conjunction with an on-site winery, within a historic building, as the building existed as of January 1, 2006.

(F) Conference and/or retreat facilities within a historic building, as the building existed as of January 1, 2006.

(G) Artist studios and galleries within a historic building, as the building existed as of January 1, 2006.

(H) Gift shops within a historic building, as the building existed as of January 1, 2006 that are:

(1) Incidental and subordinate to another approved use included in 350-081-0114(1)(d); and

(2) No larger than 100 square feet in area.

(I) Interpretive displays, picnic areas or other recreational day use activities on the subject property.

(J) Parking areas on the subject property to support any of the above uses.

(e) For the purposes of the guidelines in this section, the term "historic buildings" refers to buildings either on or eligible for the National Register of Historic Places. Eligibility for the National Register shall be determined pursuant to Cultural Resources Guideline 350-081-0114(2)(a)(A) of "Additional Resource Protection Guidelines for Special Uses in Historic Buildings."

(f) Uses listed in 350-081-0114(1)(c) and 350-081-0114(1)(d)(C) are not subject to the "Commercial Events" provisions in 350-081-0108. Commercial events at historic properties will be regulated by the guidelines contained in this section. Applications for commercial events shall include all information in the "Operational Plan for Commercial Events" as specified in 350-081-0114(2)(B)(iv) of "Additional Resource Protection Guidelines for Special Uses in Historic Buildings". The following apply to commercial events at historic properties:

(A) Commercial events include weddings, receptions, parties and other gatherings that are incidental and subordinate to the primary use on a parcel.

(B) The owner of the subject property shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject property of each event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.

(g) Uses listed in 350-081-0114(1)(a) and 350-081-0114(1)(d)(I) are not subject to the parking limits and associated "Facility Design Guidelines" in the Recreation Intensity Classes.

(h) Land use approvals for special uses in historic buildings shall be subject to review by the local government every five years from the date the original approval was issued. As part of this review, the applicant shall submit documentation to the local government on the progress made in implementing the "Protection and Enhancement Plan" required in Cultural Resources (350-081-0114(2)(a)) of "Additional Resource Protection Guidelines for Special Uses in Historic Buildings". The local government shall submit a copy of the applicant's documentation to the State Historic Preservation Agency (SHPA). The SHPA shall have 30 calendar days from the date this information is mailed to submit written comments to the local government. If the local government's determination contradicts comments from the SHPA, the local government shall justify how it reached an opposing conclusion. The local government shall revoke the land use approval if the owner has failed to implement the actions described in the "Protection and Enhancement Plan" according to the schedule for completing such actions in this plan. The local government may, however, allow such a use to continue for up to one additional year from the date a local government determines the applicant has failed to implement the actions if the applicant submits a written statement describing unforeseen circumstances that prevented the applicants from completing the specified actions according to the approved schedule, what progress the applicants have made towards completing such actions, and a proposed revised schedule for completing such actions.

(2) Additional Resource Protection Guidelines for Special Uses in Historic Buildings. The following guidelines apply to proposed uses listed under "Special Uses for Historic Buildings" in addition to all other relevant guidelines for protection of scenic, cultural, natural and recreation resources:

(a) Cultural Resources:

(A) All applications for uses listed in 350-081-0114(1)(d), shall include a historic survey and evaluation of eligibility for the National Register of Historic Places, to be prepared by a qualified professional hired by the applicant. The evaluation of eligibility shall not be required for buildings previously determined to be eligible. For such properties, documentation of a prior eligibility determination shall be included in the application. The historic survey shall meet the requirements specified in "Historic Surveys and Reports" (350-081-0540(1)(c)(H)). The evaluation of eligibility shall follow the process and include all information specified in the National Register Bulletin "How to Apply the National Register Criteria for Evaluation". Eligibility determinations shall be made by the local government, based on input from the state historic preservation Agency (SHPA). The local government shall submit a copy of any historic survey and evaluation of eligibility to the SHPA. The SHPA shall have 30 calendar days from the date this information is mailed to submit written comments on the eligibility of the property to the local government. If the local government's determination contradicts comments from the SHPA, the local government shall justify how it reached an opposing conclusion.

(B) Applications for Special Uses for Historic Buildings shall include a "Protection and Enhancement Plan" which shall include the following:

(i) A description of how the proposed use will significantly contribute to the protection and enhancement of the historic resource, including specific actions that will be taken towards restoration, protection and enhancement, and adequate maintenance

of the historic resource, and a proposed schedule for completion of such actions.

(ii) A statement addressing consistency of the proposed use with the Secretary of the Interior's Standards for Rehabilitation of Historic Properties and the Secretary of the Interior's Standards for Preservation of Historic Properties.

(iii) Detailed architectural drawings and building plans that clearly illustrate all proposed exterior alterations to the building associated with the proposed use. Any exterior additions to the building or outdoor components of the proposed use (e.g. parking areas, site for temporary structures, interpretive displays) shall be shown on the site plan.

(iv) Any proposal for commercial events at a historic property shall include an Operation Plan for Commercial Events, to be incorporated into the "Protection and Enhancement Plan". The Operational Plan shall include sufficient information to demonstrate how the commercial events will remain incidental and subordinate to the primary use of the property, and shall, at minimum, address:

(I) Number of events to be held annually.

(II) Maximum size of events, including number of guests and vehicles at proposed parking area.

(III) Provision for temporary structures, including location and type of structures anticipated.

(IV) How the proposed commercial events will contribute to protection and enhancement of the historic resource.

(C) The local government shall submit a copy of the "Protection and Enhancement Plan" to the State Historic Preservation Agency (SHPA). The SHPA shall have 30 calendar days from the date this information is mailed to submit written comments to the local governments. The SHPA comments shall address consistency of the proposed use with the Secretary of the Interior's Standards for Rehabilitation of Historic Properties and the Secretary of the Interior's Standards for Preservation of Historic Properties, and the effect of the proposed use on the historic resource.

(D) Any alterations to the building or surrounding area associated with the proposed use have been determined by the local government to be consistent with the Secretary of the Interior's Standards for Rehabilitation of Historic Properties and the Secretary of the Interior's Standards for Preservation of Historic Properties. If the local government's final decision contradicts the comments submitted by the State Historic Preservation Agency, the local government shall justify how it reached an opposing conclusion.

(E) The proposed use has been determined by the local government to have no effect or no adverse effect on the historic character of the property, including features of the property contributing to its historic significance. If the local government's final decision contradicts the comments submitted by the State Historic Preservation Agency, the local government shall justify how it reached an opposing conclusion.

(b) Scenic Resources:

(A) New parking areas associated with the proposed use shall be located on the subject property as it existed as of January 1, 2006. Such parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other impervious materials shall be prohibited.

(B) New parking areas associated with the proposed use shall be visually subordinate from Key Viewing Areas, and shall to the maximum extent practicable, use existing topography and existing vegetation to achieve visual subordination. New screening vegetation may be used if existing topography and vegetation are insufficient to help make the parking area visually subordinate from Key Viewing Areas, if such vegetation would not adversely affect the historic character of the building's setting.

(C) Temporary structures associated with a commercial event (e.g. tents, canopies, portable restrooms) shall be placed on the subject property no sooner than two days before the event and removed within two days after the event. Alternatively, temporary structures may remain in place for up to 90 days after the event if the local government determines that they will be visually subordinate from Key Viewing Areas.

(c) Recreation Resources:

(A) The proposed use shall not detract from the use and enjoyment of existing recreation resources on nearby lands.

(d) Agricultural and Forest Lands:

(A) The proposed use is compatible with and will not interfere with accepted forest or agricultural practices on nearby lands devoted to such uses.

(B) The proposed use will be sited to minimize the loss of land suitable for production of crops, livestock or forest products.

(C) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Agriculture-Special, Commercial Forest Land, or Large or Small Woodland.

(D) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Agriculture-Special, Commercial Forest Land, or Large or Small Woodland that are within 500 feet of the perimeter of the subject property on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision on an application for a Special Use for a Historic Building.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544e

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544e

Hist.: CRGC 2-2006, f. 6-22-06, cert. ef. 8-1-06

Land Divisions and Lot Line Adjustments

350-081-0120

Consolidation of Lots

(1) A unit of land shall be consolidated with adjacent lands in the same ownership if:

(a) In Oregon, the subdivision within which the unit of land is located is undeveloped pursuant to ORS Chapter 92; or

(b) In Washington, if the unit of land is smaller than the current minimum parcel size and is located within a final plat that is older than five years from the date of filing.

(2) No portion of a consolidated plat shall be considered a separate parcel solely because an existing parcel overlays, and possibly fragments, that consolidated subdivision.

(3) Section 1 shall not be applied to consolidate two or more units of land where each unit of land is developed with a dwelling that qualifies as an existing use. One or more undeveloped units of land shall be consolidated with one or more developed units of land.

(4) To carry out this section, counties shall develop their own procedures for consolidating units of land pursuant to this provision, including amending plats, vacating plats, replating, or other similar legal action.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0124

Land Divisions and Cluster Development

(1) New land divisions in the SMA are not allowed, unless the creation of a new parcel will facilitate land acquisition by the federal government to achieve the policies and guidelines in the Management Plan.

(2) Unless otherwise specified, creation of a parcel, regardless of size, or any division of land shall be subject to the guidelines in Commission Rule 350-081.

(3) At the time of creation of one or more new parcels, consolidation of access shall be considered in order to reduce adverse effects on scenic, cultural, natural and recreation resources.

(4) Where authorized in 350-081-0170-350-081-0510, a land division in the GMA may create parcels smaller than the designated minimum size and may include a bonus, as specified under 350-081-0124(6) below, in order to cluster new dwellings. Approval of cluster development shall be contingent upon submission of plans specifying dwelling sites and areas of permanent, undeveloped open land. To approve a cluster development, the local government must find that clustering new dwellings will provide a siting oppor-

tunity not available through conventional parcel-by-parcel development. These opportunities include siting the new dwellings to:

(a) Be located in areas with screening vegetation or other features that reduce visibility of development as seen from key viewing areas.

(b) Avoid significant landscape features.

(c) Protect the existing character of the landscape setting.

(d) Reduce interference with movement of deer or elk in winter range.

(e) Avoid areas of known cultural resources.

(f) Consolidate road access, septic drainfields, or other development features to reduce impacts associated with grading or ground disturbance.

(g) Reduce adverse effects to riparian areas, wetlands, natural areas, rare plants, sensitive wildlife sites, or other natural resources.

(h) Increase the likelihood of agricultural or forest management on the undeveloped land left by the cluster development.

(5) In the GMA, following cluster development, there may be no further division of any resulting parcel for residential purposes until the subject parcel is included within the boundary of an Urban Area. The local government shall ensure permanent protection for open areas created by cluster development. No parcel in a cluster development may be smaller than 1 acre in a 5-acre Residential or 10-acre Residential designation or 2 acres in a Small-Scale Agriculture or Small Woodland designation.

(6) In the GMA, cluster development may create up to 25 percent more parcels than otherwise allowed by the minimum parcel size on lands designated 5-acre Residential or 10-acre Residential and up to 50 percent more on lands designated Small-Scale Agriculture or Small Woodland. Any division in a cluster development under this guideline may create at least one additional parcel.

(7) In the GMA, at least 75 percent of land subject to a cluster development shall be permanently protected as undeveloped land.

(8) In the GMA, contiguous parcels in the same ownership or in separate ownership may be consolidated and redivided to take advantage of cluster development bonuses.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0126

Lot Line Adjustments

(1) The following guidelines shall apply to lot line adjustments in the GMA.

(a) Lot line adjustments for parcels in all land use designations except Agriculture-Special, Open Space, Commercial, Public Recreation, or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment shall not result in the creation of any new parcel(s).

(B) The lot line adjustment shall not result in the potential to create a new parcel(s) or residential development in excess of the maximum density allowed by the land use designation(s) for the affected parcels.

(C) The lot line adjustment shall not allow a parcel that is equal to or larger than the minimum parcel size before the lot line adjustment to become less than the minimum parcel size after the lot line adjustment, except to allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(D) The lot line adjustment shall not allow a parcel that is smaller than the minimum parcel size to be reduced in size, except to accomplish one of the following purposes:

(i) Resolve boundary disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements; provided

(I) The parcel to be enlarged would not become eligible for a subsequent land division; and

(II) The amount of land transferred would be the minimum necessary to resolve the issue.

(ii) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(E) The lot line adjustment shall not allow the boundary of a parcel designated Large-Scale Agriculture, Agriculture-Special, Commercial Forest Land, Large Woodland or Open Space to be extended into another land use designation for the purpose of establishing a dwelling under less stringent guidelines (e.g., extending a parcel designated GMA Large-Scale Agriculture into a parcel designated Rural Center or Residential).

(F) The lot line adjustment shall not allow previously approved parcels or developments to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(G) The lot line adjustment shall not result in a parcel that cannot comply with existing land use and resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

(b) Lot line adjustments for parcels designated Agriculture-Special or Open Space shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources.

NOTE: There is no specified minimum parcel size for parcels designated Open Space.

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(c) Lot line adjustments for parcels designated Commercial shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(d) Lot line adjustments for parcels designated Public Recreation or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate, enhance, or otherwise improve recreation uses on the parcel.

NOTE: There are no specified minimum parcel sizes for parcels designated Public Recreation or Commercial Recreation.

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(2) The following guidelines shall apply to lot line adjustments in the SMA.

(a) The proposed lot line adjustment shall not result in the creation of any new parcel(s).

(b) A lot line adjustment shall not result in a parcel greater than or equal to 40 acres becoming less than 40 acres.

(c) A lot line adjustment shall not result in a parcel less than 40 acres becoming 40 acres or greater.

(d) A parcel that is smaller than 40 acres shall not be reduced in size, except to accomplish one of the following purposes:

(A) Resolve boundary line disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements; provided

(i) The parcel to be enlarged would not become 40 acres or greater; and

(ii) The amount of land transferred would be the minimum necessary to resolve the issue.

(B) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes residential development.

(e) The lot line adjustment shall not cause previously approved parcels or development to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(f) The lot line adjustment shall not result in a parcel that cannot comply with existing land use and resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
 Stats. Implemented: ORS 196.150
 Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

Land Use Designations

350-081-0170

Agricultural Land Designations

Commission Rule 350-081-0170 through 350-081-0240 shall apply to those areas designated Large-Scale or Small-Scale Agriculture, SMA Agriculture, and Agriculture-Special on the Scenic Area Land Use Designation Map.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
 Stats. Implemented: ORS 196.150
 Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0180

Uses Allowed Outright — Agricultural Land

The uses listed in “Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special” (350-081-0074(1)) are allowed without review on lands designated Large-Scale Agriculture, Small-Scale Agriculture, or SMA Agriculture.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
 Stats. Implemented: ORS 196.150
 Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0182

Uses Allowed through the Expedited Development Review Process — Agricultural Land

The uses listed in “Expedited Development Review Process” (350-081-0050) are allowed with review through the expedited development review process on lands designated Large-Scale Agriculture, Small-Scale Agriculture, or SMA Agriculture.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
 Stats. Implemented: ORS 196.150
 Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0190

Review Uses — Agricultural Land

(1) The following uses may be allowed on lands designated Large-Scale or Small Scale Agriculture subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(a) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560 through 350-081-0590).

(b) Agricultural structures, except buildings, in conjunction with agricultural use.

(c) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in “Agricultural Buildings” (350-081-0090).

(d) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(e) and (f) below.

(e) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(f) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger

than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(g) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in “Temporary Use — Hardship Dwelling” (350-081-0092).

(h) On lands designated Large Scale Agriculture, a single-family dwelling in conjunction with agricultural use, upon a demonstration that all of the following conditions exist:

(A) The subject farm or ranch (including all of its constituent parcels, contiguous or otherwise) has no other dwellings that are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and that could be used as the principal agricultural dwelling.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy subsection (h)(C)(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following factors:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its constituent parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula:

(A)(B) (C) = I

where:

A = Average yield of the commodity per acre or unit of production

B = Average price of the commodity

C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch

I = Income capability

(i) On lands designated Large Scale Agriculture, a second single family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling that is included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with the criteria listed in 350-081-0540(1)(e).

(j) On lands designated Small Scale Agriculture, a single family dwelling on any legally existing parcel.

(k) On lands designated Large Scale Agriculture, a single-family dwelling for an agricultural operator’s relative provided that all of the following conditions exist:

(A) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator’s spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, brother or sister.

(B) The dwelling would be located on the same parcel as the dwelling of the principal operator.

(C) The operation is a commercial enterprise, as determined by an evaluation of the factors described in 350-081-0190(1)(h)(C).

(l) Construction, reconstruction, or modifications of roads not in conjunction with agriculture.

(m) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in “Resource Enhancement Projects” (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

- (n) Structures associated with hunting and fishing operations.
- (o) Towers and fire stations for forest fire protection.
- (p) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full time dwelling is necessary to the current agricultural use of the subject farm or ranch unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops or livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(q) On lands designated Large Scale Agriculture, on a parcel that was legally created and existed prior to November 17, 1986, a single family dwelling not in conjunction with agricultural use upon a demonstration that all of the following conditions exist:

(A) The dwelling will not force a change in or increase the cost of accepted agricultural practices on surrounding lands.

(B) The subject parcel is predominantly unsuitable for the production of farm crops and livestock, considering soils, terrain, location, and size of the parcel. Size alone shall not be used to determine whether a parcel is unsuitable for agricultural use. An analysis of suitability shall include the capability of the subject parcel to be used in conjunction with other agricultural operations in the area.

(C) The dwelling shall be set back from any abutting parcel designated Large-Scale or Small Scale Agriculture, as required by 350-081-0076, or designated Commercial Forest Land or Large or Small Woodland, as required in "Siting of Dwellings on Forest Land" (350-081-0310).

(D) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small Scale Agriculture, Commercial Forest Land, Large or Small Woodland.

(E) All owners of land in areas designated Large-Scale or Small Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the dwelling is proposed to be located have been notified and given at least 10 days to comment prior to a decision.

(r) On parcels in Small Scale Agriculture, a land division creating parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-081-0124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40, 80, or 160 acres, this provision will apply to parcels 80 acres or larger, 160 acres or larger, or 320 acres or larger, respectively.

(s) Life estates, subject to the guidelines in "Approval Criteria for Life Estates," (350-081-0210).

(t) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(u) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-081-0126).

(v) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(w) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-081-0096).

(x) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(y) Commercial events, subject to the guidelines in "Commercial Events" (350-081-0108).

(z) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-081-0114).

(2) The following uses may be allowed on lands designated SMA Agriculture subject to review for compliance with the scenic, cultural, natural, and recreation resource guidelines (350-081-0520 through 350-081-0620). The use or development shall be sited to minimize the loss of land suitable for the production of agricultural crops or livestock.

(a) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-081-0270(2)(x).

(b) Forest uses and practices, as allowed for in 350-081-0270(2)(y).

(c) A single family dwelling necessary for and accessory to agricultural use upon a demonstration that all of the following conditions exist:

(A) The proposed dwelling would be the only dwelling on the subject farm or ranch, including contiguous lots/parcels.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, where the day-to-day activities of one or more residents of the dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy C(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following criteria:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock, orchard, etc.) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its contiguous parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula, with periodic adjustments for inflation:

$(A)(B)(C) = I$

where:

A = Average yield of the commodity per acre or unit of production

B = Average price of the commodity

C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch

I = Income capability

(D) Minimum parcel size of 40 contiguous acres.

(d) Farm labor housing on a parcel with an existing dwelling under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use, and the operation is a commercial agricultural enterprise as determined by 350-081-0190(2)(c)(C).

(B) The housing shall be seasonal, unless it is shown that an additional full time dwelling is necessary for the current agricultural use. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural uses employed on nearby lands devoted to agricultural use.

(D) Minimum parcel size of 40 contiguous acres.

(e) Agricultural structures, except buildings, in conjunction with agricultural use.

(f) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-081-0090).

(g) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 2(h) or 2(i), below.

(h) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(i) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(j) Home occupations and cottage industries, subject to the guidelines in "Home Occupations and Cottage Industries" (350-081-0098). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(k) Bed and breakfast inns, subject to the guidelines in "Bed and Breakfast Inns" (350-081-0100). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(l) Fruit stands and produce stands, upon a showing that sales will be limited to agricultural products raised on the property and other agriculture properties in the local region.

(m) Aquaculture.

(n) Exploration, development, and production of sand, gravel, and crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the SMA.

(o) Utility facilities necessary for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Agriculture lands.

(B) The size is the minimum necessary to provide the service.

(p) Temporary asphalt/batch plant operations related to public road projects, not to exceed 6 months.

(q) Community facilities and nonprofit facilities related to agricultural resource management.

(r) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(s) Expansion of existing nonprofit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.

(t) Public recreation, commercial recreation, interpretive, and educational developments and uses, consistent with the guidelines in 350-081-0620.

(u) Road and railroad construction and reconstruction.

(v) Agricultural product processing and packaging, upon demonstration that the processing will be limited to products produced primarily on or adjacent to the property. "Primarily" means a clear majority of the product as measured by volume, weight, or value.

(w) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use Hardship Dwelling" (350-081-0092).

(x) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(y) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-081-0096).

(z) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(aa) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-081-0106).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 2-2006, f. 6-22-06, cert. ef. 8-1-06; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2012, f. 4-18-12, cert. ef. 6-1-12

350-081-0200

Review Uses with Additional Approval Criteria — Large-Scale or Small-Scale Agriculture

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520–350-081-0620) and the "Approval Criteria for Specified Review Uses," (350-081-0220) below.

(a) Utility facilities and railroads necessary for public service upon a showing that (1) there is no practicable alternative location with less adverse effect on agricultural or forest lands, and (2) the size is the minimum necessary to provide the service.

(b) Home occupations or cottage industries in existing residential or accessory structures, subject to the guidelines in "Home Occupations and Cottage Industries" (350-081-0098).

(c) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(d) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(e) Wine sales/tasting rooms, in conjunction with an on-site winery.

(f) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(g) Exploration, development, and production of mineral and geothermal resources, subject to the guidelines in 350-081-0520.

(h) Personal-use airstrips, including associated accessory structures such as a hangar. A personal-use airstrip is an airstrip restricted (except for aircraft emergencies) to use by the owner; invited guests on an infrequent and occasional basis; and commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal — use airstrip other than those owned or controlled by the owner of the airstrip.

(i) Aquaculture.

(j) Recreation development, subject to the recreation intensity class provisions (350-081-0610) and Recreation Development Plan (Management Plan, Part III, Chapter 1).

(k) Boarding of horses. The reviewing agency shall make findings on property characteristics, parcel size and impacts to neighbors, and shall specify the maximum number of horses based on those findings.

(l) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.

(m) Bed and breakfast inns in single-family dwellings, subject to the guidelines in "Bed and Breakfast Inns" (350-081-0100) and provided that the residence:

(A) Is included in the National Register of Historic Places, or

(B) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or

(C) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(n) Nonprofit, environmental learning or research facilities.

(o) Expansion of existing school or place of worship.

(p) On parcels designated Small-Scale Agriculture, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in “Small-Scale Fishing Support and Fish Processing Operations” (350-081-0102).

(q) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in “Disposal Sites for Spoil Materials from Public Road Maintenance Activities” (350-081-0106).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0210

Approval Criteria for Life Estates — Large-Scale or Small-Scale Agriculture Designations

A landowner who sells or otherwise transfers real property on lands designated Large-Scale or Small-Scale Agriculture may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in the Management Plan. A second dwelling in conjunction with agricultural use may be allowed, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

(1) The proposed dwelling is in conjunction with agricultural use, using Guideline 350-081-0190(1)(h).

(2) Upon termination of the life estate, the original or second dwelling shall be removed.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0220

Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture

The uses identified in 350-081-0200, may be allowed only if they meet both of the following criteria:

(1) The use is compatible with agricultural uses and would not force a change in or significantly increase the cost of accepted agricultural practices on nearby lands devoted to agricultural use.

(2) The use will be sited to minimize the loss of land suitable for the production of crops or livestock.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0230

Uses Allowed Outright for Lands Designated Agriculture — Special

The following uses may be allowed on lands designated Agriculture-Special without review:

(1) Existing livestock grazing. A livestock operation ceases to be existing when the land on which it is conducted has lain idle for more than 5 years.

(2) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads, and utility facilities.

(3) Low-intensity recreation uses that occur with the knowledge and permission of the landowner, including hunting, fishing, trapping, native plant study, birdwatching, photography, horseback riding, and hiking.

(4) Temporary livestock facilities, such as portable livestock pens and corrals.

(5) New fences that exclude livestock from lands that are not part of an existing livestock operation.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0231

Uses Allowed through the Expedited Development Review Process — Agriculture-Special

The uses listed in “Expedited Development Review Process” (350-081-0050) are allowed with review through the expedited development review process on lands designated Agriculture-Special.

Stat. Auth.: ORS 196.150

Stats. Implemented: RCW 43.97.015, 16 USC 544e(c), 544f(1)

Hist.: CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0232

Review Uses for Lands Designated Agriculture-Special

(1) The following uses may be allowed on lands designated Agriculture-Special, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520–350-081-0620) and “Approval Criteria for Review Uses on Lands Designated Agriculture-Special” (350-081-0234).

(2) New livestock grazing. Any operation that would introduce livestock to land that has not been grazed, or has laid idle, for more than 5 years shall be considered new livestock grazing.

(3) New fences, livestock watering facilities, and corrals.

(4) Soil, water, and vegetation conservation uses.

(5) Replacement or minor expansion of existing and serviceable structures within a dedicated site. Expansion shall be limited to the dedicated site.

(6) Fish and wildlife management uses, educational activities, and scientific research.

(7) Land divisions that facilitate livestock grazing or protect and enhance natural areas. No resulting parcel may be smaller than 160 acres, unless it would facilitate the protection of scenic, cultural, natural, or recreation resources.

(8) Single-family dwellings that are not in conjunction with agricultural use, if a landowner demonstrates that

(a) The dwelling cannot be constructed on a portion of the parcel that is located outside of the natural area; and

(b) The dwelling is sited and designed in a manner that minimizes adverse effects to the natural area. All dwellings shall meet the criteria in 350-081-0190(1)(q). The buffer guidelines for non-agricultural dwellings (350-081-0076) may be waived if they would prevent the optimum siting of a dwelling.

(9) Recreation uses, subject to the provisions for recreation intensity classes (350-081-0610).

(10) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(11) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in “Resource Enhancement Projects” (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(12) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(13) Lot line adjustments, subject to the guidelines in “Lot Line Adjustments” (350-081-0126).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0234

Approval Criteria for Review Uses on Lands Designated Agriculture-Special

(1) A range conservation plan pursuant to 350-081-0240 shall be prepared before new livestock grazing commences; new fences, livestock watering facilities, and corrals are constructed; or soil, water, and vegetation conservation activities are undertaken (350-

081-0232(1)(a), (b) and (c)). Range conservation plans are described under 350-081-0240.

(2) The Executive Director shall submit all land use applications and range conservation plans to the Oregon or Washington Natural Heritage Program. The state heritage program will have 20 days from the date that an application and/or plan is mailed to submit written comments to the local government. The Executive Director shall record and address any written comments submitted by the state heritage program in its development review order.

(3) Based on the comments from the state heritage program, the Executive Director shall make a final decision on whether the proposed use is consistent with the Agriculture — Special policies and guidelines. If the final decision contradicts the comments submitted by the state heritage program, the local government shall justify how it reached an opposing conclusion.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0236

Uses Prohibited on Lands Designated Agriculture-Special

Except for uses allowed outright and review uses, new uses shall be prohibited on lands designated Agriculture-Special. Prohibited uses include, but are not limited to:

(1) Cultivation, including plowing, harrowing, leveling, tilling, or any activity that prepares land for raising crops by turning, breaking up, or loosening the soil.

(2) Removal or clearing of native grasses, shrubs, and trees.

(3) Single-family dwellings and accessory structures, other than non-agricultural dwellings allowed as a review use.

(4) Barns, silos, and other agricultural buildings.

(5) Irrigation systems.

(6) Exploration, development, and production of mineral resources.

(7) Utility facilities, public use facilities, and roads.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0240

Range Conservation Plans

(1) If a range conservation plan is required before a use is allowed, it shall be prepared by landowners in cooperation with range scientists from local conservation districts. Specialists from the Oregon or Washington Natural Heritage Program should be consulted while the plan is being prepared.

(2) Range conservation plans shall ensure that new uses do not adversely affect natural areas. They shall accomplish the following goals:

(a) Maintain native rangeland that is in excellent or good condition; enhance rangeland that is in fair or poor condition.

(b) Preserve native trees and shrubs.

(c) Reestablish native grasses in degraded areas that have been invaded by non-native plants and weeds.

(3) Range conservation plans shall include the following elements:

(a) Range inventory. This shall include existing composition, carrying capacity, and condition of rangeland; the location of rare plants and non-native weeds; and existing fences, watering ponds, and other range improvements.

(b) Rehabilitation plan. This shall include actions that will be taken to rehabilitate native rangeland that is in fair or poor condition, such as weed and soil erosion control, seeding, and prescribed burning.

(c) Livestock management plan. This shall include the grazing system that will be used, including number and size of pastures, expected livestock numbers, and grazing/deferral periods and sequence. Management plans shall project livestock movements for at least 3 years.

(d) Monitoring program. This shall track the annual progress of the conservation plan and condition of the range. Monitoring techniques shall be described, such as line transects or photographic plots.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0250

Forest Land Designations

Commission Rule 350-081-0250 through 350-081-0310 shall apply to those areas designated Commercial Forest Land, Large or Small Woodland and SMA Forest on the Scenic Area Land Use Designation Map.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0260

Uses Allowed Outright — Forest Land

The uses listed in 350-081-0074(1) are allowed without review on lands designated Commercial Forest Land, Large Woodland, Small Woodland, or SMA Forest.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0262

Uses Allowed through the Expedited Development Review Process — Forest Land

The uses listed in “Expedited Development Review Process” (350-081-0050) are allowed with review through the expedited development review process on lands designated Commercial Forest Land, Large Woodland, Small Woodland, or SMA Forest.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0270

Review Uses — Forest Land

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(a) On lands designated Large Woodland, a single-family dwelling upon a demonstration that all of the following conditions exist:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The principal purpose for locating a dwelling on lands designated Large Woodland is to enable the resident to conduct efficient and effective forest management. This requirement indicates a relationship between ongoing forest management and the location of a dwelling on the subject parcel. A dwelling may not always be required for forest management.

(B) The subject parcel has been enrolled in the appropriate state’s forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the appropriate local government. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor and expenses; and how the dwelling will contribute toward the successful completion of the operations.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forestry and that could be used as the principal forest dwelling.

(E) The dwelling complies with the “Approval Criteria for the Siting of Dwellings on Forest Land” (350-081-0310) and “Approval Criteria for Fire Protection” (350-081-0300).

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest

Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(b) On lands designated Small Woodland, one single-family dwelling on a legally created parcel upon the parcel's enrollment in the appropriate state's forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-081-0300). A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(c) One single-family dwelling if shown to be in conjunction with and substantially contributing to the current agricultural use of a farm. Guideline 350-081-0190(1)(h) shall be used to determine whether a dwelling is a farm dwelling. The siting of the dwelling shall comply with the "Approval Criteria for Fire Protection" in 350-081-0300.

(d) Temporary onsite structures that are auxiliary to and used during the term of a particular forest operation. "Auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located onsite, is temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(e) Temporary portable facility for the primary processing of forest products grown on a parcel of land or contiguous land in the same ownership where the facility is to be located. The facility shall be removed upon completion of the harvest operation.

(f) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(g) Structures associated with hunting and fishing operations.

(h) Towers and fire stations for forest fire protection.

(i) Agricultural structures, except buildings, in conjunction with agricultural use, subject to the "Approval Criteria for Fire Protection" (350-081-0300).

(j) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the "Approval Criteria for Fire Protection" (350-081-0300) and the standards in "Agricultural Buildings" (350-081-0090).

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(l) or (1)(m) below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-081-0300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-081-0310) and

"Approval Criteria for Fire Protection" (350-081-0300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use — Hardship Dwelling" (350-081-0092) and the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-031-0300).

(o) A second single-family dwelling for a farm operator's relative, subject to 350-081-0190(1)(k) and the "Approval Criteria for Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-081-0300).

(p) Private roads serving a residence, subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-081-0300).

(q) Recreation development, subject to the guidelines established for the recreation in-tensity classes (350-081-0610) and the Recreation Development Plan (Management Plan, Part III, Chapter 1).

(r) Construction or reconstruction of roads or modifications not in conjunction with forest use or practices.

(s) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject agricultural unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(t) On lands designated Commercial Forest Land, a temporary mobile home in conjunction with a timber operation, upon a finding that security personnel are required to protect equipment associated with a harvest operation or to protect the subject forest land from fire. The mobile home must be removed upon completion of the subject harvest operation or the end of the fire season. The placement of the mobile home is subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-081-0300).

(u) On parcels in Small Woodland, a land division creating parcels smaller than the designated minimum parcel size, subject to guidelines for cluster development in "Land Divisions and Cluster Development" (350-081-0124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40 or 80 acres, this provision will apply to parcels 80 acres or larger or 160 acres or larger, respectively.

(v) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560 through 350-081-0590).

(w) Life estates, subject to the guidelines in "Approval Criteria for Life Estates" (350-081-0320).

(x) Land divisions in Small Woodland, subject to the minimum lot sizes designated on the Land Use Designation Map. Land divisions in Commercial Forest Land and Large Woodland, subject to the standards and minimum lot sizes in Policies 4 through 9 in the "Land Use Policies" in Part II, Chapter 2: Forest Land of the Management Plan.

(y) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in “Lot Line Adjustments” (350-081-0126).

(z) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(aa) Docks and boathouses, subject to the guidelines in “Docks and Boathouses” (350-081-0096).

(bb) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(cc) Commercial events on lands designated Large Woodland or Small Woodland, subject to the guidelines in “Commercial Events” (350-081-0108).

(dd) Special uses in historic buildings, subject to the guidelines in “Special Uses in Historic Buildings” (350-081-0114).

(2) The following uses may be allowed on lands designated SMA Forest subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines (350-081-0520 through 350-081-0620). The use or development shall be sited to minimize the loss of land suitable for the production of forest products:

(a) All review uses allowed for in 350-081-0190(2).

(b) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of subsection (2)(x), below.

(c) Railroad and road construction or reconstruction.

(d) Exploration, development, and production of sand, gravel, or crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products in the SMA.

(e) Silvicultural nurseries.

(f) Utility facilities for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Forest Land.

(B) The size is the minimum necessary to provide the service.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in “Resource Enhancement Projects” (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Fish hatcheries and aquaculture facilities.

(i) Public recreation, commercial recreation, interpretive and educational developments, and uses consistent with the provisions of 350-081-0620.

(j) One single family dwelling on a parcel of 40 contiguous acres or larger if an approved forest management plan demonstrates that such a dwelling is necessary for and accessory to forest uses. The forest management plan shall demonstrate the following:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of trees. The principal purpose for allowing a dwelling on forest lands is to enable the resident to conduct efficient and effective management. This requirement indicates a relationship between ongoing forest management and the need for a dwelling on the subject property.

(B) The subject parcel has been enrolled in the appropriate state’s forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the appropriate county. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor, and expenses; and how the dwelling will contribute toward the successful management of the property.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forest management of the subject parcel.

(E) The dwelling complies with county dwelling, siting, and state/county fire protection guidelines.

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operations are entitled to carry on accepted agricultural or forest practices.

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(l) or (2)(m), below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) Home occupations and cottage industries, subject to the “Home Occupations and Cottage Industries” guidelines in 350-081-0098.

(o) Temporary portable facilities for the processing of forest products.

(p) Towers and fire stations for forest fire protection.

(q) Community facilities and nonprofit facilities related to forest resource management.

(r) Expansion of existing nonprofit group camps, retreats, or conference or education centers, necessary for the successful operation of the facility on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(s) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in “Temporary Use – Hardship Dwelling” (350-081-0092).

(t) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(u) Docks and boathouses, subject to the guidelines in “Docks and Boathouses” (350-081-0096).

(v) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(w) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in “Disposal Sites for Spoil Materials from Public Road Maintenance Activities” (350-081-0106).

(x) Clearing trees for new agricultural use with the following steps and subject to the following additional guidelines:

(A) A Stewardship Plan shall be submitted and deemed complete by the Executive Director and submitted to the Forest Service for review. 350-081-0270(2)(y)(C).

(B) Clearing trees for new agricultural use shall be limited to 15 acres.

(C) If the Stewardship Plan proves that the above guideline is detrimental to the proposed agricultural use, the final size of the

clearing shall be determined by the application of 350-081-0270(2)(x)(D)(i-iv) below and subject to guideline 350-081-0270(2)(x)(I).

(D) After a 30-day public comment period, the Forest Service shall review the Stewardship Plan using the following criteria:

(i) Scenic Resource guidelines in 350-081-0270(2)(y)(D)(i) and (vii).

(ii) Applicable guidelines of 350-081-0550, 350-081-0600 and 350-081-0620.

(iii) The Natural Resource Conservation Service (NRCS) soil unit description shall indicate that soils are suitable for the proposed agricultural use. The woodland management tables shall be used as part of the analysis of suitability for both agricultural and forest uses.

(iv) The size, shape and pattern on the landscape of the clearing for the new agricultural use shall blend with the surrounding landscape pattern either because the existing pattern includes agricultural openings or because the new agricultural opening is designed to appear natural.

(E) The Forest Service shall send the review statement to the Executive Director. The Forest Service shall state whether or not the new agricultural use should proceed including any conditions that are recommended to be required by the Executive Director.

(F) The Executive Director will accept an application for new agricultural use on forested lands after receipt of a positive review statement from the Forest Service.

(G) The forest practice portion of the new agricultural use shall not be approved by the state forestry department or Executive Director until a decision on the new agricultural use is issued by the Executive Director.

(H) The new agricultural use shall be operational within two years of the time frame described in the approved Stewardship Plan.

(I) New agricultural uses with an approved Stewardship Plan requiring more than 15 acres shall attain the final approved size sequentially. After the first 15 cleared acres is operational, each subsequent clearing shall not occur until the previous clearing is operational.

(y) Forest practices in accordance with an approved forest practices application (see 350-081-0032) and subject to the additional guidelines in 350-081-0270.

(A) The following information, in addition to general site plan requirements (350-081-0032) shall be required:

(i) Delineate the following on a recent aerial photo or detailed map:

(I) The size, shape, and exact location of the proposed treatment area including any clumps of leave trees to remain. If more than one silvicultural prescription is to be used, code each on the photo.

(II) Other important natural features of the subject parcel such as steep areas, streams, wetlands, rock outcrops, etc.

(III) Road and structure construction and/or reconstruction location.

(IV) Location of proposed rock or aggregate sources.

(V) Major skid trails, landings, and yarding corridors.

(VI) Commercial firewood cutting areas.

(VII) Protection measures for scenic, cultural, natural, and recreation resources, such as road closures.

(ii) Describe the existing forest in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(iii) Describe how the forest practice will fit into the existing landscape pattern and how it will meet scenic and natural resource standards in 350-081-0270(2)(y)(D) and 350-081-0270(2)(y)(E).

(iv) Written silvicultural prescriptions with projected post-treatment forest condition specified in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(v) Road and structure construction and/or reconstruction design.

(vi) Existing and proposed rock pit development plans.

(vii) A discussion of slash disposal methods.

(viii) A reforestation plan as reviewed by the appropriate state forest practices agency.

(B) As part of the application, flag, stake or mark buffers, any trees or downed wood to be retained or removed (whichever makes the most sense), and areas for placing fill or removing material in preparation for a field visit by the reviewer.

(C) Stewardship Plan Requirements: The following information, in addition to the applicable portions of the forest practice application requirements above and general site plan requirements (350-081-0032) shall be provided:

(i) Outline the long term goals, proposed operations, and future sustainability of the subject parcel.

(ii) Describe the time frame and steps planned to reach the long term goals.

(iii) For Forest Practices, describe how the proposed activities fit into the long term goals and sustainability of the parcel and/or forest health. The following shall be addressed:

(I) Describe the range of natural conditions expected in the forest in terms of tree species, structure, and landscape pattern.

(II) Describe what the resulting tree species, structure, and landscape pattern will be after the proposed activities.

(III) Give a clear explanation how a deviation from the applicable guidelines may better achieve forest health objectives

(IV) Give a clear explanation how and why the proposed activities will lead the forest towards its range of natural variability and result in reaching sustainability, resiliency to disturbances.

(iv) For clearing trees for new agricultural use, the following shall be addressed in addition to 350-081-0270(2)(y)(C)(i) and (ii) above:

(I) Submit NRCS soil unit description and map for each soil unit affected by the proposed clearing or treatment.

(II) Based on the needs of the operation, give a clear explanation as to the exact size of the clearing needed and how it will meet the natural and scenic requirements set forth in 350-081-0270(2)(x)(D)(i-iv).

(III) Describe in sufficient detail for evaluation the proposed agricultural use, the improvements needed on the parcel, time line for its establishment, and its marketability.

(IV) Show evidence that an agricultural specialist, such as the county extension agent, has examined and found the proposed agricultural use reasonable and viable.

(D) For forest practices, the following scenic resource guidelines shall apply:

(i) Forest practices shall meet the design guidelines and scenic standards for the applicable landscape setting and zone (See Required SMA Scenic Standards table in 350-081-0530-(2)(c)).

(ii) In the western portion (to White Salmon River) of the SMA Coniferous Woodland Landscape Setting, no more than 8% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iii) In the western portion (to the White Salmon River) of the SMA Gorge Walls, Canyonlands and Wildlands Landscape Setting, no more than 4% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iv) For all other landscape settings, created forest openings visible at one time shall be within the desired range for the vegetation type as set forth in Natural Resources guidelines in 350-081-0270(2)(y)(E)(i) through (iii).

(v) Size, shape, and dispersal of created forest openings shall maintain the desired natural patterns in the landscape as set forth in

Natural Resources guidelines in 350-081-0270(2)(y)(E)(i) through (iii).

(vi) The maximum size of any created forest opening is set forth by the “Desired” vegetation type in the Forest Structure and Pattern Table.

(I) If the treatment is proposed to go beyond the above guideline based on forest health or ecosystem function requirements, a Stewardship Plan shall be required.

(II) If the Stewardship Plan proves that the above guideline is detrimental to either forest health or ecosystem function, the size of the created forest opening shall be within the natural range for the vegetation type as listed in the Desired Forest Structure and Pattern Table for each vegetation type, shall not mimic catastrophic fires, and shall maintain scenic standards.

(vii) Created forest openings shall not create a break or opening in the vegetation in the skyline as viewed from a key viewing area.

(E) Forest practices shall maintain the following in addition to applicable natural resources guidelines in 350-081-0600.

(i) Silvicultural prescriptions shall maintain the desired natural forest stand structures (tree species, spacing, layering, and mixture of sizes) based on forest health and ecosystem function requirements. Forest tree stand structure shall meet the requirements listed in the Desired Forest Structure and Pattern Table for each vegetation type. Forest tree stand structure is defined as the general structure of the forest in each vegetation type within which is found forest openings.

(ii) Created forest openings shall be designed as mosaics not to exceed the limits defined as Desired in the Desired Forest Structure and Pattern Table unless proposed as a deviation as allowed under the scenic resource guideline in 350-081-0270(2)(y)(D)(vi).

(iii) Snag and down wood requirements shall be maintained or created as listed in the Desired Forest Structure and Pattern Table for each vegetation type.

(iv) If the treatment is proposed to deviate from the snag and down wood requirements based on forest health or ecosystem function requirements, a Stewardship Plan shall be required and shall show and prove why a deviation from the snag and down wood requirements is required.

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 2-2006, f. 6-22-06, cert. ef. 8-1-06; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0280

Review Uses with Additional Approval Criteria — Commercial Forest Land, or Large or Small Woodland Designations

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 and 620) and the “Approval Criteria for Specified Review Uses” (350-081-0290).

(2) Utility facilities and railroads necessary for public service upon a showing that

(a) There is no practicable alternative location with less adverse effect on agricultural and forest lands and on scenic, cultural, natural and recreation resources and

(b) The size is the minimum necessary to provide the service.

(3) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in “Home Occupations and Cottage Industries” (350-081-0098).

(4) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(5) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(6) Wine sales/tasting rooms, in conjunction with an on-site winery.

(7) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(8) Exploration, development, and production of mineral and geothermal resources, subject to the guidelines in 350-081-0520.

(9) Aquaculture.

(10) Boarding of horses. The reviewing agency shall make findings on property characteristics, parcel size and impacts to neighbors, and shall specify the maximum number of horses based on those findings.

(11) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.

(12) Expansion of existing nonprofit group camps, retreats, or conference centers.

(13) Bed and breakfast inns in single-family dwellings, subject to the guidelines in “Bed and Breakfast Inns” (350-081-0100) and provided that the residence:

(a) Is included in the National Register of Historic Places, or

(b) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or

(c) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(14) Nonprofit, environmental learning or research facilities.

(15) On parcels designated Small Woodland, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in “Small-Scale Fishing Support and Fish Processing Operations” (350-081-0102).

(16) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in “Disposal Sites for Spoil Materials from Public Road Maintenance Activities” (350-081-0106).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0290

Approval Criteria for Specified Review Uses on Lands Designated Commercial Forest Land or Large or Small Woodland

The uses identified under 350-081-0280, may be allowed only if they meet all of the following criteria:

(1) The owners of land that is designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture and that lies within 500 feet of the perimeter of the subject parcel have been notified of the land use application and have been given at least 10 days to comment prior to a final decision.

(2) The use will not seriously interfere with accepted forest or agricultural practices on nearby lands devoted to resource use.

(3) The use will be sited in a way that minimizes the loss of forest or agricultural land and minimizes the chance of interference with accepted forest or agricultural practices on nearby lands.

(4) The use will not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel and will comply with the “Approval Criteria for Fire Protection” (350-081-0300).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0300

Approval Criteria for Fire Protection in GMA Forest Designations

All uses, as specified, shall comply with the following fire safety guidelines:

(1) All buildings shall be surrounded by a maintained fuel break of 50 feet. Hazardous fuels shall be removed within the fuel break area. Irrigated or fire resistant vegetation may be planted within the fuel break. This could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees.

(2) Buildings with plumbed water systems shall install at least one standpipe a minimum of 50 feet from the structure(s).

(3) A pond, stream, tank or sump with storage of not less than 1,000 gallons, or a well or water system capable of delivering 20 gallons per minute shall be provided. If a well pump is located on-site, the electrical service shall be separate from the dwelling.

(4) Access drives shall be constructed to a minimum of 12 feet in width and not exceed a grade of 12 percent. Turnouts shall be provided at a minimum of every 500 feet. Access drives shall be maintained to a level that is passable to fire equipment. Variances to road guidelines may be made only after consultation with the local rural fire district and the Washington Department of Natural Resources in Washington or the Oregon Department of Forestry in Oregon.

(5) Within 1 year of the occupancy of a dwelling, the local government shall conduct a review of the development to assure compliance with these guidelines.

(6) Telephone and power supply systems shall be underground whenever possible.

(7) Roofs of structures should be constructed of fire-resistant materials such as metal, fiberglass shingle or tile. Roof materials such as cedar shake and shingle should not be used.

(8) Any chimney or stovepipe on any structure for use with a woodstove or fireplace should be screened with no coarser than 1/4 inch mesh metal screen that is noncombustible and corrosion resistant and should be equipped with a spark arrestor.

(9) All structural projections such as balconies, decks and roof gables should be built with fire resistant materials equivalent to that specified in the Uniform Building Code.

(10) Attic openings, soffit vents, foundation louvers or other ventilation openings on dwellings and accessory structures should be screened with no coarser than 1/4-inch mesh metal screen that is noncombustible and corrosion resistant.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0310

Approval Criteria for Siting of Dwellings on Forest Land in the GMA

The approval of new dwellings and accessory structures on forest lands shall comply with the following guidelines:

(1) The dwelling and structures shall be sited on the parcel so that they will have the least impact on nearby or adjoining forest operations. Dwellings shall be set back at least 200 feet from adjacent properties. Clustering or locating proposed development closer to existing development on adjacent lands may minimize impacts on nearby or adjacent forest operations.

(2) The amount of forest land used to site dwellings, structures, access roads, and service corridors shall be minimized. This can include locating new dwellings and structures as close to existing public roads as possible, thereby minimizing the length of access roads and utility corridors; or locating the dwelling, access road, and service corridors on portions of the parcel that are least or poorly suited for forestry. Areas may not be suitable for forestry because of existing nonforest uses, adjacent dwellings, or land productivity.

(3) Dwellings shall be located to minimize the risks associated with wildfire. Dwellings should be located on gentle slopes and in any case not on slopes that exceed 40 percent. Narrow canyons and draws should be avoided. Dwellings should be located to minimize the difficulty of gaining access to the structure in the case of fire.

Dwellings should be located to make the access roads as short and flat as possible.

(4) A local government may grant a variance to the siting guidelines contained within this section upon a demonstration that the guidelines in "Variances from Setbacks and Buffers" (350-081-0078) have been satisfied.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0320

Approval Criteria for Life Estates in Commercial Forest Land or Small or Large Woodland

A landowner who sells or otherwise transfers real property on lands designated Commercial Forest Land or Large or Small Woodland may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in the Management Plan. A second dwelling unit on lands designated Commercial Forest Land or Large or Small Woodland may be allowed, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

(1) The proposed dwelling is in conjunction with agricultural use, using 350-081-0190(1)(h); or

(2) On lands designated Large Woodland, the dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The proposed dwelling shall comply with 350-081-0270(1)(a); or

(3) On lands designated Small Woodland, the proposed dwelling complies with 350-081-0270(1)(b); and

(4) Upon termination of the life estate, the original or second dwelling shall be removed.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0330

Open Space Designations

Commission Rule 350-081-0330 through 350-081-0340 shall apply to those areas designated GMA-Open Space and SMA-Open Space on the Scenic Area Land Use Designation Map.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0335

Uses Allowed Outright — Open Space

The uses listed in "Uses Allowed Outright, GMA and SMA Open Space" (350-081-0074(2)) are allowed without review on lands designated Open Space.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0338

Uses Allowed through the Expedited Development Review Process — Open Space

The uses listed in "Expedited Development Review Process" (350-081-0050) may be allowed with review through the expedited development review process on lands designated Open Space.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0340

Review Uses — Open Space

(1) The following uses may be allowed on all lands designated GMA-Open Space subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520–350-081-0620):

(a) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-081-0610).

(b) Land divisions to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources.

(c) Repair, maintenance, operation, and improvement of existing structures, trails, roads, railroads, utility facilities, and hydro-electric facilities.

(d) Removal of timber, rocks or other materials for purposes of public safety and placement of structures for public safety.

(e) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(f) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(g) Lot line adjustments, subject to compliance with the guidelines in "Lot Line Adjustments" (350-081-0126).

(2) Review Uses — Specific Lands Designated Open Space:

(a) The following uses may be allowed on lands designated GMA-Open Space for Gorge Walls and Canyonlands subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520–350-081-0620):

(A) Livestock grazing.

(B) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(C) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a county conservation district.

(D) Harvesting of wild crops.

(E) Educational or scientific research.

(F) Continued operation of existing quarries, if they are determined to be consistent with guidelines to protect scenic, cultural, natural, and recreation resources.

(G) All those uses allowed in "All Lands Designated Open Space".

(b) The following uses may be allowed on lands designated GMA-Open Space for the Mosley Lakes Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520–350-081-0620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(B) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(C) Commercial trapping.

(D) All those uses allowed in "All Lands Designated Open Space".

(c) The following uses may be allowed on lands designated GMA-Open Space for the Chenoweth Table Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520–350-081-0620):

(A) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-081-0610), after consultation with the Oregon Natural Heritage Program.

(B) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Oregon Natural Heritage Program.

(C) Educational or scientific research, after consultation with the Oregon Natural Heritage Program.

(D) All those uses allowed in "All Lands Designated Open Space".

(d) The following uses may be allowed on lands designated GMA-Open Space for the Squally Point Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520–350-081-0620):

(A) Except in the upland dunes south of the railroad tracks, low-intensity recreation, subject to the guidelines for recreation intensity classes (350-081-0610) after consultation with the Oregon Natural Heritage Program.

(B) Repair and maintenance of railroads, except measures to stabilize dunes, after consultation with the Oregon Natural Heritage Program.

(C) Except as limited by (d)(A), above, all those uses allowed in "All Lands Designated Open Space".

(e) The following uses may be allowed on lands designated GMA-Open Space for the Klickitat River Wildlife and Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520–350-081-0620):

(A) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-081-0610), after consultation with the Washington Natural Heritage Program and Washington Department of Fish and Wildlife.

(B) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(C) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(D) All those uses allowed in "All Lands Designated Open Space".

(f) The following uses may be allowed on lands designated GMA-Open Space for the Balch Lake Wetlands Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520–350-081-0620):

(A) Livestock grazing, subject to a range conservation plan, after consultation with the Washington Department of Fish and Wildlife.

(B) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(C) Educational and scientific research, after consultation with the Washington Department of Fish and Wildlife.

(D) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-081-0610) after consultation with the Washington Department of Fish and Wildlife.

(E) All those uses allowed in "All Lands Designated Open Space".

(g) The following uses may be allowed on lands designated GMA-Open Space for the Mouth of Wind River Wildlife Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520–350-081-0620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research, after consultation with the Washington Department of Fish and Wildlife.

(E) Commercial fishing and trapping.

(F) Low-intensity recreation, subject to the guidelines for recreation intensity classes (Part I, Chapter 4: Recreation Resources), after consultation with the Washington Department of Fish and Wildlife.

(G) All those uses allowed in "All Lands Designated Open Space".

(h) The following uses may be allowed on lands designated GMA-Open Space on those portions of state park ownerships not suitable for major recreation facilities subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520–350-081-0620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research.

(E) All those uses allowed in "All Lands Designated Open Space".

(3) The following new uses may be allowed on lands designated SMA-Open Space subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines (350-081-0520–350-081-0620):

(a) Changes in existing uses, including reconstruction, replacement, and expansion of existing structures and transportation facilities, except for commercial forest practices.

(b) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include vegetation management and forest practices (subject to the forest practice guidelines of 350-081-0270(2)(y) for the restoration of forest health, new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(c) Low-intensity recreation uses and developments, including educational and interpretive facilities, consistent with 350-081-0620.

(d) Utility facilities for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Open Space land.

(B) The size is the minimum necessary to provide the service.

(e) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(f) Treatment of noxious weeds shall be permitted without completion of an SMA Open Space plan when the following criteria have been met:

(A) Noxious weed infestation is new and eradication is still viable.

(B) Delayed or deferred treatment could have widespread or major adverse impacts to one or more of the following resources:

(i) Displacement of native and traditionally gathered plants;

(ii) Degradation of wildlife habitat and forage;

(iii) Degradation or loss of agricultural uses of land, such as cropland or livestock forage;

(iv) Limitation of recreational uses.

(C) For federal lands, treatment effects have been thoroughly evaluated in an environmental assessment.

(4) An Open Space plan shall be completed by the primary managing agency or landowner prior to any new land uses or development on lands designated SMA-Open Space, and shall be reviewed by the Forest Service. The Open Space plan shall include the following:

(a) Direction for resource protection, enhancement, and management.

(b) Review of existing uses to determine compatibility with Open Space values.

(c) Consultation with members of the public and with agency and resource specialists.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0350

Residential Land Designations

Commission Rule 350-081-0350 through 350-081-0390 shall apply to those areas designated Residential on the Scenic Area Land Use Designation Map.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0360

Uses Allowed Outright — Residential Land

The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture — Special" (350-081-0074(1)) are allowed without review on lands designated Residential.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0365

Uses Allowed through the Expedited Development Review Process — Residential Land

The uses listed in "Expedited Development Review Process" (350-081-0050) are allowed with review through the expedited development review process on lands designated Residential.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0370

Review Uses — Residential Land

(1) The following uses may be allowed on lands designated GMA-Residential, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(a) One single family dwelling per legally created parcel. If the subject parcel is located adjacent to lands designated Large-Scale or Small Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, the use shall comply with the buffer and notification requirements for agricultural land [350-081-0076 and 350-081-0190(1)(q)(E)], or forest land [(350-081-0290(1)(a) and 350-081-0310(1)(a)]. If the subject parcel is located within a Residential designation that is adjacent to lands designated Commercial Forest Land or Large or Small Woodland, the placement of a dwelling shall also comply with the fire protection guidelines in "Approval Criteria for Fire Protection" (350-081-0300).

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) The temporary use of a mobile home in the case of a family hardship, subject to guidelines for hardship dwellings in "Temporary Use Hardship Dwelling" (350-081-0092).

(e) Construction or reconstruction of roads.

(f) On parcels 10 acres or larger in the 5-acre Residential designation, or 20 acres or larger in the 10-acre Residential designation, a land division creating new parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-081-0124).

(g) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560 through 590).

(h) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(i) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-081-0126).

(j) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(k) Agricultural structures, except buildings, in conjunction with agricultural use.

(l) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-081-0090).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Docks and boathouses, subject to the guidelines in “Docks and Boathouses” (350-081-0096).

(o) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Commercial events, subject to the guidelines in “Commercial Events” (350-081-0108).

(q) Special uses in historic buildings, subject to the guidelines in “Special Uses in Historic Buildings” (350-081-0114).

(2) The following uses may be allowed on lands designated SMA-Residential subject to review for compliance with scenic, cultural, natural, and recreation resources guidelines (350-081-0520 through 350-081-0620):

(a) One single family dwelling per legally created lot or consolidated parcel not less than 40 contiguous acres. The placement of a dwelling shall comply with fire protection standards developed by the county, in accordance with Management Plan SMA Policy 13 in Part II, Chapter 2: Forest Land.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) New utility facilities.

(e) Fire stations.

(f) Home occupations and cottage industries subject to the guidelines in “Home Occupations and Cottage Industries” (350-081-0098).

(g) Bed and breakfast inns, subject to the guidelines in “Bed and Breakfast Inns” (350-081-0100).

(h) Community parks and playgrounds.

(i) Road and railroad construction and reconstruction.

(j) Forest practices, as specified in 350-081-0270(2)(y).

(k) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in “Resource Enhancement Projects” (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(l) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in “Temporary Use Hardship Dwelling” (350-081-0092).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(o) Docks and boathouses, subject to the guidelines in “Docks and Boathouses” (350-081-0096).

(p) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-081-0270(2)(x).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 2-2006, f. 6-22-06, cert. ef. 8-1-06; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2012, f. 4-18-12, cert. ef. 6-1-12

350-081-0380

Review Uses with Additional Approval Criteria — Residential Land

The following uses may be allowed on lands designated GMA-Residential, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (350-081-0520–350-081-0620) and “Approval Criteria for Specified Review Uses,” (350-081-0390).

(1) Accredited childcare centers within lands designated 1-acre Residential or 2-acre Residential. A childcare center may be allowed in other Residential designations within an existing church or community building.

(2) Schools within an existing church or community building.

(3) Expansion of existing primary or middle schools on land purchased prior to June 8, 1999. For purposes of this section, existing schools means public schools that existed prior to adoption of the original Management Plan on October 15, 1991.

(4) Utility facilities and railroads.

(5) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in “Home Occupations and Cottage Industries” (350-081-0098).

(6) Fire stations.

(7) Recreation development, subject to compliance with 350-081-0610.

(8) Community parks and playgrounds, consistent with the standards of the National Park and Recreation Society regarding the need for such facilities.

(9) Bed and breakfast inns in single family dwellings located on lands designated 5-acre Residential or 10-acre Residential, pursuant to the guidelines in “Bed and Breakfast Inns” (350-081-0100).

(10) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(11) Wine sales/tasting rooms in conjunction with an on-site winery, under the following conditions:

(a) The use shall comply with the guidelines in “Home Occupations and Cottage Industries” (350-081-0098), with the following exceptions:

(A) The use may employ an unlimited number of outside employees.

(B) The wine sales/tasting room may include interior and/or exterior space, provided the combined interior and exterior spaces shall not exceed 1,000 square feet.

(C) The interior space may be located in an existing building or in a new building or addition to an existing building constructed for the primary purpose of housing the wine sales/tasting room.

(D) The exterior space may be a veranda, patio, or other similar type of structure.

(b) Small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in “Small-Scale Fishing Support and Fish Processing Operations” (350-081-0102).

(12) Boarding of horses on lands designated 10-acre Residential. The reviewing agency shall make findings on property characteristics, parcel size and impacts to neighbors, and shall specify the maximum number of horses based on those findings.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0390

Approval Criteria for Specified Review Uses on Lands Designated Residential

The uses identified in 350-081-0380, may be allowed only if they meet all of the following:

(1) The proposed use will be compatible with the surrounding area. Review of compatibility shall include impacts associated with the visual character of the area; traffic generation; and noise, dust, and odors.

(2) The proposed use will not require public services other than those existing or approved for the area.

(3) If the subject parcel is located within 500 feet of lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, new buildings associated with the proposed use comply with the buffer guidelines in “Agricultural Buffer Guidelines” (350-081-0076).

(4) If the subject parcel is located within 500 feet of lands designated Commercial Forest Land or Large or Small Woodland, new buildings associated with the proposed use comply with the fire protection guidelines in “Approval Criteria for Fire Protection” (350-081-0300).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0400

Rural Center

Commission Rule 350-081-0400 through 350-081-0420 shall apply to those areas designated Rural Center on the Scenic Area Land Use Designation Map.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0410

Uses Allowed Outright — Rural Center

The uses listed in “Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special” (350-081-0074(1)) are allowed without review on lands designated Rural Center and Commercial.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0415

Uses Allowed through the Expedited Development Review Process — Rural Center

The uses listed in “Expedited Development Review Process” (350-081-0050) are allowed with review through the expedited development review process on lands designated Rural Center and Commercial.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0420

Review Uses — Rural Center

The following uses may be allowed within Rural Centers, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources:

(1) One single-family dwelling per legally created parcel.

(2) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 350-081-0420(1)(c).

(3) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(a) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(b) The height of any individual accessory building shall not exceed 24 feet.

(4) The temporary use of a mobile home in the case of a family hardship, pursuant to guidelines for hardship dwellings in “Temporary Use — Hardship Dwelling” (350-081-0092).

(5) Duplexes.

(6) Fire stations.

(7) Libraries.

(8) Government buildings.

(9) Community centers and meeting halls.

(10) Schools.

(11) Accredited childcare centers.

(12) Rural service commercial and tourist commercial uses limited to 5,000 square feet of floor area per building or use:

(a) Grocery stores.

(b) Variety and hardware stores.

(c) Shops, offices, and repair shops.

(d) Personal services such as barber and beauty shops.

(e) Travelers’ accommodations, bed and breakfast inns.

(f) Restaurants.

(g) Taverns and bars.

(h) Gas stations.

(i) Gift shops.

(13) Home occupations or cottage industries in an existing residence or accessory structure, subject to guidelines in “Home Occupations and Cottage Industries” (350-081-0098).

(14) Utility facilities and railroads.

(15) Recreation development, subject to compliance with 350-081-0610.

(16) Places of worship.

(17) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560–350-081-0590).

(18) Land divisions, subject to the standards and minimum lot sizes in Policies 6 and 7 in the “Land Use Policies” in Part II, Chapter 5: Commercial Land of the Management Plan.

(19) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in “Lot Line Adjustments” (350-081-0126).

(20) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in “Resource Enhancement Projects” (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(21) Agricultural structures, except buildings, in conjunction with agricultural use.

(22) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in “Agricultural Buildings” (350-081-0090).

(23) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(24) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(25) Commercial events, subject to the guidelines in “Commercial Events” (350-081-0108).

(26) Special uses in historic buildings, subject to the guidelines in “Special Uses in Historic Buildings” (350-081-0114).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0430

Commercial Land

Commission Rule 350-081-0430 through 350-081-0460 shall apply to those areas designated Commercial on the Scenic Area Land Use Designation Map.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0440

Uses Allowed Outright — Commercial Designations

The uses listed in “Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special” (350-081-0074(1)) are allowed without review on lands designated Commercial.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0445

Uses Allowed through the Expedited Development Review Process — Commercial Designations

The uses listed in “Expedited Development Review Process” (350-081-0050) are allowed with review through the expedited development review process on lands designated Commercial.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0450

Review Uses — Commercial Designations

The following uses may be allowed on lands designated Commercial, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (350-081-0520–350-081-0620) and “Approval Criteria for Specified Review Uses,” (350-081-0460):

- (1) Travelers’ accommodations, bed and breakfast inns.
 - (2) Restaurants.
 - (3) Gift shops.
 - (4) Home occupations or cottage industries in an existing residence or accessory structure, subject to guidelines in “Home Occupations and Cottage Industries” (350-081-0098).
 - (5) One single-family dwelling per legally created parcel.
 - (6) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed as accessory buildings larger than 200 square feet in area or 10 feet in height.
 - (7) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel, subject to the following standards:
 - (a) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.
 - (b) The height of any individual accessory building shall not exceed 24 feet.
 - (8) Utility facilities and railroads.
 - (9) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in “Resource Enhancement Projects” (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).
 - (10) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in “Lot Line Adjustments” (350-081-0126).
 - (11) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.
 - (12) Docks and boathouses, subject to the guidelines in “Docks and Boathouses” (350-081-0096).
 - (13) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.
 - (14) Commercial events, subject to the guidelines in “Commercial Events” (350-081-0108).
 - (15) Special uses in historic buildings, subject to the guidelines in “Special Uses in Historic Buildings” (350-081-0114).
- Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 2-2006, f. 6-22-06, cert. ef. 8-1-06

350-081-0460

Approval Criteria for Review Uses on Lands Designated on Lands Designated Commercial

The uses identified under “Review Uses: Commercial Designations” may be allowed only if they meet the following two criteria:

- (1) The proposal is limited to 5,000 square feet of floor area per building or use.

- (2) The proposed use would be compatible with the surrounding area. Review for compatibility shall include impacts associated with the visual character of the area; traffic generation; and noise, dust and odors.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0470

Recreation

Commission Rule 350-081-0470 through 350-081-0510 shall apply to those areas designated Public Recreation and Commercial Recreation on the Scenic Area Land Use Designation Map.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0480

Uses Allowed Outright — Public Recreation and Commercial Recreation

The uses listed in “Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special” (350-081-0074(1)) are allowed without review on lands designated Public Recreation and Commercial Recreation.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0485

Uses Allowed through the Expedited Development Review Process — Public Recreation and Commercial Recreation

The uses listed in “Expedited Development Review Process” (350-081-0050) are allowed with review through the expedited development review process on lands designated Public Recreation and Commercial Recreation.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0490

Review Uses — Public Recreation and Commercial Recreation

- (1) The following uses may be allowed on lands designated GMA-Public Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources (350-081-0520 through 350-081-0620) and compliance with 350-081-0610(5)(a) and (c)–(g), where applicable, of the “Approval Criteria for Recreation Uses” contained in the recreation intensity class guidelines (350-081-0610):
 - (a) Publicly-owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-081-0610).
 - (b) Commercial uses and non-resource based recreation uses that are part of an existing or approved resource-based public recreation use, consistent with the guidelines for such uses contained in this section.
 - (c) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560–350-081-0590).
 - (d) Special uses in historic buildings, subject to the guidelines in “Special Uses in Historic Buildings” (350-081-0114).

- (2) The following uses may be allowed on lands designated GMA Public Recreation, subject to compliance with the “Approval Criteria for Non-Recreation Uses in Public Recreation designations,” (350-081-0500), and (350-081-0520–350-081-0620):

- (a) One single-family dwelling for each parcel legally created prior to adoption of the Management Plan. Exceptions may be considered only upon demonstration that more than one residence is necessary for management of a public park.
- (b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline 350-081-0490(2)(c).
- (c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-081-0090).

(f) Utility transmission, transportation, communication, and public works facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-081-0096).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in "Commercial Events" (350-081-0108).

(3) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural and recreation resources (350-081-0520–350-081-0620) and compliance with 350-081-0610(5)(a) and (c)–(g) of the "Approval Criteria for Recreation Uses" guidelines (350-081-0610):

(a) Commercially owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-081-0610).

(b) Overnight accommodations that are part of a commercially owned, resource-based recreation use, where such resource-based recreation use occurs on the subject site or on adjacent lands that are accessed through the site, and that meet the following standards:

(A) Buildings containing individual units shall be no larger than 1,500 square feet in total floor area and no higher than 2-1/2 stories.

(B) Buildings containing more than one unit shall be no larger than 5,000 square feet in total floor area and no higher than 2-1/2 stories.

(C) The total number of individual units shall not exceed 25, unless the proposed development complies with standards for clustered accommodations in subsection (4) of this guideline.

(D) Clustered overnight travelers accommodations meeting the following standards may include up to 35 individual units:

(i) Average total floor area of all units is 1,000 square feet or less per unit.

(ii) A minimum of 50 percent of the project site is dedicated to undeveloped, open areas (not including roads or parking areas).

(iii) The facility is in an area classified for high-intensity recreation (Recreation Intensity Class 4).

(c) Commercial uses, including restaurants sized to accommodate overnight visitors and their guests, and non-resource based recreation uses that are part of an existing or approved resource-based commercial recreation use, consistent with the policies, guidelines, and conditional use criteria for such uses contained in this section.

(d) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560–350-081-0590).

(e) Special uses in historic buildings, subject to the guidelines in "Special Uses in Historic Buildings" (350-081-0114).

(4) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with the "Approval Criteria for Non-Recreational Uses in Commercial Recreation," (350-081-0510), and the guidelines for the protection of scenic, natural, cultural, and recreation resources (350-081-0520–350-081-0620):

(a) One single-family dwelling for each lot or parcel legally created prior to adoption of the Management Plan.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (4)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-081-0090).

(f) Utility transmission, transportation, and communication facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-081-0096).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in "Commercial Events" (350-081-0108).

(5) Land divisions may be allowed in GMA-Public Recreation, subject to compliance with 350-081-0500(1)(c), and in GMA Commercial Recreation, subject to compliance with 350-081-0510(1)(c).

(6) Lot line adjustments may be allowed in GMA Public Recreation and GMA Commercial Recreation, subject to compliance with the guidelines in "Lot Line Adjustments" (350-081-0126).

(7) The following uses may be allowed on lands designated SMA-Public Recreation subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines:

(a) Forest uses and practices, as allowed for in 350-081-0270(2), except Forest Land Review Uses (2)(i), (2)(l), (2)(m), and (2)(w).

(b) Public trails, consistent with the provisions in 350-081-0620.

(c) Public recreational facilities, consistent with the provisions in 350-081-0620.

(d) Public nonprofit group camps, retreats, conference or educational centers, and interpretive facilities.

(e) One single-family dwelling on a parcel of 40 contiguous acres or larger when it meets the conditions described for Agricultural Land (350-081-0190(2)(c)) or Forest Land (350-081-0270(2)(j)), or when shown to be necessary for public recreation site management purposes.

(f) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(g) below.

(g) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(h) Home occupation and cottage industries, as specified in "Home Occupations and Cottage Industries" (350-081-0098).

(i) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(j) Road and railroad construction and reconstruction.

(k) Utility facilities for public service upon a showing that:

(A) There is no alternative location with less adverse effect on Public Recreation land.

(B) The size is the minimum necessary to provide the service.

(l) Agricultural review uses, as allowed for in 350-081-0190(2), except Agricultural Land Review Uses (2)(h), (2)(i), (2)(t), and (2)(aa).

(m) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use – Hardship Dwelling" (350-081-0092).

(n) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(o) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-081-0096).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 2-2006, f. 6-22-06, cert. ef. 8-1-06; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0500

Approval Criteria for Non-Recreation Uses in GMA-Public Recreation Designations

The uses identified in 350-081-0490(2) and (5), may be allowed if they meet the following criteria:

(1) The proposed use will not interfere with existing or approved public recreation uses on the subject property or adjacent lands. Mitigative measures used to comply with this criterion may include provision of onsite buffers, seasonal or temporary closures during peak recreation use periods, etc.

(2) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structures and other improvements may be used to comply with this criterion.

(3) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance, or otherwise improve recreational uses on the site.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0510

Approval Criteria for Non-Recreation Uses in GMA-Commercial Recreation Designations

The uses identified in 350-081-0490(4) and (5), may be allowed if they meet the following criteria:

(1) The proposed use will not interfere with existing or approved commercial recreation uses on the subject property or adjacent lands. Mitigative measures used to comply with this criterion may include provision of on-site buffers, seasonal or temporary closures during peak recreation use periods, etc.

(2) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structure and other improvements may be used to comply with this criterion.

(3) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance, or otherwise improve recreational uses on the site.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

Resource Protection Guidelines

350-081-0520

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:

(a) New buildings and roads shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.

(b) New buildings shall be compatible with the general scale (height, dimensions and overall mass) of existing nearby development. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(c) Project applicants shall be responsible for the proper maintenance and survival of any planted vegetation required by the guidelines in this chapter.

(d) A site plan and land use application shall be submitted for all new buildings, except for buildings smaller than 60 square feet in area and less than or equal to 10 feet in height, as measured at the roof peak. The site plan and application shall include all information required in the site plan guidelines in "Review Uses" 350-081-0032(5). Supplemental requirements for developments proposed on lands visible from key viewing areas are included in the key viewing areas guidelines in this chapter.

(e) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.

(f) For all new production and/or development of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable. At a minimum, such reclamation plans shall include:

(A) A map of the site, at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with 10-foot contour intervals or less, showing pre-mining existing grades and post-mining final grades; locations of topsoil stockpiles for eventual reclamation use; location of catch basins or similar drainage and erosion control features employed for the duration of the use; and the location of storage, processing, and equipment areas employed for the duration of the use.

(B) Cross-sectional drawings of the site showing pre-mining and post-mining grades.

(C) Descriptions of the proposed use, in terms of estimated quantity and type of material removed, estimated duration of the use, processing activities, etc.

(D) Description of drainage/erosion control features to be employed for the duration of the use.

(E) A landscaping plan providing for revegetation consistent with the vegetation patterns of the subject landscape setting, indicating the species, number, size, and location of plantings for the final reclaimed grade, as well as a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(g) All reclamation plans for new quarries or expansion of existing quarries shall be sent to the appropriate state reclamation permitting agency for review and comment. The state agency shall have 30 calendar days from the date a reclamation plan is mailed to

submit written comments on the proposal. State agency comments shall address the following:

(A) Whether the proposed mining is subject to state reclamation permit requirements;

(B) If subject to state jurisdiction, whether an application has been received for a state reclamation permit and, if so, the current status of the application; and

(C) For uses subject to state jurisdiction, any issues or concerns regarding consistency with state reclamation requirements, or any suggested modifications to comply with state reclamation requirements. The Executive Director may request technical assistance from state agencies on reclamation plans for proposed mining not within the state agency's jurisdiction.

(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 include consideration of the cumulative effects of proposed developments.

(d) The extent and type of conditions applied to a proposed development to achieve visual subordination shall be proportionate to its potential visual impacts as seen from key viewing areas.

(A) Decisions shall include written findings addressing the factors influencing potential visual impact, including but not limited to:

(i) The amount of area of the building site exposed to key viewing areas.

(ii) The degree of existing vegetation providing screening.

(iii) The distance from the building site to the key viewing areas from which it is visible.

(iv) The number of key viewing areas from which it is visible.

(v) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

(B) Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to:

(i) Siting (location of development on the subject property, building orientation, and other elements).

(ii) Retention of existing vegetation.

(iii) Design (color, reflectivity, size, shape, height, architectural and design details and other elements).

(iv) New landscaping.

(e) New development shall be sited to achieve visual subordination from key viewing areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, or sensitive wildlife sites or would conflict with guidelines to protect cultural resources. In such situations, development shall comply with this guideline to the maximum extent practicable.

(f) New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from key viewing areas.

(g) Existing tree cover screening proposed development from key viewing areas shall be retained as specified in the Landscape Settings Design Guidelines in 350-081-0520(3).

(h) The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from key viewing areas. Variances to this guideline may be granted if application of the guideline would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the guideline have been made.

(i) An alteration to a building built before November 17, 1986, that already protrudes above the skyline of a bluff, cliff, or

ridge as seen from a key viewing area, may itself protrude above the skyline if:

(A) The altered building, through use of color, landscaping and/or other mitigation measures, contrasts less with its setting than before the alteration; and

(B) There is no practicable alternative means of altering the building without increasing the protrusion.

(j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) shall be required only when application of all other available guidelines in 350-081-0520 is not sufficient to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is required to make a proposed development visually subordinate from key viewing areas, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to make the development visually subordinate within five years or less from the commencement of construction.

(C) Unless as specified otherwise by provisions in 350-081-0520, landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The Scenic Resources Implementation Handbook shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in 350-081-0520(3), and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(k) Conditions regarding new landscaping or retention of existing vegetation for new developments on lands designated GMA Forest shall meet both scenic guidelines and fuel break requirements in 350-081-0300(1)(a).

(l) Unless expressly exempted by other provisions in 350-081-0520, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors.

(m) The exterior of buildings on lands seen from key viewing areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all key viewing areas by existing topographic features. The Scenic Resources Implementation Handbook will include a list of recommended exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets recommended thresholds in the "Visibility and Reflectivity Matrices" in the Implementation Handbook (once they are created). Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure visual subordination. Recommended square footage limitations for such surfaces will be provided for guidance in the Implementation Handbook.

(n) In addition to the site plan requirements in 350-081-0032(5), applications for all buildings visible from key viewing areas shall include a description of the proposed building(s)' height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used; number, size, locations of plantings; and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes).

(o) For proposed mining and associated activities on lands visible from key viewing areas, in addition to submittal of plans and information pursuant to 350-081-0520(1)(f) section of this

chapter, project applicants shall submit perspective drawings of the proposed mining areas as seen from applicable key viewing areas.

(p) Exterior lighting shall be directed downward and sited, hooded, and shielded such that it is not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(q) Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of dark earth-tone colors found at the specific site or in the surrounding landscape. The specific colors or a list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors.

(r) Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordination requirements for lands seen from key viewing areas. To be eligible for such exemption, the structure must be included in, or eligible for inclusion in, the National Register of Historic Places or be in the process of applying for a determination of significance pursuant to such regulations. Rehabilitation of or modifications to structures meeting this guideline shall be consistent with National Park Service regulations for such structures.

(s) New main lines on lands visible from key viewing areas for the transmission of electricity, gas, oil, other fuels, or communications, except for connections to individual users or small clusters of individual users, shall be built in existing transmission corridors unless it can be demonstrated that use of existing corridors is not practicable. Such new lines shall be underground as a first preference unless it can be demonstrated to be impracticable.

(t) New communication facilities (antennae, dishes, etc.) on lands visible from key viewing areas that require an open and unobstructed site shall be built upon existing facilities unless it can be demonstrated that use of existing facilities is not practicable.

(u) New communications facilities may protrude above a skyline visible from a key viewing area only upon demonstration that:

(A) The facility is necessary for public service;

(B) The break in the skyline is seen only in the background; and

(C) The break in the skyline is the minimum necessary to provide the service.

(v) Overpasses, safety and directional signs, and other road and highway facilities may protrude above a skyline visible from a key viewing area only upon a demonstration that:

(A) The facility is necessary for public service; and

(B) The break in the skyline is the minimum necessary to provide the service.

(x) Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to this guideline may be authorized.

(y) New buildings shall not be permitted on lands visible from key viewing areas with slopes in excess of 30 percent. Variances to this guideline may be authorized if the guideline's application would render a property unbuildable. In determining the slope, the average percent slope of the proposed building site shall be used.

(z) Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from key viewing areas.

(aa) All proposed structural development involving more than 200 cubic yards of grading on sites visible from key viewing areas shall include submittal of a grading plan. This plan shall be reviewed by the local government for compliance with key viewing area policies. The grading plan shall include the following:

(A) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with contour intervals of at least 5 feet, including:

(i) Existing and proposed final grades.

(ii) Location of all areas to be graded, with cut banks and fill slopes delineated.

(iii) Estimated dimensions of graded areas.

(B) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:

(i) Its purpose.

(ii) An estimate of the total volume of material to be moved.

(iii) The height of all cut banks and fill slopes.

(iv) Provisions to be used for compactions, drainage, and stabilization of graded areas. (Preparation of this information by a licensed engineer or engineering geologist is recommended.)

(v) A description of all plant materials used to revegetate exposed slopes and banks, including the species, number, size, and location of plants, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(vi) A description of any other interim or permanent erosion control measures to be used.

(bb) Expansion of existing quarries and new production and/or development of mineral resources proposed on sites more than 3 miles from the nearest key viewing areas from which it is visible may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to 350-081-0520 have been met.

(B) The area to be mined and the area to be used for primary processing, equipment storage, stockpiling, etc. associated with the use would be visually subordinate as seen from any key viewing areas.

(C) A reclamation plan to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-081-0520(1)(f) and (g).

(D) A written report on a determination of visual subordination has been completed, with findings addressing the extent of visibility of proposed mining activities from key viewing areas, including:

(i) A list of key viewing areas from which exposed mining surfaces (and associated facilities/activities) would be visible.

(ii) An estimate of the surface area of exposed mining surfaces that would be visible from those key viewing areas.

(iii) The distance from those key viewing areas and the linear distance along those key viewing areas from which proposed mining surfaces are visible.

(iv) The slope and aspect of mining surfaces relative to those portions of key viewing areas from which they are visible.

(v) The degree to which potentially visible mining surfaces are screened from key viewing areas by existing vegetation, including winter screening considerations.

(vi) The degree to which potentially visible mining surfaces would be screened by new plantings, berms, etc. and appropriate time frames to achieve such results, including winter screening considerations.

(cc) Unless addressed by 350-081-0520(2)(bb), new production and/or development of mineral resources may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to this chapter have been met.

(B) The area to be mined and the area used for primary processing, equipment storage, stockpiling, etc., associated with the use would be fully screened from any key viewing area.

(C) A reclamation plan to restore the area to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-081-0520(1)(f) and (g).

(dd) An interim time period to achieve compliance with visual subordination requirements for expansion of existing quarries and development of new quarries located more than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the date of approval.

(ee) An interim time period to achieve compliance with full screening requirements for new quarries located less than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the date of approval. Quarrying activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(3) Landscape Settings. All review uses within the following landscape settings shall comply with the following applicable guidelines:

(a) Pastoral

(A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas-fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust (primarily in the eastern Gorge).

(iv) At least one-quarter of any trees planted for screening shall be coniferous for winter screening.

(C) Compatible recreation uses include resource-based recreation of a very low-intensity or low-intensity nature (as defined by 350-081-0610) occurring infrequently in the landscape.

(b) Coniferous Woodland:

(A) Structure height shall remain below the forest canopy level.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(I) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained.

(II) At least half of any trees planted for screening purposes shall be species native to the setting. Such species include: Douglas-fir, grand fir, western red cedar, western hemlock, big leaf maple, red alder, ponderosa pine and Oregon white oak, and various native willows (for riparian areas).

(III) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses include resource-based recreation uses of varying intensities. Typically, outdoor recreation uses should be low-intensity, and include trails, small picnic areas and scenic viewpoints. Some more intensive recreation uses, such as campgrounds, may occur. They should be scattered, interspersed with large areas of undeveloped land and low-intensity uses.

(c) Oak-Pine Woodland:

(A) Structure height shall remain below the tree canopy level in wooded portions of this setting.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) At least half of any tree species planted for screening purposes shall be species native to the setting. Such species include Oregon white oak, ponderosa pine, and Douglas-fir.

(ii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening. For substantially wooded portions:

(iii) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained. For treeless portions or portions with scattered tree cover:

(iv) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(v) Patterns of plantings for screening vegetation shall be in character with the surroundings. Residences in grassy, open areas or savannahs shall be partly screened with trees in small groupings and openings between groupings.

(vi) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(C) Resource-based recreation uses of varying intensities may be compatible with this setting, although most are of low-intensity nature (such as trails or small scenic outlooks). More intensive recreation uses may be compatible where allowed by 350-081-0610, although they are generally rare in this setting. As with Woodland settings, intensive recreation uses in Oak-Pine Woodlands may be compatible if widely scattered and not in large concentrations.

(d) Grassland:

(A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible. Exceptions to this guideline are permitted where necessary for farming operations.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(ii) Lower structures that emphasize horizontal lines and blend with this sweeping landscape should be encouraged rather than very tall structures.

(iii) Planting of trees for screening shall not be extensive, in character with the openness of this setting. Where used, screening vegetation shall either tie in with nearby riparian vegetation in seasonal drainages or emulate windrows. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include Oregon white oak, Lombardy poplar, black locust, black cottonwood (wet locations), Russian olive and ponderosa pine.

(C) Resource-based recreation uses of a very low-intensity or low-intensity nature that occur infrequently are compatible with this setting, and include hiking, hunting and wildlife viewing.

(e) Rural Residential

(A) Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.

(B) In portions of this setting visible from key viewing areas, and not exempt from visual subordination guidelines (see 350-081-0520(3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses should be limited to small community park facilities, but may occasionally include low-intensity resource-based recreation uses (such as scenic overlooks).

(f) Rural Residential/Pastoral, Rural Residential/Coniferous Woodland, and Rural Residential/Oak-Pine Woodland

(A) New development in this setting shall meet the design guidelines described for both the Rural Residential setting and the

more rural setting with which it is combined (either Pastoral, Coniferous Woodland or Oak-Pine Woodland), unless it can be demonstrated that compliance with the guidelines for the more rural setting is impracticable. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) In the event of a possible conflict between the two sets of guidelines, the guidelines for the more rural setting (Coniferous Woodland, Oak-Pine Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such guidelines would not be practicable.

(C) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

(g) Residential:

(A) In portions of this setting visible from key viewing areas and not exempt from visual subordination guidelines (see 350-081-0520(3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) The exteriors of structures shall be non-reflective unless fully screened from key viewing areas with existing vegetation and/or topography.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iv) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(B) Compatible recreation uses are limited to community park facilities.

(h) Village:

(A) New commercial buildings shall be limited in size to a total floor area of 5,000 square feet or less, and shall be limited in height to 2 1/2 stories or less.

(B) For new commercial, institutional (churches, schools, government buildings), or multifamily residential uses on parcels fronting a scenic travel corridor (Washington State Route 14 or the Historic Columbia River Highway) and expansion of existing development for such uses, parking shall be limited to rear or side yards of buildings to the maximum extent practicable.

(C) New vehicular access points to the scenic travel corridors shall be limited to the maximum extent practicable, and access consolidation shall be required where feasible.

(D) New development proposals and expansion of existing development shall be encouraged to follow planned unit development approaches, featuring consolidated access, commonly shared landscaped open areas, etc.

(E) New commercial, institutional or multifamily residential uses fronting a scenic travel corridor shall comply with the following landscape requirements:

(i) Parking or loading areas for 10 or more spaces shall include a landscaped strip at least 5 feet wide between the new use and the scenic travel corridor roadway.

(ii) The landscape strip required in 350-081-0520(3)(h)(E)(i) shall include shrubs, vegetative ground cover, and, at minimum, one tree. Trees shall be spaced as appropriate to the species and not to exceed 25 feet apart on the average.

(F) The use of building materials that reinforce the Village setting's character, such as wood, logs, or stone, and that reflect community desires, should be encouraged.

(G) Architectural styles that are characteristic of the area (such as 1 1/2-story dormer roof styles in Corbett) and that reflect community desires should be encouraged. Entry signs should be consistent with such architectural styles.

(H) Design features that create a "pedestrian-friendly" atmosphere, such as large shop windows on the ground floor of commercial buildings, porches along ground floors with street frontage, etc., should be encouraged.

(I) Pedestrian walkways and bicycle paths should be encouraged and integrated into new developments wherever feasible.

(J) Where feasible, existing tree cover of species native to the region or commonly found in the area shall be retained when designing new development or expanding existing development.

(K) Compatible recreation uses may include community parks serving the recreation needs of local residents, and varying intensities of other recreation uses.

(i) River Bottomlands

(A) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, existing tree cover screening the development from key viewing areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the River Bottomland setting. Public recreation developments are encouraged to maximize the percentage of planted screening vegetation native to this setting. Such species include black cottonwood, big leaf maple, red alder, Oregon white ash, Douglas-fir, western red cedar and western hemlock (west Gorge), and various native willow species.

(iii) At least one-quarter of any trees planted for screening purposes shall be coniferous for winter screening.

(C) Compatible recreation uses depend on the degree of natural resource sensitivity of a particular site. In the most critically sensitive River Bottomlands, very low-intensity uses which do not impair wetlands or special habitat requirements may be compatible. In other River Bottomland areas, nodes of moderate-intensity and/or high-intensity recreation uses may be compatible, provided that:

(i) Their designs emphasize retention and/or enhancement of native riparian communities;

(ii) Structures and parking areas are visually subordinate;

(iii) They are separated from other areas of concentrated recreation usage by stretches of natural-appearing shoreline and adjacent uplands.

(j) Gorge Walls, Canyons, and Wildlands:

(A) New development and expansion of existing development shall be screened so it is not seen from key viewing areas, to the maximum extent practicable.

(B) All trees planted to screen permitted development and uses from key viewing areas shall be native to the area.

(C) Existing tree cover shall be retained to the maximum extent practicable, except for the minimum removal necessary to accommodate facilities otherwise permitted in the underlying land use designation or for safety purposes.

(D) All buildings shall be limited in height to a maximum of 1 1/2 stories.

(E) The exteriors of structures shall be non-reflective.

(F) Signage shall be limited to natural materials such as wood or stone, with natural or earth-tone colors, unless public safety concerns or federal or state highway standards require otherwise.

(G) Compatible recreation uses are limited to very low or low-intensity resource-based activities which focus on enjoyment and appreciation of sensitive resources. Such compatible uses (such as trails) are generally associated with minimal facility development, if any.

(k) Developed Settings and Visual Subordination Policies
GMA policies to protect key viewing area viewsheds require that all new development on lands seen from key viewing areas be visually subordinate to its landscape setting, except for "specified developed settings that are not visually sensitive." Three landscape settings are considered developed settings within this context: Rural Residential, Residential, and Village. Of all GMA lands in these three settings, six particular areas that are not visually sensitive have been identified. New development in these settings shall be compatible with the setting, but not necessarily visually subordinate. New developments in these settings are exempt from

the color and siting guidelines in the Key Viewing Areas section of this chapter. These areas are:

- (A) Corbett Rural Center (Village);
 - (B) Skamania Rural Center (Village);
 - (C) West of Hood River Urban Area, east of Country Club Road (Rural Residential);
 - (D) Murray's Addition subdivision, The Dalles (Residential);
 - (E) Two small areas south of The Dalles in Sections 9 and 10, Township 1N, Range 13E (Residential);
 - (F) Portion of Underwood Heights along Cooper Avenue, south of Cook-Underwood Road (Rural Residential).
- (4) Scenic Travel Corridors All review uses within Scenic Travel Corridors shall comply with the following applicable guidelines:

(a) For the purposes of implementing this section, the foreground of a scenic travel corridor shall include those lands within 1/4 mile of the edge of pavement of the scenic travel corridor roadway.

(b) All new buildings and alterations to existing buildings, except in a Rural Center designation (village landscape setting), shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway. A variance to this setback requirement may be granted pursuant to 350-081-0078(2). All new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway, to the maximum extent practicable.

(c) Additions to existing buildings or expansion of existing parking lots located within 100 feet of the edge of pavement of a scenic travel corridor roadway, except in a Rural Center designation (village landscape setting), shall comply with 350-081-0520(4)(b) above, to the maximum extent practicable.

(d) All proposed vegetation management projects in public rights-of-way to provide or improve views shall include the following:

(A) An evaluation of potential visual impacts of the proposed project as seen from any key viewing area.

(B) An inventory of any rare plants, sensitive wildlife habitat, wetlands, or riparian areas on the project site. If such resources are determined to be present, the project shall comply with applicable Management Plan guidelines to protect the resources.

(e) When evaluating possible locations for undergrounding of signal wires or powerlines, railroads and utility companies shall prioritize those areas specifically recommended as extreme or high priorities for undergrounding in the Columbia River Gorge National Scenic Area Corridor Visual Inventory (April 1990).

(f) New production and/or development of mineral resources proposed within 1/4 mile of the edge of pavement of a scenic travel corridor may be allowed upon a demonstration that full visual screening of the site from the scenic travel corridor can be achieved by use of existing topographic features or existing vegetation designed to be retained through the planned duration of the proposed project. An exception to this may be granted if planting of new vegetation in the vicinity of the access road to the mining area would achieve full screening. If existing vegetation is partly or fully employed to achieve visual screening, over 75 percent of the tree canopy area shall be coniferous species providing adequate winter screening. Mining and associated primary processing of mineral resources is prohibited within 100 feet of a scenic travel corridor, as measured from the edge of pavement, except for access roads. Compliance with full screening requirements shall be achieved within timeframes specified in 350-081-0520(2)(ee).

(g) Expansion of existing quarries may be allowed pursuant to 350-081-0520(2)(bb). Compliance with visual subordination requirements shall be achieved within timeframes specified in 350-081-0520(2)(dd).

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0530

Special Management Area Scenic Review Criteria

(1) SMA Design Guidelines Based on Landscape Settings

(a) The following guidelines apply to all lands within SMA landscape settings regardless of visibility from KVAs (includes areas seen from KVAs as well as areas not seen from KVAs):

(A) Pastoral: Pastoral areas shall retain the overall appearance of an agricultural landscape. The use of plant species common to the landscape setting shall be encouraged. The use of plant species in rows, as commonly found in the landscape setting, is encouraged.

(B) Coniferous Woodland and Oak-Pine Woodland: Woodland areas shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the overall visual character of the natural appearance of the Coniferous Woodland and Oak-Pine Woodland landscape.

(i) Buildings shall be encouraged to have a vertical overall appearance in the Coniferous Woodland landscape setting and a horizontal overall appearance in the Oak-Pine Woodland landscape setting.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(C) Residential: The Residential setting is characterized by concentrations of dwellings.

(i) At Rowena Dell, new buildings shall have a rustic appearance using natural materials. At Latourell Falls, new buildings shall have an appearance consistent with the predominant historical architectural style.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(D) River Bottomlands: River Bottomlands shall retain the overall visual character of a floodplain and associated islands.

(i) Buildings shall have an overall horizontal appearance in areas with little tree cover.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(E) Gorge Walls, Canyonlands, and Wildlands: New developments and land uses shall retain the overall visual character of the natural-appearing landscape.

(i) Structures, including signs, shall have a rustic appearance, use nonreflective materials, have low contrast with the surrounding landscape, and be of a Cascadian architectural style.

(ii) Temporary roads shall be promptly closed and revegetated.

(iii) New utilities shall be below ground surface, where feasible.

(iv) Use of plant species non-native to the Columbia River Gorge shall not be allowed.

(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 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.

(c) The required SMA scenic standards for all development and uses are summarized in the following table: [Table not included. See ED. NOTE.]

(d) In all landscape settings, scenic standards shall be met by blending new development with the adjacent natural landscape elements rather than with existing development.

(e) Proposed developments or land uses shall be sited to achieve the applicable scenic standard. Development shall be designed to fit the natural topography, to take advantage of landform and vegetation screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics. When screening of development is needed to meet the scenic standard from key viewing areas, use of existing topog-

raphy and vegetation shall be given priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms.

(f) The extent and type of conditions applied to a proposed development or use to achieve the scenic standard shall be proportionate to its degree of visibility from key viewing areas.

(A) Decisions shall include written findings addressing the factors influencing the degree of visibility, including but not limited to:

(i) The amount of area of the building site exposed to key viewing areas,

(ii) The degree of existing vegetation providing screening,

(iii) The distance from the building site to the key viewing areas from which it is visible,

(iv) The number of key viewing areas from which it is visible, and

(v) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

(B) Conditions may be applied to various elements of proposed developments to ensure they meet the scenic standard for their setting as seen from key viewing areas, including but not limited to:

(i) Siting (location of development on the subject property, building orientation, and other elements);

(ii) Retention of existing vegetation;

(iii) Design (color, reflectivity, size, shape, height, architectural and design details and other elements); and

(iv) New landscaping.

(g) Sites approved for new development to achieve scenic standards shall be consistent with guidelines to protect wetlands, riparian corridors, sensitive plant or wildlife sites and the buffer zones of each of these natural resources, and guidelines to protect cultural resources.

(h) Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from key viewing areas.

(i) Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that meeting this guideline is not feasible considering the function of the structure.

(j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) to achieve the required scenic standard from key viewing areas shall be required only when application of all other available guidelines in this chapter is not sufficient to make the development meet the scenic standard from key viewing areas. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is necessary to meet the required standard, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to meet the scenic standard within five years or less from the commencement of construction.

(C) Landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The Scenic Resources Implementation Handbook shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in this chapter, and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(k) Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors

as dark or darker than the colors in the shadows of the natural features surrounding each landscape setting.

(l) The exterior of structures on lands seen from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. The Scenic Resources Implementation Handbook will include a recommended list of exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets approval thresholds in the "Visibility and Reflectivity Matrices" in the Implementation Handbook. Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure meeting the scenic standard. Recommended square footage limitations for such surfaces will be provided for guidance in the Implementation Handbook.

(m) Any exterior lighting shall be sited, limited in intensity, shielded, or hooded in a manner that prevents lights from being highly visible from key viewing areas and from noticeably contrasting with the surrounding landscape setting, except for road lighting necessary for safety purposes.

(n) Seasonal lighting displays shall be permitted on a temporary basis, not to exceed 3 months.

(3) SMA Guidelines for KVA Foregrounds and Scenic Routes:

(a) All new developments and land uses immediately adjacent to scenic routes shall be in conformance with state or county scenic route guidelines.

(b) Scenic highway corridor strategies shall be developed and implemented for Interstate 84 (I-84), Washington State Route 14 (SR 14) and the Historic Columbia River Highway (HCRH). For I-84, SR 14 and the HCRH, this involves ongoing implementation (and possible updating) of the associated existing documents.

(c) The goals of scenic corridor strategies shall include:

(A) Providing a framework for future highway improvements and management that meet Management Plan scenic guidelines and public transportation needs; and

(B) Creating design continuity for the highway corridor within the Scenic Area. Corridor strategies shall, at minimum, include design guidelines (e.g. materials, conceptual designs, etc.) for typical projects that are consistent with Management Plan scenic resources provisions and an interdisciplinary, interagency project planning and development process.

(d) The following guidelines shall apply only to development within the immediate foregrounds of key viewing areas. Immediate foregrounds are defined as within the developed prism of a road or trail KVA or within the boundary of the developed area of KVAs such as Crown Pt. and Multnomah Falls. They shall apply in addition to applicable guidelines in 350-081-0530(2).

(A) The proposed development shall be designed and sited to meet the applicable scenic standard from the foreground of the subject KVA. If the development cannot meet the standard, findings must be made documenting why the project cannot meet the requirements in the previous section and why it cannot be redesigned or wholly or partly relocated to meet the scenic standard.

(B) Findings must evaluate the following:

(i) The limiting factors to meeting the required scenic standard and/or applicable guidelines from the previous section,

(ii) Reduction in project size;

(iii) Options for alternative sites for all or part of the project, considering parcel configuration and on-site topographic or vegetative screening;

(iv) Options for design changes including changing the design shape, configuration, color, height, or texture in order to meet the scenic standard.

(C) Form, line, color, texture, and design of a proposed development shall be evaluated to ensure that the development blends with its setting as seen from the foreground of key viewing areas:

(i) Form and Line-Design of the development shall minimize changes to the form of the natural landscape. Development shall borrow form and line from the landscape setting and blend with the form and line of the landscape setting. Design of the development

shall avoid contrasting form and line that unnecessarily call attention to the development.

(ii) Color-Color shall be found in the project's surrounding landscape setting. Colors shall be chosen and repeated as needed to provide unity to the whole design.

(iii) Texture-Textures borrowed from the landscape setting shall be emphasized in the design of structures. Landscape textures are generally rough, irregular, and complex rather than smooth, regular, and uniform.

(iv) Design-Design solutions shall be compatible with the natural scenic quality of the Gorge. Building materials shall be natural or natural appearing. Building materials such as concrete, steel, aluminum, or plastic shall use form, line color and texture to harmonize with the natural environment. Design shall balance all design elements into a harmonious whole, using repetition of elements and blending of elements as necessary.

(e) Right-of-way vegetation shall be managed to minimize visual impacts of clearing and other vegetation removal as seen from key viewing areas. Roadside vegetation management (vista clearing, planting, etc.) should enhance views from the highway.

(f) Screening from key viewing areas shall be encouraged for existing and required for new road maintenance, warehouse, and stockpile areas.

(4) SMA Guidelines for Areas Not Seen from KVAs:

(a) Unless expressly exempted by other provisions in this chapter, colors of structures on sites not visible from key viewing areas shall be earth-tones found at the specific site. The specific colors or list of acceptable colors shall be approved as a condition of approval, drawing from the recommended palette of colors included in the Scenic Resources Implementation Handbook.

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

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08

350-081-0540

General Management Area Cultural Resource Review Criteria

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

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

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

(c) Reconnaissance and Historic Surveys and Survey Reports.

(A) Reconnaissance survey requirements and exceptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Reconnaissance Surveys for Large-Scale Uses

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

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

(I) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.

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

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

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

(G) Reconnaissance Survey Reports for Large-Scale Uses

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

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

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

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

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

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

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

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

(H) Historic Surveys and Reports

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

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

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

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

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

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

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

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

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

(2) Cultural Resource Reconnaissance and Historic Surveys

(a) Consultation and Ethnographic Research;

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

(B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate. All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In

instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

(b) Notice of Survey Results:

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

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

(c) Conclusion of the Cultural Resource Protection Process

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

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

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

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

(iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone. Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected. An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

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

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

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

have been satisfied, the project applicant shall conduct an evaluation of significance.

(3) Evaluation of Significance

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

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

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

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

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

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

(b) Notice of Evaluation Results:

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

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

(c) Cultural Resources are Culturally Significant:

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

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

(d) Conclusion of the Cultural Resource Protection Process:

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

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

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

(4) Assessment of Effect:

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

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

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

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

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

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

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

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

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

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

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

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

(b) Notice of Assessment Results:

(A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.

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

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments

submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

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

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

(5) Mitigation Plans

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

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

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

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

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

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

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

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

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

(b) Notice of Mitigation Plan Results:

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

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

(c) Conclusion of the Cultural Resource Protection Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cultural Resource Protection Process" are met and the mitigation plan is executed.

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0550

Special Management Area Cultural Resource Review Criteria

(1) General Guidelines for Implementing the Cultural Resources Protection Process

(a) All cultural resource information shall remain confidential, according to Section 6(a)(1)(A) of the Scenic Area Act. Federal agency cultural resource information is also exempt by statute from the Freedom of Information Act under 16 USC 470aa and 36 CFR 296.18.

(b) All cultural resources 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 61.

(c) The Forest Service will be responsible for performing the literature review and consultation, inventory, evaluations of significance, assessments of effect, and mitigation requirements in 350-081-0550(4) for forest practices and National Forest System lands.

(d) New developments or land uses shall not adversely affect significant cultural resources.

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

(2) The procedures and guidelines in 350-081-0540 shall be used to review all proposed developments and land uses other than those on all federal lands, federally assisted projects and forest practices.

(3) The procedures and guidelines in 36 CFR 800 and 350-081-0550(4) shall be used by the Executive Director and federal agencies to evaluate new developments or land uses on federal lands, federally assisted projects, and forest practices.

(4) The following procedures as well as the provisions in 36 CFR 800.4 for assessing potential effects to cultural resources and 36 CFR 800.5 for assessing adverse effects to cultural resources shall be used to assess potential effects to cultural resources.

(a) Literature Review and Consultation

(A) An assessment shall be made to determine if any cultural resources listed on the National Register of Historic Places at the national, state or county level exist on or within the area of potential direct and indirect impacts.

(B) A search shall be made of state and county government, National Scenic Area/Forest Service and any other pertinent inventories, such as archives and photographs, to identify cultural resources, including consultation with the State Historic Preservation Office and tribal governments. State and tribal government response to the consultation request shall be allowed for 30 days.

(C) Consultation with cultural resource professionals knowledgeable about the area.

(D) A field inventory by a cultural resource professional shall be required if the Forest Service or the Executive Director determines that a recorded or known cultural resource exists on or within the immediate vicinity of a new development or land use, including those reported in consultation with the Tribal governments.

(b) Field Inventory

(A) Tribal representatives shall be invited to participate in the field inventory.

(B) The field inventory shall consist of one or the other of the following guidelines, as determined by the cultural resource professional:

(i) Complete survey: the systematic examination of the ground surface through a controlled procedure, such as walking an area in

evenly spaced transects. A complete survey may also require techniques such as clearing of vegetation, augering or shovel probing of subsurface soils for the presence of buried cultural resources.

(ii) Sample survey: the sampling of an area to assess the potential of cultural resources within the area of proposed development or use. This technique is generally used for large or difficult to survey parcels, and is generally accomplished by a stratified random or non stratified random sampling strategy. A parcel is either stratified by variables such as vegetation, topography or elevation, or by non environmental factors such as a survey grid. Under this method, statistically valid samples are selected and surveyed to indicate the probability of presence, numbers and types of cultural resources throughout the sampling strata. Depending on the results of the sample, a complete survey may or may not subsequently be recommended.

(C) A field inventory report shall be prepared, and shall include the following:

(i) A narrative integrating the literature review of section (4)(a) above with the field inventory of section (4)(b) above.

(ii) A description of the field inventory methodology used, including the type and extent of field inventory, supplemented by maps which graphically illustrate the areas surveyed, not surveyed, and the rationale for each.

(iii) A statement of the presence or absence of cultural resources within the area of the new development or land use.

(iv) When cultural resources are not located, a statement of the likelihood of buried or otherwise concealed cultural resources shall be included. Recommendations and standards for monitoring, if appropriate, shall be included.

(D) The report shall follow the format specified by the Washington Office of Archaeology and Historic Preservation for inventories conducted in the State of Washington. Reports for inventories conducted in the State of Oregon shall follow the format specified by the Oregon State Historic Preservation Office.

(E) The field inventory report shall be presented to the Forest Service or the Executive Director for review.

(c) Evaluations of Significance

(A) When cultural resources are found within the area of the new development or land use, an evaluation of significance shall be completed for each cultural resource in accordance with the criteria of the National Register of Historic Places (36 CFR 60.4).

(B) Evaluations of cultural resource significance shall be guided by previous and current research designs relevant to specific research questions for the area.

(C) Evaluations of the significance of traditional cultural properties shall follow National Register Bulletin 38, Guidelines for the Evaluation and Documentation of Traditional Cultural Properties, within local and regional contexts.

(D) Recommendations for eligibility to the National Register shall be completed for each identified resource, in accordance with National Register criteria A through D (36 CFR 60.4). The Forest Service or the Executive Director shall review evaluations for adequacy.

(E) Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources in the project area, and documentation of their concerns, shall be included as part of the evaluation of significance.

(F) An assessment of effect shall be required if the Forest Service or the Executive Director determines that the inventoried cultural resources are significant.

(d) Assessment of Effect

(A) For each significant (i.e., National Register eligible) cultural resource inventoried within the area of the proposed development or change in use, assessments of effect shall be completed, using the criteria outlined in 36 CFR 800.5 ("Assessing Effects"). Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources of the project area shall be included for sections (4)(d)(B) through (4)(d)(D) below. The Forest Service or Executive Director shall review each determination for adequacy.

(B) If the proposed development or change in use will have "No Adverse Effect," as defined by 36 CFR 800.4, to a significant cultural resource, documentation for that finding shall be completed, following the "Documentation Standards" of 36 CFR 800.11. If the proposed development or change in use will have an effect then the criteria of adverse effect must be applied (36 CFR 800.5).

(C) If the proposed development or change in use will have an "Adverse Effect" as defined by 36 CFR 800.5 to a significant cultural resource, the type and extent of "adverse effect" upon the qualities of the property that make it eligible for the National Register shall be documented (36 CFR 800.6 "Resolution of Adverse Effects"). This documentation shall follow the process outlined under 36 CFR 800.11 ("Failure to Resolve Adverse Effects").

(D) If the "effect" appears to be beneficial (i.e., an enhancement to cultural resources), documentation shall be completed for the recommendation of that effect upon the qualities of the cultural resource that make it eligible to the National Register. This documentation shall follow the process outlined under 36 CFR 800.11 ("Documentation Standards").

(e) Mitigation

(A) If there will be an effect on cultural resources, measures shall be provided for mitigation of effects (36 CFR 800.6 "Resolution of Adverse Effects"). These measures shall address factors such as avoidance of the property through project design or modification and subsequent protection, burial under fill, data recovery excavations, or other measures which are proposed to mitigate effects.

(B) Evidence of consultation with tribal governments and individuals with knowledge of the resources to be affected, and documentation of their concerns, shall be included for all mitigation proposals.

(C) The Forest Service or the Executive Director shall review all mitigation proposals for adequacy.

(5) Discovery During Construction

All authorizations for new developments or land uses shall be conditioned to require the immediate notification of the Forest Service or the Executive Director if cultural resources are discovered during construction or development.

(a) If cultural resources are discovered, particularly human bone or burials, work in the immediate area of discovery shall be suspended until a cultural resource professional can evaluate the potential significance of the discovery and recommend measures to protect and/or recover the resources.

(b) If the discovered material is suspected to be human bone or a burial, the following procedure shall be used:

(A) The applicant shall stop all work in the vicinity of the discovery.

(B) The applicant shall immediately notify the Executive Director, the Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.

(C) The Forest Service or the Executive Director shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.

(D) A cultural resource professional shall evaluate the potential significance of the resource pursuant to 350-081-0550(4)(c) and report the results to the Forest Service or the Executive Director.

(c) The cultural resource review process shall be complete and work may continue if the Forest Service or the Executive Director determines that the cultural resource is not significant.

(d) The cultural resource professional shall recommend measures to protect and/or recover the resource pursuant to 350-081-0550(4)(e) if the Forest Service or the Executive Director determines that the cultural resource is significant.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2012, f. 4-18-12, cert. ef. 6-1-12

350-081-0560

General Management Area Wetland Review Criteria

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

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

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Wetlands boundaries shall be delineated using the procedures specified in the Corps of Engineers Wetlands Delineation Manual (Wetlands Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997).

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

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

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

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

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

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

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

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

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in 350-081-0560(5), and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620:

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

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

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

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

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

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

wildlife management structures that are constructed by federal, state, or tribal resource agencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts. The following wetlands restoration, creation, and enhancement guidelines shall apply:

(A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.

(B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.

(C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.

(D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):

- (i) Restoration: 2:1
- (ii) Creation: 3:1
- (iii) Enhancement: 4:1

(E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.

(F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.

(G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.

(H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.

(I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

(7) Wetlands Buffer Zones

(a) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

(b) The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.

(A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.

(B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.

(C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.

(c) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:

- (A) Forest communities: 75 feet
- (B) Shrub communities: 100 feet

(C) Herbaceous communities: 150 feet

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

(8) Wetlands Compensation Plans Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:

(a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.

(b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

(c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.

(d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.

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

(C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.

(e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.

(f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0570

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

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

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

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

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

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

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

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

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

(3) The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant 350-081-0570(5), and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds,

and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2000), unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife. In Washington, the Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods for in-water work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.

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

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

(7) Stream, Pond, and Lake Buffer Zones

(a) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be mea-

sured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0580

General Management Area Sensitive Wildlife Review Criteria

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

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

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

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 endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,

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

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

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

(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within 1000 feet of sensitive wildlife areas and sites.

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

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

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

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

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

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually. Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to 350-081-0580(4) and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620.

(4) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:

(A) Identify/verify the precise location of the wildlife area or site,

(B) Ascertain whether the wildlife area or site is active or abandoned, and

(C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

(b) The following factors may be considered when site plans are reviewed:

(A) Biology of the affected wildlife species.

(B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).

(C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.

(E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.

(c) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:

(A) The sensitive wildlife area or site is not active, or

(B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

(d) If the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Executive Director will incorporate them into the development review order and the wildlife protection process may conclude.

(e) The project applicant shall prepare a wildlife management plan if the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.

(f) The Executive Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Fish and Wildlife. The state wildlife agency will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the state wildlife agency in the land use review order. Based on the comments from the state wildlife agency, the Executive Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached. The Executive Director shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

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

the wildlife area or site and/or buffer zone. Wildlife management plans shall meet the following guidelines:

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

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

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

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

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

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

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

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

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

(6) New fences in deer and elk winter range

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07,

cert. ef. 1-1-08; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0590

General Management Areas Rare Plant Review Criteria

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

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

(A) Endemic to the Columbia River Gorge and vicinity,

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

(C) Listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program. Updated lists of sensitive plant species can be found on the websites for the Oregon or Washington Natural Heritage Program. A list also is maintained by the USDA Forest Service – Scenic Area Office and available on the Gorge Commission website.

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

(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within 1000 feet of rare plants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Sensitive Plant Buffer Zones

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

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

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

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

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

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

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0600

Special Management Areas Natural Resource Review Criteria

(1) All new developments and uses, as described in a site plan prepared by the applicant, shall be evaluated using the following guidelines to ensure that natural resources are protected from adverse effects. Comments from state and federal agencies shall be carefully considered. (Site plans are described in 350-081-0032).

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

(a) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in subsections (2)(a)(B)(i) and (ii) below. These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined below.

(A) All buffer zones shall be retained undisturbed and in their natural condition, except as permitted with a mitigation plan.

(B) Buffer zones shall be measured outward from the bank full flow boundary for streams, the high water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the wetlands, stream, pond or lake boundary. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from

the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

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

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

(iii) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all of the following:

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

(II) The wetland is not critical habitat.

(III) Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.

(C) The buffer width shall be increased for the following:

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

(ii) When the frequently flooded area exceeds the recommended riparian buffer zone width, the buffer width shall be extended to the outer edge of the frequently flooded area.

(iii) When an erosion or landslide hazard area exceeds the recommended width of the buffer, the buffer width shall be extended to include the hazard area.

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

(E) Requests to reconfigure buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant (1) identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(F) The Executive Director shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the project file. Based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reconfigured buffer zones are justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached.

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

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

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

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U. S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands.

(B) Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands that are discovered by the local planning staff during an inspection of a potential project site shall be delineated and protected.

(C) The project applicant shall be responsible for determining the exact location of a wetlands boundary. Wetlands boundaries shall be delineated using the procedures specified in the '1987 Corps of Engineers Wetland Delineation Manual (on-line Edition)'.

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

(e) Stream, pond, and lake boundaries shall be delineated using the bank full flow boundary for streams and the high water mark for ponds and lakes. The project applicant shall be responsible for determining the exact location of the appropriate boundary for the water resource.

(f) The Executive Director may verify the accuracy of, and render adjustments to, a bank full flow, high water mark, normal pool elevation (for the Columbia River), or wetland boundary delineation. If the adjusted boundary is contested by the project applicant, the Executive Director shall obtain professional services, at the project applicant's expense, or ask for technical assistance from the Forest Service to render a final delineation.

(g) Buffer zones shall be undisturbed unless the following criteria have been satisfied:

(A) The proposed use must have no practicable alternative as determined by the practicable alternative test.

Those portions of a proposed use that have a practicable alternative will not be located in wetlands, stream, pond, lake, and riparian areas and/or their buffer zone.

(B) Filling and draining of wetlands shall be prohibited with exceptions related to public safety or restoration/enhancement activities as permitted when all of the following criteria have been met:

(i) A documented public safety hazard exists or a restoration/enhancement project exists that would benefit the public and is corrected or achieved only by impacting the wetland in question, and

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

(iii) The proposed project minimizes the impacts to the wetland.

(C) Unavoidable impacts to wetlands and aquatic and riparian areas and their buffer zones shall be offset by deliberate restoration and enhancement or creation (wetlands only) measures as required by the completion of a mitigation plan.

(h) Determination of potential natural resources effects shall include consideration of cumulative effects of proposed developments within the following areas: wetlands, streams, ponds, lakes, riparian areas and their buffer zones.

(3) Wildlife and Plants

(a) Protection of sensitive wildlife/plant areas and sites shall begin when proposed new developments or uses are within 1000 ft of a sensitive wildlife/plant site and/or area. Sensitive Wildlife Areas and endemic plants are those areas depicted in the wildlife inventory and listed in the "Types of Wildlife Areas and Sites Inventoried in the Columbia Gorge" and "Columbia Gorge and Vicinity Endemic Plant Species" tables in the Management Plan, including all Priority Habitats listed in this Chapter. The approximate locations of sensitive wildlife and/or plant areas and sites are shown in the wildlife and rare plant inventory. Updated lists of sensitive wildlife and plant species can be found on websites for the Washington Department of Fish and Wildlife, the Wildlife Division of Oregon Department of Fish and Wildlife, and the Oregon or Washington Natural Heritage Programs. A list also is maintained by the USDA Forest Service – Scenic Area Office and available on the Gorge Commission website.

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

(c) The Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:

(A) Identify/verify the precise location of the wildlife and/or plant area or site,

(B) Determine if a field survey will be required,

(C) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season, and

(D) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.

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

(ii) Requests to reduce buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant, 1) identifies the precise location of the sensitive wildlife/plant or water resource, 2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and 3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

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

(d) The Executive Director, in consultation with the State and federal wildlife biologists and/or botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the proposed developments or uses do not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or site:

(A) Published guidelines regarding the protection and management of the affected wildlife/plant species. Examples include: the Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron; the Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander.

(B) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(C) Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.

(D) Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful life of the area or site.

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

(F) The site plan is consistent with the "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources"

(Oregon Department of Fish and Wildlife 2000) and the Washington guidelines when they become finalized.

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

(H) The site plan illustrates that new developments and uses, including bridges, culverts, and utility corridors, shall not interfere with fish and wildlife passage.

(I) Maintain, protect, and enhance the integrity and function of Priority Habitats (such as old growth forests, talus slopes, and oak woodlands) as listed on the following Priority Habitats Table. This includes maintaining structural, species, and age diversity, maintaining connectivity within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function.

(e) The wildlife/plant protection process may terminate if the Executive Director, in consultation with the Forest Service and state wildlife agency or Heritage program, determines (1) the sensitive wildlife area or site is not active, or (2) the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site, and (3) the proposed use is within the buffer and could be easily moved out of the buffer by simply modifying the project proposal (site plan modifications). If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife/plant protection process may conclude.

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

(g) The Executive Director shall submit a copy of all field surveys (if completed) and mitigation plans to the Forest Service and appropriate state agencies. The Executive Director shall include all comments in the record of application and address any written comments submitted by the state and federal wildlife agency/heritage programs in the final decision. Based on the comments from the state and federal wildlife agency/heritage program, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife/plant policies and guidelines. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(h) The Executive Director shall require the project applicant to revise the mitigation plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife/plant area or site.

(i) Determination of potential natural resources effects shall include consideration of cumulative effects of proposed developments within the following areas: sites within 1,000 feet of sensitive wildlife areas and sites; and 2) sites within 1,000 feet of rare plants.

(4) Soil Productivity

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

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

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

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

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

Practicable Alternative Test

(5) An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken

on that site after taking into consideration cost, technology, logistics, and overall project purposes. A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following: [Table not included. See ED. NOTE.]

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

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

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

Mitigation Plan

(6) Mitigation Plan shall be prepared when:

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

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

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

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

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

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

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

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

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

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

(d) Show how restoration, enhancement, and replacement (creation) measures will be applied to ensure that the proposed use results in minimum feasible impacts to sensitive resources, their buffer zones, and associated habitats.

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

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

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

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

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

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

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

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

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

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

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

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

(C) Fish passage shall be protected from obstruction.

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

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

(F) Groundwater and surface water quality will not be degraded by the proposed use. Natural hydrologic conditions shall be maintained, restored, or enhanced in such a manner that replicates natural conditions, including current patterns (circulation, velocity, volume, and normal water fluctuation), natural stream channel and shoreline dimensions and materials, including slope, depth, width, length, cross-sectional profile, and gradient.

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

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

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

Restoration: 2: 1

Creation: 3: 1

Enhancement: 4: 1

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

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

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

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2012, f. 4-18-12, cert. ef. 6-1-12

350-081-0610

General Management Areas Recreation Resource Review Criteria

The following uses are allowable, subject to compliance with 350-081-0610(5) and (6).

(1) Recreation Intensity Class 1 (Very Low Intensity):

(a) Parking areas for a maximum of 10 cars for any allowed uses in Recreation Intensity Class 1.

(b) Trails for hiking, equestrian, and mountain biking use.

(c) Pathways for pedestrian and bicycling use.

(d) Trailheads (with provisions for hitching rails and equestrian trailers at trailheads accommodating equestrian use).

(e) Scenic viewpoints and overlooks.

(f) Wildlife/botanical viewing and nature study areas.

(g) River access areas.

(h) Simple interpretive signs and/or displays, not to exceed a total of 50 square feet.

(i) Entry name signs, not to exceed 10 square feet per sign.

(j) Boat docks, piers, or wharfs.

(k) Picnic areas.

(l) Restrooms/comfort facilities.

(2) Recreation Intensity Class 2 (Low Intensity):

(a) All uses permitted in Recreation Intensity Class 1.

(b) Parking areas for a maximum of 25 cars, including spaces for campground units, to serve any allowed uses in Recreation Intensity Class 2.

(c) Simple interpretive signs and displays, not to exceed a total of 100 square feet.

(d) Entry name signs, not to exceed 20 square feet per sign.

(e) Boat ramps, not to exceed two lanes.

(f) Campgrounds for 20 units or less, tent sites only.

(3) Recreation Intensity Class 3 (Moderate Intensity):

(a) All uses permitted in Recreation Intensity Classes 1 and 2.

(b) Parking areas for a maximum of 75 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 3.

(c) Interpretive signs, displays and/or facilities.

(d) Visitor information and environmental education signs, displays, or facilities.

(e) Entry name signs, not to exceed 32 square feet per sign.

(f) Boat ramps, not to exceed three lanes.

(g) Concessions stands, pursuant to applicable policies in Chapter 4, Part 1 of the Management Plan.

(h) Campgrounds for 50 individual units or less, for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 3 campgrounds may also include one group campsite area, in addition to the allowed individual campground units or parking area maximums allowed as described herein.

(4) Recreation Intensity Class 4 (High Intensity):

(a) All uses permitted in Recreation Intensity Classes 1, 2, and 3.

(b) Parking areas for a maximum of 250 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 4.

(c) Horseback riding stables and associated facilities.