



Supporting Documents

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(CCC 40.240.440) Amendments to Columbia River Gorge National
Scenic Area Districts

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For other formats, contact the Clark County ADA Office
Voice 564.397.2322 / Relay 711 or 800.833.6388
Fax 360.397.6165 / Email ADA@clark.wa.gov

**NOTICE OF PUBLIC HEARING
CLARK COUNTY COUNCIL**

NOTICE IS HEREBY GIVEN that the Clark County Council will conduct a public hearing on **February 18, 2020, at 6:00 p.m.**, at the Public Services Center, 1300 Franklin Street, Hearing Room, 6th Floor, Vancouver, Washington to consider the following:

CPZ2019-00033 – Columbia River Gorge National Scenic Area Districts (Title 40) Amendment: A proposal to amend Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H) to correct a scrivener’s error.

Staff Contact: Sharon.Lumbantobing@clark.wa.gov or (564) 397-4909

The staff report, related materials, and hearing agenda will be available 15 days prior to the hearing date on the county’s web page at <https://www.clark.wa.gov/community-planning/housing-initiative>. Copies of materials are also available at Clark County Community Planning, 1300 Franklin Street, 3rd Floor, Vancouver, Washington. For other formats, contact the Clark County ADA Office at ADA@clark.wa.gov, voice 564-397-2322, Relay 711 or 800-833-6388, or Fax 564-397-6165.

Anyone wishing to attend this hearing should appear at the time and place stated above. Public testimony is welcome, and if submitted, will be included in the hearing record. At the hearing, you may give spoken testimony, and may submit written and other testimony, such as maps or photos. You need not testify in order to attend.

You may provide advance testimony to the Clark County Council by mailing or e-mailing the clerk of the council at Rebecca.Messinger@clark.wa.gov or via US Postal Service to the Clark County Councilors, c/o Rebecca Messinger, PO Box 5000, Vancouver, WA 98666-5000. Please be aware that the county may not forward your testimony to the commissioners unless it is received before 5 p.m. at least two (2) business days before the hearing.

Approved as to Form only:

CLARK COUNTY COUNCIL

Clerk of the Board

Approved as to Form only:
ANTHONY F. GOLIK
Prosecuting Attorney

By:


Taylor Hallvik
Deputy Prosecuting Attorney

PLEASE PUBLISH:

Friday, January 31, 2020

Please Bill:

Clark County Community Planning
Attn: Sonja Wiser, Program Assistant
P. O. Box 9810
Vancouver, WA 98666-9810

Columbian Account 70914



For other formats, contact
the Clark County ADA Office

Voice 360.397.2322
Fax 360.397.6165

Relay 711 or 800.833.6388
Email ADA@clark.wa.gov



Clark County Planning Commission

Karl Johnson, Chair
Ron Barca, Vice Chair
Rick Torres
Steve Morasch
Bryan Halbert
Matt Swindell

**CLARK COUNTY PLANNING COMMISSION
THURSDAY, NOVEMBER 21, 2019**

**6:30 P.M. - PUBLIC HEARING
CONTINUED FROM OCTOBER 17, 2019**

**CC HEARING ROOM, 6TH FLOOR
PUBLIC SERVICES BUILDING
1300 FRANKLIN STREET
VANCOUVER, WA**

AGENDA

- I. CALL TO ORDER**
- II. ROLL CALL & INTRODUCTION OF GUESTS**
- III. GENERAL & NEW BUSINESS**
 - A. Approval of Agenda for October 17, 2019
 - B. Approval of Minutes for October 3rd & 8th, 2019
 - C. Communications from the Public
- IV. PUBLIC HEARING ITEM, Continued from October 17, 2019:**
 - A. Clark County Unified Development Code (Title 40.250.030) Amendments (CPZ2019-00033 Columbia River Gorge National Scenic Area Code update) –**
The proposal is to amend the Clark County Code pertaining to the Columbia River Gorge National Scenic Area to correct a scrivener’s error to CCC 40.240.H, which states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedures should be a Type III (quasi-judicial) process as they are elsewhere in code.
- V. NEW BUSINESS**
- VII. COMMENTS FROM MEMBERS OF THE PLANNING COMMISSION**
- VIII. ADJOURNMENT**

STAFF REPORT AND RECOMMENDATIONS:

Staff recommendations to the Planning Commission will be available 14 days prior to the hearing date listed above. Staff reports and other information can be accessed on the following web page at: <https://www.clark.wa.gov/community-planning/planning-commission-hearings-and-meeting-notes>

Or, contact Sonja Wiser, Program Assistant at (360) 397-2375, ext. 4558, or e-mail Sonja.wiser@clark.wa.gov

SUBMISSION OF WRITTEN TESTIMONY:

If you bring written testimony to read at the hearing, the Planning Commission would request submission of at least ten copies for the record (seven copies for Planning Commission and three copies for staff).

E-MAIL TESTIMONY:

PLEASE NOTE: All e-mails need to be received no later than 48 hours prior to the hearing and need to include full name, address, city, zip code, and phone number to be included as parties of record. Testimony can be e-mailed to the above-listed planners or to Sonja.wiser@clark.wa.gov

ACCOMMODATION OF PHYSICAL IMPAIRMENTS:

The Public Service Center is wheelchair accessible. If you need auxiliary aids or services in order to attend, contact the Clark County ADA Office. **Relay** (800) 833-6384 or 711; **E-mail** ADA@clark.wa.gov.


HEARING COVERAGE:

Coverage of this evening's hearing may be cable cast live on Clark/Vancouver television channel 23 or 21, on cable television systems. For replay dates and times, please check your local television guide or www.cvtv.org.

Web Page at: <https://www.clark.wa.gov/community-planning/planning-commission-hearings-and-meeting-notes>



Staff Report

TO: Clark County Planning Commission
FROM: Oliver Orjiako, Director 
PREPARED BY: Sharon Lumbantobing, Planner II
DATE: November 21, 2019
SUBJECT: CPZ2019-00033 CLARK COUNTY UNIFIED DEVELOPMENT CODE
(TITLE 40.240.440) AMENDMENTS – COLUMBIA RIVER GORGE
NATIONAL SCENIC AREA **SUPPLEMENTAL INFORMATION**

PROPOSED ACTION

Amend the Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H) to correct a scrivener's error. CCC 40.240.440(H) currently states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedure should be a Type III (quasi-judicial) process as provided elsewhere in code.

SUPPLEMENTAL INFORMATION

In response to the Clark County Planning Commission's request for information at the October 17, 2019, Planning Commission hearing, the following exhibits are being included for clarification:

- 1) Exhibit 7 (Excerpt of Ord. 2003-11-01 Gorge Small Woodland Designations) shows that the development and production of mineral and geothermal resources in Gorge small woodland designations require Type III review procedures in the then 40.240.310(G). This section has subsequently been renumbered as 40.250.520(H).
- 2) Exhibit 8 and 9 (Ord. 2006-08-21 and Ord 2006-05-04) Planning Commission requested copies of these ordinances.
- 3) Exhibit 10 (Board of County Commissioner minutes from September 23, 2003) Planning Commission requested a copy of the Title 40 hearing minutes.
- 4) Exhibit 11 (Staff Report to the Board of County Commissioners from September 17, 2003) Planning Commission requested a copy of the staff report for the Title 40 hearing.
- 5) Exhibit 12 (Surface Mining Overlay in the Columbia River Gorge National Scenic Area Districts) there is one property in the Columbia River Gorge with the Surface Mining Overlay.
- 6) Exhibit 13 (Clark County Surface Mining Overlay and Active Mines) Planning Commission requested a map of the Surface Mining Overlay areas.



14. Towers and fire stations for forest fire protection.
15. Community facilities and nonprofit facilities related to forest resource management.
16. 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.
17. Signs as specified in Section ~~40.240.200(B)~~, ~~18.334.160(2)~~.
18. 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 the replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use proposals shall be submitted within 12 months following an emergency/disaster event.

40.240.310 REVIEW USES WITH ADDITIONAL APPROVAL CRITERIA FOR GORGE SMALL WOODLAND DESIGNATIONS

18.334.280

The following uses may be allowed on lands designated Gorge Small Woodland, subject to compliance with the appropriate scenic, cultural, natural, or recreation resources guidelines (Sections ~~40.240.490 through 40.240.590~~; ~~18.334.520 through 620 and 290~~):

- A. 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.
- B. Home occupations in an existing residence or accessory structure, subject to the guidelines in Section ~~40.240.190(E)~~, ~~18.334.150(45)~~.
- 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 and sales of wine is from grapes grown on the subject farm or in the local region.
- E. 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.
- F. Exploration of mineral and geothermal resources, subject to Sections ~~40.240.490 through 40.240.590~~, ~~18.334.520 through 620~~.
- G. Development, and production of mineral and geothermal resources, as defined by Section ~~40.240.060~~, ~~18.334.040~~, subject to Section ~~40.240.490~~ ~~18.334.520~~ and all other applicable Federal, State and County standards, including those of Section ~~40.250.020~~, ~~CCC 18.329~~, ~~Surface Mining Overlay Zoning District~~. Type III review procedures specified under Section ~~40.510.030~~ ~~CCC 18.600.080~~ shall be required.
- H. Agriculture.
- I. Boarding of horses.
- J. Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.
- K. Expansion of existing nonprofit group camps, retreats, or conference centers.
- L. Bed and breakfast inns in single-family dwellings, subject to Section ~~40.240.190(F)~~ ~~18.334.150(56)~~ and provided that the residence:
 1. Is included in the National Register of Historic Places, or
 2. Is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or
- M. Nonprofit, environmental learning or research facilities.

40.240.320 APPROVAL CRITERIA FOR SPECIFIED REVIEW USES ON LANDS ZONED GORGE SMALL WOODLAND

18.334.290

Uses identified in Section ~~40.240.310~~ ~~18.334.280~~ may be allowed only if they meet the following criteria:

- A. The owners of land designated Gorge Small Woodland, or Gorge Large-Scale or Small-Scale Agriculture 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;
- B. The use will not interfere seriously with accepted forest or agricultural practices on nearby lands devoted to resource use;

ORDINANCE NO. 2006-08-21

AN ORDINANCE relating to land use, and regulating the development of lands within the Columbia River Gorge National Scenic Area (CRGNSA) portion of Clark County.

WHEREAS, the Board adopted updates to CCC Chapter 40.240 Columbia River Gorge National Scenic Area districts on May 2, 2006 (Ordinance 2006-05-04) as requested by the Columbia River Gorge Commission; and

WHEREAS, the Gorge Commission and the Secretary of Agriculture need to find that the amendments to Chapter 40.240 are consistent with the Scenic Area Management Plan; and

WHEREAS, the Gorge Commission found at their July 11, 2006 meeting that the changes to CCC Chapter 40.240 are consistent with the management plan except for the definition of 'lot line adjustment'; now, therefore,

BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY

COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:

Section 1. Amendatory. CCC Chapter 40.240 Columbia River Gorge National Scenic Area districts is amended as shown in Exhibit A.

Section 2. Effective Date. This ordinance shall go into effect at midnight on November 2, 2006.

Section 3. Instructions to the Clerk. The Clerk of the board shall:

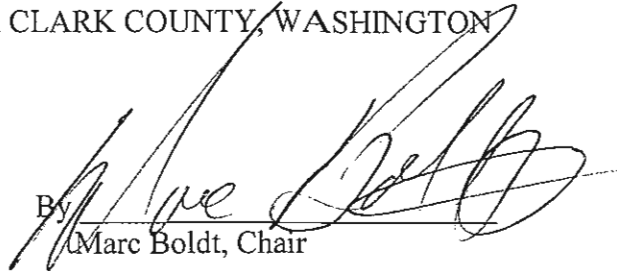
- (1) Transmit a copy of this ordinance to the state within ten days of its adoption pursuant to RCW 36.70A.106;
- (2) Record a copy of this ordinance with the Clark County Auditor;
- (3) Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290; and
- (4) Transmit a copy of this ordinance to the Gorge Commission.

ADOPTED this 15 day of August, 2006

Attest:

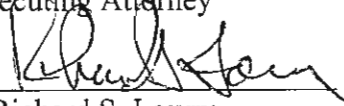
BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON


Clerk to the Board


By Marc Boldt, Chair

Approved as to Form Only
ARTHUR D. CURTIS
Prosecuting Attorney

By _____
Betty Sue Morris, Commissioner

By 
Richard S. Lowry
Chief Civil Deputy Prosecuting Attorney

By _____
Steve Stuart, Commissioner

EXHIBIT A

40.240.010 PURPOSE AND AUTHORITY

....If the provisions of this chapter differ from state law ~~then~~ than the provisions of this chapter shall prevail.....

40.240.040 DEFINITIONS

Agricultural Use

-
• Land under buildings supporting accepted agricultural practices. ~~Agricultural use does not include livestock feedlots.~~

Agricultural use does not include livestock feedlots.

'Lot-line adjustment'. "Lot line adjustment" means relocation of one or more common boundary lines between two contiguous parcels that does not create additional parcels. ~~transfer of a portion of a parcel from one owner to the owner of an adjacent parcel resulting in no increase in the number of parcels.~~

Thinning (SMA) "Thinning (SMA)" means a forest practice intended to create ~~create~~ favorable conditions for continued growth....

40.240.050 APPLICATIONS AND PROCEDURES

D. Acceptance of Application.

The responsible official shall review the application for completeness and adequacy within the timeframe pursuant to Chapter 40.510, Section 40.240.050(F)(3). To determine that an application is fully complete refer to Section 40.240.050(A), Application for Review and Approval. Additional submittals additional to Section 40.240.050(A) may be required through reference in the pre-application report.

1. No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The responsible official shall notify the applicant of all omissions and deficiencies in writing within the time frame pursuant to Chapter 40.510, Section 40.240.050(F)(3).
2. No application shall be accepted which the responsible official deems cannot be acted upon reasonably within the time frame pursuant to Chapter 40.510, Section 40.240.050(F)(3), except when the applicant consents to a longer period for action.

40.240.060 EXPEDITED DEVELOPMENT REVIEW PROCESS

D. Procedure for Expedited Review Process

5. Written decision.
 - b. The responsible official shall approve a proposed use or development only if consistent with the standards of Section 6 ~~of the Management Plan~~ and the

purposes of the Act (Public Law Lands 99-663), and this chapter.

40.240.070 EMERGENCY/DISASTER RESPONSE ACTIONS

A. General Guidelines.

1. Actions taken in response to an emergency/disaster event, as defined in Section 40.240.040, are allowed in all GMA/SMA land use designations, subject to the notification requirements in subsection (B)(1) ~~(2)~~ below.

B. Notification Requirements.

2. Upon notification of an emergency/disaster response action, the responsible official, or Forest Service shall, as soon as possible:
 - c. Notify the Forest Service, 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. ~~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. 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.

40.240.170 EXISTING AND DISCONTINUED USES

C. Replacement of Existing Structures Damaged or Destroyed by Disaster.

5. The replacement structure shall be pursuant to Sections 40.240.170(B)(1) and B(3) if it would not comply with Sections 40.240.170(C)(2) and (C)(3) ~~(4)~~.

40.240.280 DISPOSAL SITES FOR MATERIALS FROM PUBLIC ROAD MAINTENANCE ACTIVITIES

C. 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, as follows:

1. Sites more than three (3) miles from the nearest key viewing area shall be visually subordinate as seen from any key viewing area, pursuant to Section 40.240.800(B)(27). 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 three (3) years beyond the start of on-the-ground activities.

2. Sites less than three (3) miles from the nearest key viewing area shall be fully screened from any key viewing area, pursuant to Section 40.240.800(B)(28). An interim period to achieve compliance with this requirement.....

40.240.310 SPECIAL USES IN HISTORIC BUILDINGS

- B. Additional review uses for historic buildings
 6. Uses in subsections (B)(3) and (B)(4)(I) are not subject to the parking limits in Sections ~~40.240.890~~ and ~~40.240.900~~.

40.240.800 GENERAL MANAGEMENT AREA SCENIC REVIEW CRITERIA

- B. Key viewing areas.
 14. ~~For all buildings, roads, or mining and associated activities proposed on lands visible from key viewing areas, the following supplemental site plan information shall be submitted in in addition to the site plan requirements in Section 40.240.050, applications for all buildings visible from key viewing areas shall include: and 40.240.800(A)(6) for mining and associated activities:~~
 - a. ~~For buildings, a description of proposed building(s) height, shape, color, exterior building materials, exterior lighting, and landscaping details (types of plants used, number, size, location of plantings, and any irrigation provisions or other measures to ensure survival of landscaping planted for screening purposes.~~
 - b. ~~Elevation drawings 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.~~
 - c. ~~All applications for structural development involving more than one hundred (100) cubic yards of grading with slopes between ten and thirty percent (10-30%) shall include 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:~~
 - (1) ~~A map of the site, prepared at a scale of one inch equals two hundred (200) feet (1:2,400) or a scale providing greater detail, with contour intervals of at least five (5) feet, including:~~
 - (a) ~~natural and finished grades;~~
 - (b) ~~location of all areas to be graded, with cut banks and fill slopes delineated; and~~
 - (c) ~~estimated dimensions of graded areas.~~
 - (2) ~~A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:~~
 - (a) ~~its purpose;~~
 - (b) ~~an estimate of the total volume of material to be moved;~~
 - (c) ~~the height of all cut banks and fill slopes;~~
 - (d) ~~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);~~
 - (e) ~~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; and~~
~~(f) a description of any other interim or permanent erosion control measures to be used.~~

ORDINANCE NO. 2006-05-04

AN ORDINANCE relating to land use, and regulating the development of lands within the Columbia River Gorge National Scenic Area (CRGNSA) portion of Clark County.

WHEREAS, Clark County adopted an ordinance in 1994 (Ordinance 1994-04-30) for local administration of county jurisdictional lands within the CRGNSA; and

WHEREAS, the Columbia River Gorge Commission (Gorge Commission) revisions to the Management Plan for the CRGNSA in April 2004 and the implementing ordinance in March 2005; and

WHEREAS, the Gorge Commission requested that Clark County update its scenic area regulations (CCC Chapter 40.240) because of the revisions made to the CRGNSA Management Plan; and

WHEREAS, Clark County, as one of the counties that has adopted land use regulations consistent with Management Plan, is required to amend those regulations to be consistent with the revisions; and

WHEREAS, the Clark County Planning Commission made its recommendations to the Board on the proposed amendments; and

WHEREAS, the Board held a duly advertised public hearing on the proposed revisions; and

WHEREAS, the Board finds that recommended amendments to CCC Chapter 40.240 will have no additional impact on existing landowners who are already subject to regulations of the Management Plan as administered by the Gorge Commission; and

WHEREAS, the Gorge Commission and the Secretary of Agriculture need to find that the amendments to Chapter 40.240 are consistent with the CRGNSA Management Plan; now, therefore,

BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:

Section 1. Repealer. CCC Chapter 40.240 Columbia River Gorge National Scenic Area districts is repealed.

Section 2. New Chapter. A new CCC Chapter 40.240 as shown in Exhibit "A" is adopted.

Section 3. Effective Date. This ordinance shall go into effect at midnight on November 2, 2006.

Section 4. Instructions to the Clerk. The Clerk of the board shall:

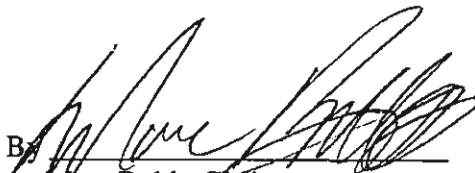
- (1) Transmit a copy of this ordinance to the state within ten days of its adoption pursuant to RCW 36.70A.106;
- (2) Record a copy of this ordinance with the Clark County Auditor;
- (3) Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290; and
- (4) Transmit a copy of this ordinance to the Gorge Commission.

ADOPTED this 2 day of May, 2006

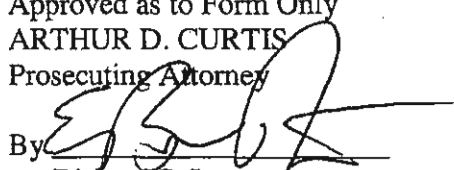
Attest:

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON


Clerk to the Board

By 
Marc Boldt, Chair

Approved as to Form Only
ARTHUR D. CURTIS
Prosecuting Attorney

By 
Richard S. Lowry
Chief Civil Deputy Prosecuting Attorney

By _____
Betty Sue Morris, Commissioner

By _____
Steve Stuart, Commissioner

1 **40.240 COLUMBIA RIVER GORGE NATIONAL SCENIC AREA DISTRICTS**

2
3 **ADMINISTRATION**

4
5 **40.240.010 PURPOSE AND AUTHORITY**

6 The purpose of these regulations is to protect and provide for the enhancement of the scenic, cultural,
7 recreational, and natural resources of the Columbia River Gorge, and to protect and support the economy
8 of the Columbia River Gorge by allowing future economic development in a manner that enhances the
9 scenic, cultural, recreational, and natural resources of the Gorge. These regulations are intended to be
10 consistent with and implement the Management Plan for the Columbia River Gorge National Scenic Area
11 (CRGNSA) adopted and amended by the Columbia River Gorge Commission. These regulations shall
12 only apply to lands within the Clark County area within the National Scenic Area. If the provisions of this
13 chapter differ from state law than the provisions of this chapter shall prevail. If conflicts occur between
14 Chapter 40.240 and other Title 40 provisions, Chapter 40.240 shall prevail as to lands within the National
15 Scenic Area, except when conflicts arise between buffer and/or riparian zone width requirements in
16 Chapter 40.240 and Chapters 40.440 and 40.450, the broadest buffer and/or riparian zone width shall be
17 required. The provisions of Chapter 40.240 shall provide the minimum protection of natural resources.
18 Additional requirements providing greater levels of natural resources protection, pursuant to provisions of
19 Chapters 40.440 and 40.450 shall be imposed.

20
21 **A. Area Affected.**

22 1. Chapter 40.240 shall:

- 23 a. Apply to all lands in Clark County, Washington within the Columbia River Gorge National Scenic
24 Area as designated by the Columbia River Gorge National Scenic Area Act as may be amended;
25 b. Apply to all unincorporated lands within the Scenic Area; and
26 c. Be applied by Clark County to the Scenic Area within incorporated lands where authorized by
27 state or federal law. Administration and enforcement of these incorporated areas may be subject
28 to inter-local agreement between Clark County and the City of Washougal.

- 29 2. Those portions of Chapter 40.240 and any amendments thereto pertaining to the General
30 Management Area (GMA) become effective once the Columbia River Gorge Commission finds it
31 consistent with the Management Plan for the CRGNSA. Those portions of Chapter 40.240 and any
32 amendments thereto pertaining to the Special Management Area (SMA) become effective when the
33 Secretary of Agriculture concurs on the ordinances adopted by Clark County.

34
35 **B. Review and approval required.**

36 No building, structure or land shall be used and no building or structure shall be hereafter erected,
37 altered or enlarged, including those proposed by state or federal agencies, in the Clark County
38 portion of the Columbia River Gorge National Scenic Area except for the uses listed in this chapter,
39 when considered under the applicable procedural and substantive guidelines of this chapter.

40
41 **C. Uniform Application of Management Plan.**

- 42 1. The Management Plan shall be applied consistent with and in the spirit of the National Scenic Area
43 Act.
44 2. The Gorge Commission, Forest Service, and counties should strive to apply Management Plan
45 provisions uniformly throughout the National Scenic Area, except when a county has adopted a
46 more restrictive provision.
47 3. In applying provisions of the Management Plan, the Gorge Commission and Forest Service may
48 consider, but shall not be constrained by, county interpretations, state interpretation and
49 application of state law and administrative regulations, or judicial decisions that do not directly
50 involve the Management Plan.



Tape 39

Board of County Commissioners
County Board of Health
1300 Franklin Street, 6th Floor
Vancouver, Washington

Hearing Agenda

9:45 AM - Three Creeks Library
RES# 2003-09-01 approved.

TUESDAY, SEPTEMBER 23, 2003
10:00 A.M. BOARD OF COMMISSIONERS

295 PLEDGE OF ALLEGIANCE

PUBLIC COMMENT Curtis Achziger re: #300 Consent; Bridget Schwary Public Safety Fair

MC CONSENT AGENDA 1-11 approved.

PUBLIC HEARING: TITLE 40 2003-9-12
To consider the adoption of a new Clark County Unified Development Code proposed to be Clark County Code Title 40.
Staff: Gordon Euler, 397.2375 x4968

approved, effective 1-04
Reason consent later

ADJOURN

BOARD OF HEALTH (CONVENES UPON ADJOURNMENT OF BOARD OF COMMISSIONERS)

2258 (Side 2) PUBLIC COMMENT: None.

CONSENT AGENDA 1-3 approved

ADJOURN

2:00 P.M. BOARD OF COMMISSIONERS

2255 (Side 2) BID OPENING 2342
NE 164th Street Walkway

WEDNESDAY, SEPTEMBER 24, 2003

11:00 A.M.

BID AWARD 2342 Award.
NE 164th Street Walkway

ADJOURN

The Courthouse and Public Service Center are served by C-TRAN bus routes. You may reach C-TRAN at 695-0123 for information on times, fare, and routes.

*Persons requiring auxiliary aids or special arrangements in order to participate in meetings should call 397-2232, Clark County Commissioners' office, or TTY/TDD 397-2445, Commissioners' Office, at least two days prior to the scheduled meeting.

COMMISSIONERS PROCEEDINGS
SEPTEMBER 23, 2003
CLARK COUNTY, WASHINGTON

The Board convened in the Commissioners' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Commissioners Morris, Stanton, and Pridemore, Chair, present.

PLEDGE OF ALLEGIANCE

The Commissioners conducted the Flag Salute.

PUBLIC COMMENT

Speaker #1

Curtis Achziger, 3609 NE 85th Street, Vice-President, NE Hazel Dell Neighborhood Association, commented on consent agenda item 3 (Notice of Hearing/Resolution to consider vacating a portion of the constructed right-of-way known as Hanley-Curry Road). Mr. Achziger said the Department of Public Works owns 20 acres to the east of the Parkview Knoll Subdivision and he wanted to talk about the easement along its western border. He said the 10 acres to the north of the property would be given over to Parks and Recreation. Achziger said his concern was the fact that the easement still exists. He further explained. He said to the north, just before 82nd Street, there is a wetland and that staff is reluctant to cross that wetland. He said the best the easement could lead to would be a stub road into the park. He said the area is heavily wooded and he expressed concerns about a 50-foot piece along the western border of the park being stripped of vegetation for an easement. Achziger said he would like the Board to consider vacating that easement because of the future park.

Discussion continued between Mr. Achziger and the Board in order to further clarify his concerns.

Morris suggested that Mr. Achziger talk with the Department of Public Works in order to start the process.

Achziger explained that he tried to make an appointment with Pete Capell; however, it would be 2-4 weeks before he would be able to meet with him.

Speaker #2

Bridget Schwarz, 2110 NW 179th Street, Ridgefield, Fairgrounds Neighborhood Association, commented on the Public Safety Fair and Open House held on September 20th. Ms. Schwarz expressed thanks to all county personnel involved with the event and that without their support, it wouldn't have been as successful and fun as it was.

CONSENT AGENDA

There being no public comment, **MOVED** by Morris to approve items 1 through 11.
Commissioners Pridemore, Morris, and Stanton voted aye. Motion carried. (See Tape 39)

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PUBLIC HEARING: TITLE 40

Held a public hearing to consider the adoption of a new Clark County Unified Development Code proposed to be Clark County Code Title 40.

Gordy Euler, Department of Community Development, presented. Euler provided a brief background of the project. He said the goal of the project was a single title of the Clark County Code proposed to be Title 40, from which all regulations relating to land development can be found. He explained that three drafts were put out for review, the last of which is the Public Review Draft – the one currently before the Board. Euler talked about some of the changes that were made. He said the proposed Title 40 contains the road and concurrency standards from the current Title 12; the critical areas ordinances from current Title 13; the subdivision ordinance from all of Title 17; Zoning from Title 18; and the SEPA ordinance of Title 20. He further explained the format and updates. Euler noted that they had received one letter from Carra Sahler regarding the draft, as well as a SEPA comment from the Friends of the Columbia Gorge, both of which were included in the staff report. He added that the last part of the staff report is a list of additional corrections and clarifications that they have come across since the Public Review Draft was made available in mid-August. He said the document was reviewed by numerous individuals and that a number of the changes resulted from a very thorough scrutiny. Euler thanked Cathy Corliss of Angelo and Eaton, Mike Butts, Susan Ellinger, Mitch Kneipp, and Alan Boguslawski for their hard work on the project.

Morris asked if the changes indicated in the staff report had not yet been included in the text itself.

Euler said that was correct – those are additional changes that need to be addressed.

Morris referenced page 4, number 105 regarding Frontage where it reads – “to discourage parking between the from of the building and the street.” She said it should read “front” versus “from.”

Euler said that was correct.

Stanton referenced page 8 of the staff report where it talks about additional changes...Contiguous Lots. She said that as she sees it they currently talk about contiguous lots being three and with the clarification that Euler has put in, it would be two.

Cathy Corliss, Angelo Eaton & Associates, clarified. She said that when they consolidated definitions, the terms they really struggled with, such as contiguous, adjacent, and adjoining, were used in different fashions in the various titles. When they consolidated, they ended up with some really strange situations. She said one of the changes they made, when it was reviewed in the overall context of the final document, was the change to the term “contiguous.” She said they had incorrectly defined the term “contiguous” as being more

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than two, and as they talked with staff it was determined that the new definition more correctly reflects what contiguous should mean, which is "two or more together." Corliss further explained. She said that within the context of the code the correction should accurately reflect the way contiguous has been used.

Carra Sahler, Attorney, Preston Gates, 222 SW Columbia Street, Portland, Oregon, commented on behalf of the Consortium of Clark County School Districts. Ms. Sahler thanked the Board for entertaining the Consortium's suggested revisions to the county code. She said they do appreciate the reader-friendly format, but did have some additional thoughts for how to eliminate unintended ambiguities. She summarized the four points that had been brought forth in their letter, as well as referenced a chart to assist in explaining the Consortium's recommended changes. She referenced page 6, the last item, and said the section listed exemptions from stormwater treatment. She said the words "temporary school portable" should be replaced with "school modular or portable." She explained that "school modular or portable" is a defined term that is used elsewhere in the code.

Stanton asked if that was what was being proposed.

Sahler said that was correct, and that she understands that staff approves the changes.

Euler said it was one they had incorporated.

Sahler then referred to page 2 of the chart under the fifth item where "school modular or portable" is defined. She said that during the county code restructure, the word "habitable" had been implemented and the Consortium was concerned about that change.

Corliss said the definition that they had was potentially too broad and might pick up things such as storage sheds. The word "habitable" was meant to narrow it to something that would be used for certain purposes.

Euler added that they have struck it.

Sahler commented on the third point and the Consortium's proposed definition of public schools, which they feel would eliminate questions about what constitutes a public school. She said the Planning Commission agreed. She said that staff had set forth a number of concerns in the staff report, one being that defining "public schools" might affect the term "public and private schools." Sahler said that merely defining the term "public schools" doesn't necessarily impinge on the term "private schools" because they are separate items. She said that similarly, a definition of "public schools" doesn't impinge on the meaning of "business and trade schools." She referred to page 4 of the chart and stated that the county has suggested a solution – Page 117, where it says "public and private schools, including business and trade schools."

Morris asked what the advantage would be for adding a definition.

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Sahler said it would help to avoid any ambiguity about what exactly a public school is. She further explained.

Morris asked if they treat public schools any differently than private schools.

Euler said the issue isn't so much with the definition that's proposed, but when they looked in the code to see how the word school is used they found that they are kind of all over the map. He referenced page 117 and said that one of the reasons they added the term "public and private" to the use table was to make it consistent with the use lists in the other sections. He said the code doesn't distinguish between public and private schools and there are a number of places where they talk about preschools, as well as a number of places in the commercial code where educational institutions are talked about. *Euler* said it wasn't the definition that they had a problem with, but it was taking the definition and applying it to the way the word schools is used in the current code that was causing problems.

Morris said she was trying to get at what would be the purpose of having a public and a private school. She said the only example she could think of in which they treat them differently was in the traffic impact fee code where they exempt public schools, but not private schools. She said she didn't see why they would need to change the definition of schools unless there are other instances in the code where they treat public and private schools differently.

[Discussion continued regarding the definition of public and private schools.]

Pridemore said the concern was that within the entire code they don't know how many different applications it might have and some of them may become fundamental policy issues that they have specifically tried not to address through this process. He said it might be something that they need to review.

Sahler stated that all of the inconsistencies were pointed out in their letter and that the Planning Commission was aware of those inconsistencies, but nevertheless suggested adoption.

Euler clarified that the Planning Commission looked at adopting a definition of schools; they didn't adopt this definition. He said he had met with Mike Butts and they looked at how many places the term "school" is used. He said when they looked at how it was used it became clear that they would dig themselves in fairly quickly. *Euler* said they are making the recommendation that as part of Title 40 adoption, they not include a definition.

Pridemore asked Ms. *Sahler* if there was a specific application of this definition that she and the Consortium were concerned about.

Sahler said they were concerned about there not being any definition at all. She said they haven't faced any problems, but it was more of a pre-emptive attempt to avoid problems in the future.

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There was no further public comment.

Morris said that with corrections to spelling, she was comfortable with it.

Stanton agreed. She said she shared concern about going ahead with a definition of public schools, which might result in something they didn't intend. She said they had made it clear that they didn't want to make any substantive changes.

Euler reiterated that they felt it was a good idea, although they appreciate what the school districts' are proposing.

Pridemore said if there was a practical application somewhere in the code that they could do a quick fix on now while they consider the broader implications, he could see doing that. However, he said he was comfortable leaving it as is.

There being no further comment, **MOVED** by *Morris* to adopt, with appropriate spelling corrections, Code Restructure Project—Clark County Code Title 40, effective January 1, 2004. Commissioners *Pridemore*, *Morris*, and *Stanton* vote aye. Motion carried. (See Tape 39)

The Board of County Commissioners' hearing adjourned and they convened as the Board of Health.

PUBLIC COMMENT

There was no public comment.

CONSENT AGENDA

There being no public comment, **MOVED** by *Stanton* to approve items 1 through 3. Commissioners *Pridemore*, *Morris* and *Stanton* voted aye. Motion carried. (See Tape 39)

Adjourned.

COMMISSIONERS PROCEEDINGS
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2 . .m. Bid Opening

BID OPENING 2342

Present at the Bid Opening:

Louise Richards, Clerk of the Board; Mike Westerman, General Services; and Allyson Anderson, General Services

Held a public hearing for Bid Opening 2342 – NE 164th Street Walkway. Mike Westerman, General Services, opened and read the sole bid. Westerman said it was their intention to award Bid 2342 on September 24, 2003, at 11:00 a.m., in the Commissioners' hearing room of the Clark County Public Service Center, 6th Floor. (See Tape 39)

Adjourned.

BOARD OF COUNTY COMMISSIONERS

Craig A. Pridemore, Chair


Betty Sue Morris, Commissioner


Judie Stanton, Commissioner

ATTEST:

Louise Richards
Clerk of the Board

rt

1 **40.240.020 COMPREHENSIVE PLAN AND ZONING DESIGNATIONS**

2 A. All lands within the Clark County area lying within the Columbia River Gorge National Scenic Area
3 shall carry a zoning map designation, and identical Comprehensive Plan map designation of one of
4 the following categories, as delineated on the adopted Clark County Columbia River Gorge National
5 Scenic Area Zoning and Comprehensive Plan maps:

- 6 1. General Management Area (GMA):
7 a. Gorge Large-Scale Agriculture 80 (GLSA-80);
8 b. Gorge Large-Scale Agriculture 40 (GLSA-40);
9 c. Gorge Small-Scale Agriculture 20 (GSSA-20);
10 d. Gorge Small Woodland 20 (GSW-20);
11 e. Gorge Small Woodland 40 (GSW-40);
12 f. Gorge Open Space (GOS);
13 g. Gorge Residential 5 (GR-5);
14 h. Gorge Residential 10 (GR-10); or
15 i. Gorge Public Recreation (GPR).
16 2. Special Management Area (SMA):
17 a. Gorge SMA Agriculture (GSAG);
18 b. Gorge SMA Forest (GSFF); or
19 c. Gorge SMA Open Space (GSOS).
20

21 In addition, Columbia River Gorge National Scenic Area Management Plan maps for Landscape Settings
22 and Recreation Intensity Classes shall be used for limited regulatory purposes where referred to in this
23 chapter. All maps listed shall be made available at the offices of the Clark County Department of
24 Community Development in Vancouver, Washington, and the Columbia River Gorge Commission in
25 White Salmon, Washington.
26
27

28 **40.240.030 AMENDMENTS TO THIS SECTION**

29 Clark County may initiate and complete changes to this chapter or associated map designations as
30 follows, to be reviewed under procedures specified under Chapter 40.500:

- 31
32 A. Scrivener errors, spelling and numbering corrections may be undertaken administratively by county
33 staff.
34
35 B. Minor textual alterations may be undertaken by Clark County through a Type IV legislative action
36 under Section 40.510.040 upon a finding that such changes are consistent with the CRGNSA
37 General Management Plan. Such alterations shall require subsequent approval by the Columbia
38 River Gorge Commission, and the U.S. Secretary of Agriculture for alterations in the SMA, before
39 taking effect.
40
41 C. Minor and major textual and map alterations may be undertaken by Clark County through a Type IV
42 legislative action under Section 40.510.040 in response to changes in the CRGNSA General
43 Management Plan and/or other actions by the Columbia River Gorge Commission authorizing such
44 alterations.
45
46 D. Individuals seeking major textual and map changes requiring a change to the General Management
47 Plan are encouraged to contact the Columbia River Gorge Commission to complete such changes
48 before seeking corresponding changes within this chapter. Any changes to the zoning maps
49 designations shall require corresponding changes to the Comprehensive Plan map, and shall be
50 considered major changes.
51
52
53

1 **40.240.040 DEFINITIONS**

2
3 As used in this chapter, unless otherwise noted, the following words and their derivations shall have the
4 following meanings. The definitions do not apply to areas of Clark County outside of the Columbia River
5 Gorge National Scenic Area.
6

Accepted agricultural practice	"Accepted agricultural practice" means a mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.
Accessory structure/building	"Accessory structure/building" means a structure or detached building whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use. The term "detached" means that the main building and accessory building do not share a common wall. An accessory building connected to the main building by a breezeway is a detached building.
Active wildlife site	"Active wildlife site" means a wildlife site that has been used within the past five (5) years by a sensitive wildlife species.
Addition	"Addition" means an extension or increase in the area or height of an existing building.
Agency official	"Agency official" means the federal, state, or local agency head or designee who has authority over a proposed project.
Agricultural specialist (SMA)	"Agricultural specialist (SMA)" means a person such as a county extension agent with a demonstrated knowledge of farming operations, and a demonstrated ability to interpret and recommend methods to implement regulations pertaining to agriculture. Such abilities are usually obtained through a combination of higher education and experience.
Agricultural structure/building	"Agricultural structure/building" means a structure or building located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.
Agricultural use	"Agricultural use" means 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: <ul style="list-style-type: none"> • The operation or use of farmland subject to any agriculture-related government program. • Land lying fallow for one (1) year as a normal and regular requirement of good agricultural husbandry. • Land planted in orchards or other perennials prior to maturity. • Land under buildings supporting accepted agricultural practices. Agricultural use does not include livestock feedlots.
Anadromous fish	"Anadromous fish" means species of fish that migrates upstream to freshwater after spending part of their life in the ocean saltwater.
Anaerobic	"Anaerobic" means a condition in which molecular oxygen is absent (or effectively so) from the environment.
Aquaculture	"Aquaculture" means the cultivation, maintenance, and harvesting of aquatic species.
Aquatic area	"Aquatic area" means the water area of a stream, pond, or lake measured at the

	ordinary high water mark.
Archaeological resource	See cultural resource.
Archival research	"Archival research" means 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.
Bed and breakfast inn	"Bed and breakfast inn" means 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.
Best management practices	"Best management practices" means conservation techniques and management measures that: <ul style="list-style-type: none"> • Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; • Minimize adverse effects to groundwater and surface-water flow and circulation patterns; and • Maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.
Biodiversity (SMA)	"Biodiversity (SMA)" means a diversity of biological organisms at the genetic, species, ecosystem, and landscape levels.
Boat landing	"Boat landing" means a Cleared area or developed structure used to facilitate launching or retrieving watercraft.
Buffer zone	"Buffer zone" means 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.
Building	"Building" means 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.
Camping or recreational vehicle	"Camping or recreational vehicle" means 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 and subject to review for consistency with this chapter 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 sixty (60) days in any consecutive twelve- (12-) month period.
Campsite	"Campsite" means a single camping unit that usually consisting of a cleared, level area for a tent, and may include a parking spur, fire ring, table, and other amenities.
Capability	"Capability" means 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.
Canopy closure (SMA)	"Canopy closure (SMA)" means, 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.
Cascadian architecture (SMA)	"Cascadian architecture (SMA)" means architectural style using native rockwork, large timber, and steeply pitched roofs in a rustic manner.
Catastrophic situations (SMA)	"Catastrophic situations (SMA)" means forces such as fire, insect and disease infestations, and earth movements.

Childcare center	<p>"Childcare center" means a facility providing daycare to three or more children, but not including:</p> <ul style="list-style-type: none"> • The provision of care that is primarily educational, unless provided to a preschool child for more than four (4) hours a day. • The provision of care that is primarily supervised training in a specific subject, including but not limited to dancing, gymnastics, drama, music or religion. • The provision of short-term care related to or associated with group athletic or social activities. • The provision of daycare in the provider's home in the family living quarters for less than thirteen (13) children.
Columbia River Gorge National Scenic Area Graphic Signing System	"Columbia River Gorge National Scenic Area Graphic Signing System" means sign design standards developed for the Scenic Area for public signs in and adjacent to public road rights-of-way.
Commercial development/ use	"Commercial development / use" means 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.
Commercial forest products	"Commercial forest products" means forest products including timber for lumber, pulp, and firewood for commercial purposes.
Commercial recreation	"Commercial recreation" means 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.
Community facility	"Community facility" means 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.
Consulting parties (cultural resources)	"Consulting parties (cultural resources)" means organizations or individuals who submit substantive written comments to the Development Review Officer in a timely manner because they are concerned with the effects of a proposed use on cultural resources.
Contiguous land	"Contiguous land" means 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.
Counties	"Counties" means the six counties within the Scenic Area: Hood River, Multnomah, and Wasco in Oregon, and Clark, Skamania, and Klickitat in Washington.
Created opening (SMA)	"Created opening (SMA)" means a created forest opening with less than forty percent (40%) average canopy closure of overstory trees and less than sixty percent (60%) average canopy closure of understory trees averaging less than five (5) inches diameter at breast height for coniferous forests and less than twenty-five percent (25%) total canopy cover for oak woodlands. This definition does not include agricultural fields.
Creation (wetlands)	"Creation (wetlands)" means 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 (one hundred to two hundred (100 to 200) years).
Cultivation	"Cultivation" means any activity that prepares land for raising crops by turning, breaking, or loosening the soil. Cultivation includes plowing, harrowing, leveling, and tilling.

Cultural resource	<p>"Cultural resource" means 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:</p> <ul style="list-style-type: none"> • Archaeological resources. Physical evidence or ruins of human occupation or activity that is located on or below the surface of the ground and are at least fifty (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 by-products from tool and utensil-making activities; and graves, human remains, and associated artifacts. • Historic buildings and structures. Standing or above-ground buildings and structures that are at least fifty (50) years old. Historic buildings and structures include, but are not limited to, log cabins, barns, canals, flumes, pipelines, highways, and tunnels. • 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.
Cumulative effects	"Cumulative effects" means 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.
Cut	"Cut" means an area where soil or earth is excavated or removed in conjunction with development activities.
Days	"Days" means calendar days, including weekends and holidays.
Days, working	"Days working" means days, during which Clark County Department of Community Development offices are open to the public, excluding weekends and holidays.
Dedicated site	"Dedicated site" means an area actively devoted to the current use and as delineated on the site plan.
Deer and elk winter range	"Deer and elk winter range" means areas normally used, or capable of being used, by deer and elk from December through April.
Destruction of wetlands	"Destruction of wetlands" means 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.
Developed recreation	"Developed recreation" means 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.
Developed Road Prism (SMA)	"Developed Road Prism (SMA)" means 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.
Development	"Development" means any land division or structure, including but not limited to, new construction of buildings and structures, and mining, dredging, filling, grading,

	paving, and excavation.
Diameter at breast height (dbh)	"Diameter at breast height (dbh)" means the diameter of a tree as measured at breast height.
Duplex	"Duplex" means a building containing two dwelling units and designed for occupancy by two families.
Dwelling, single-family	"Dwelling, single family" means a detached building containing one dwelling unit and designed for occupancy by one family only.
Dwelling unit	"Dwelling unit" means a single unit designed for occupancy by one family and having not more than one cooking area or kitchen.
Earth Materials	"Earth materials" means 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).
Effect on treaty rights	"Effect on treaty rights" means 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.
Emergency / Disaster	"Emergency/Disaster" means a sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damaged to life, health, property, essential public services, or the environment.
Emergency / Disaster Response	"Emergency/Disaster Response" means actions involving any development or vegetation removal that must be taken immediately in response to an emergency/disaster event. Emergency/disaster response actions that do not involve any structural development or ground-disturbance activities are not included in this definition.
Endemic	"Endemic" means plant and animal species that are found only in the vicinity of the Columbia River Gorge area.
Enhancement (natural resources)	"Enhancement (natural resources)" means 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.
Ephemeral streams (SMA)	"Ephemeral streams (SMA)" means streams that contain flowing water only during, and for a short duration after, precipitation events
Ethnography	"Ethnography" means 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.
Existing use or structure	<p>"Existing use or structure" means any use or structure that was legally established. "Legally established" means:</p> <ul style="list-style-type: none"> • 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; • 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 <p>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</p>

	change was established.
Exploration, development (extraction and excavation), and production of mineral resources	"Exploration, development (extraction and excavation), and production of mineral resources" means 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 is considered industrial uses.
Finished grade	"Finished grade" means the final elevation of the ground level of a property after construction is completed.
Fill	"Fill" means the placement, deposition, or stockpiling of sand, sediment, or other earth materials to create new uplands or create an elevation above the existing surface.
Fire break	"Fire break" means a break in ground cover fuels, adjacent to and surrounding buildings.
Footprint	"Footprint" means the area that falls directly beneath and shares the same perimeter as a structure.
Forbs	"Forbs" means broad-leaved herbs, in contrast to ferns, fern allies, and grasses and grass-like plants.
Foreground (SMA)	"Foreground (SMA)" means one-half mile on either side of a traveled road or trail.
Forest Health (SMA)	"Forest Health (SMA)" means 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.
Forest practice (SMA)	"Forest practice (SMA)" means 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 twelve (12) years or less are considered agricultural uses.
Forest practices (GMA)	"Forest practices (GMA)" means those activities related to the growing and harvesting of forest tree species, as defined by the Washington Forest Practices Act.
Forest products	"Forest products" means commodities produced from a forest, including, but not limited to, timber products, boughs, mushrooms, pine cones, and huckleberries.
Forest Stand Structure (SMA)	"Forest Stand Structure (SMA)" means the number, types and spacing of tree species, tree sizes, and canopy layers contained in a stand of trees.
Forest use	"Forest use" means the growing, propagation, and harvesting of forest tree species and other forest products.
Fully screened	"Fully screened" means 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).
Grade (ground level)	"Grade (ground level)" means the average elevation of the finished ground elevation as defined by the International Building Code.
Grading	"Grading" means any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

Hazard Tree (SMA)	"Hazard tree" means a tree with a structural defect that will predictably result in whole or partial failure within one-and-one-half (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.
Height of building	"Height of building" means 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.
Herbaceous	"Herbaceous" means a plant with no persistent woody stem above the ground, with characteristics of an herb.
Herbs	"Herbs" means non-woody (herbaceous) plants, including grasses and grass-like plants, forbs, ferns, fern allies, and non-woody vines. (Note: Seedlings of woody plants that are less than three (3) feet tall shall be considered part of the herbaceous layer.)
Historic buildings and structures	See cultural resource.
Historic survey	"Historic survey" means 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.
Home Occupation	"Home occupation" means small scale professional or vocational activities conducted on non-commercial properties in a manner which does not detract from residential or resource characteristics of the surrounding area. Under this chapter, home occupations shall be consistent in definition and usage with the Scenic Area Management Plan provisions for cottage industries and home occupations.
Horses, boarding of	"Horses, boarding of" means the stabling, feeding, and grooming for a fee, or the renting 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.
Hydric soil	"Hydric soil" means a soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.
In-lieu sites	"In-lieu sites" means 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, 401. Additional in-lieu sites will be provided for.
Indian tribal government	"Indian tribal government" means 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 Yakima Indian Nation (Tribal Council).
Indian tribes	"Indian tribes" means 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.
Industrial uses	"Industrial uses" means any use of land or water primarily involved in: <ul style="list-style-type: none"> • Assembly or manufacture of goods or products; • Processing or reprocessing of raw materials, processing of recyclable materials or agricultural products not produced within a constituent farm unit; • 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 • Production of electric power for commercial purposes.
Interpretive	"Interpretive displays" means signs and structures that provide for the

displays	convenience, education, and enjoyment of visitors, helping visitors understand and appreciate natural and cultural resources and their relationship to them.
Key components	"Key components" means 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.
Key viewing areas	<p>"Key viewing areas" means 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:</p> <ul style="list-style-type: none"> • Historic Columbia River Highway; • Crown Point; • Highway 1-84, including rest stops; • Multnomah Falls; • Washington State Route 14; • Beacon Rock; • Panorama Point Park; • Cape Horn; • Dog Mountain Trail; • Cook-Underwood Road; • Rowena Plateau and Nature Conservancy Viewpoint; • Portland Women's Forum State Park; • Bridal Veil State Park; • Larch Mountain; • Rooster Rock State Park; • Bonneville Darn Visitor Centers; • Columbia River; • Washington State Route 141; • Washington State Route 142; • Oregon Highway 35; • Sandy River; and • Pacific Crest Trail. <p>In the SMA only:</p> <ul style="list-style-type: none"> • Old Washington State Route 14 (County Road 1230); • Wyeth Bench Road; • Larch Mountain Road; and • Sherrard Point on Larch Mountain.
Land division	"Land division" means the division or re-division of contiguous land(s) into tracts, parcels, sites or divisions, regardless of the proposed parcel or tract size or use. A land division includes, but is not limited to, short subdivisions, partitions, and subdivisions.
Landscape setting	"Landscape setting" means the combination of land use, landform, and vegetation patterns that distinguish an area in appearance and character from other portions of the Scenic Area.
Livestock feedlot	"Livestock feedlot" means stockyards and commercial livestock finishing yards for cattle, sheep, swine, and fur bearers. Feedlots do not include winter pasture or winter hay-feeding grounds.
Lot line adjustment	"Lot line adjustment" means transfer of a portion of a parcel from one owner to the owner of an adjacent parcel resulting in no increase in the number of parcels.

Maintenance	"Maintenance" means 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.
Management plan	"Management plan" means the document entitled Management Plan for the Columbia River Gorge National Scenic Area adopted October 14, 1991 and updated April 9, 2004. The Management Plan becomes effective upon approval of land use ordinances by the Commission for the General Management Area and concurrence of land use ordinances by the Secretary of Agriculture for the Special Management Area.
Mitigation	"Mitigation" means the use of any or all of the following actions: <ul style="list-style-type: none"> • Avoiding the impact altogether by not taking a certain action or parts of an Action; • Minimizing impacts by limiting the degree or magnitude of the action and its implementation; • Rectifying the impact by repairing, rehabilitating, or restoring the affected environment; or • Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
Mosaic (SMA)	"Mosaic (SMA)" means the dispersal of over-story and under-story leave trees in irregularly spaced clumps of varying sizes throughout an irregularly shaped created forest opening.
Multifamily dwelling	"Multifamily dwelling" means a dwelling constructed or modified into two or more single-family units.
Native species	"Native species" means species that naturally inhabit an area.
Natural grade	"Natural grade" means the undisturbed elevation of the ground level of a property before any excavation or construction operations.
Natural resources	"Natural resources" means naturally occurring features including land, water, air, plants, animals (including fish), plant and animal habitat, and scenery.
Natural resource specialist	"Natural resource specialist" means 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.
Natural resource-based recreation (SMA)	"Natural resource-based recreation (SMA)" means 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.
Nonprofit organization	"Non-profit organization" means an organization whose nonprofit status has been approved by the U.S. Internal Revenue Service.
Not Visually Evident (SMA)	"Not visually evident" means a visual-quality-standard that provides for development or uses that is 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.

Old growth	<p>"Old growth" means a forest stand usually at least one-hundred eighty to two-hundred twenty (180-220) years old with moderate to high canopy closure; a multi-layered, multi-species canopy dominated by large over-story 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.</p>
Operational (SMA)	<p>"Operational (SMA)" means 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.</p>
Open Spaces	<p>"Open spaces" means unimproved lands not designated as agricultural lands or forest lands by the Management Plan and designated as open space by the Management Plan. Open spaces include:</p> <ul style="list-style-type: none"> • Scenic, cultural, and historic areas, • Fish and wildlife habitat; • Lands which support plant species that are endemic to the Scenic Area or which are listed as rare, threatened or endangered species pursuant to State or Federal Endangered Species Acts; • Ecologically and scientifically significant natural areas; • Outstanding scenic views and sites; • Water areas and wetlands; • Archaeological sites, Indian burial grounds and village sites, historic trails and roads and other areas which are culturally or historically significant; • Potential and existing recreation resources; and • Federal and state wild, scenic, and recreation waterways.
Ordinary high water mark	<p>"Ordinary high water mark" means 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.</p>
Other related major structure (SMA)	<p>"Other related major structure" means a structure related to a dwelling on a parcel in the SMA that is less than forty (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."</p>
Overstory (SMA)	<p>"Overstory (SMA)" means for forest practices, the tall or mature trees that rise above the shorter or immature understory trees.</p>
Parcel	<p>"Parcel" means:</p> <ul style="list-style-type: none"> • 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 Section 40.240.390 shall not be considered a parcel. • 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 17, 1986. • 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. <p>A unit of land shall not be considered a separate parcel simply because the subject tract of land:</p>

	<ul style="list-style-type: none"> • Is a unit of land solely created to establish a separate tax account; • Lies in different counties; • Lies in different sections or government lots; • Lies in different land use or zoning designations; or • Is dissected by a public or private road.
Practicable	"Practicable" means able to be done, considering technology and cost.
Preexisting	"Pre-existing" means existing prior to the adoption of the Columbia River Gorge National Scenic Area Management Plan.
Previously disturbed	"Previously disturbed" means an area of land where the natural surface has been graded, excavated, paved and/or graveled.
Primarily	"Primarily" means a clear majority as measured by volume, weight, or value.
Project area	"Project area" means 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.
Public use facility	"Public use facility" means 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.
Rare plant species	"Rare plant species" means used in a generic sense to refer to various categories of sensitive plants cited in federal and state programs.
Recreation facility	"Recreation facility" means 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 one-quarter- (1/4-) mile of land that does not contain any such developments or improvements, except for roads and/or pathways.
Reconnaissance survey	"Reconnaissance survey" means 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.
Recreation Opportunity Spectrum (ROS)	<p>"Recreation Opportunity Spectrum (ROS)" means 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).</p> <ul style="list-style-type: none"> • Primitive: Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified. • Semi-primitive: Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting. • Roaded Natural: Roaded areas with moderately frequent human encounters and with resource modifications evident. • Rural: Roaded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications. • 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. • Urban: Highly accessible, roaded areas dominated by human encounters and human-related structures.
Recreation resources	"Recreation resources" means areas and facilities that provide recreation opportunities and experiences. Recreation resources include semi-primitive areas with few facilities and developed sites.
Regularly maintained	"Regularly maintained" means an area of land that has been previously disturbed and where periodic actions have been taken to:

	<ul style="list-style-type: none"> • keep the area clear of vegetation (e.g., shoulders, utility yards); • limit the height and type of vegetation (e.g. utility rights-of-way); and/or • establish and retain non-native vegetation (e.g., landscaped medians, rest area grounds).
Rehabilitation (natural resources)	"Rehabilitation (natural resources)" means 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.
Remnant old forest (SMA)	"Remnant old forest (SMA)" means large trees in the overstory that are well into the mature growth state (older than one-hundred eighty (180) years).
Repair	"Repair" means 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.
Resource-based recreation	"Resource-based recreation" means 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.
Responsible official	"Responsible official" means the director of the department of Community Development of Clark County or the director's authorized designate. The responsible official is responsible for the administration, interpretation and implementation of this chapter.
Restoration	"Restoration" means a human activity that returns a resource from a disturbed or altered condition to a previous, less disturbed or less altered condition. This definition does not modify or eliminate the Management Plan definition of restoration applicable only to wetlands.
Restoration (wetlands)	"Restoration (wetlands)" means 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.
Review uses	"Review uses" means 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.
Riparian area	"Riparian area" means 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.
Road	<p>"Road" means 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:</p> <ul style="list-style-type: none"> • Ways described as streets, highways, throughways, or alleys. • Road-related structures that are in the right-of-way, such as tunnels, culverts, or similar structures. • Structures that provide for continuity of the right-of-way, such as bridges.
Scenic Area	"Scenic Area" means the Columbia River Gorge National Scenic Area.
Scenic travel corridor	"Scenic travel corridor" means those portions of Washington State Routes 14, 141, and 142 located in the Scenic Area and specifically designated to be managed as

	scenic and recreational travel routes.
Secretary	"Secretary" means the Secretary of Agriculture.
Sensitive plant species	<p>"Sensitive plant species" means plant species that are:</p> <ul style="list-style-type: none"> • endemic to the Columbia River Gorge and vicinity; • listed as endangered or threatened pursuant to federal or state endangered species acts; or • listed as endangered, threatened or sensitive by the Oregon or Washington Natural Heritage Program. <p>In the Special Management Area, 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.</p>
Sensitive wildlife species	<p>"Sensitive wildlife species" means animal species that are:</p> <ul style="list-style-type: none"> • listed as endangered or threatened pursuant to federal or state endangered species acts; • listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission; or • considered to be of special interest to the public, limited to great blue heron, osprey, mountain goat golden eagle, and prairie falcon. <p>In the Special Management Area, 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.</p>
Service station	"Service station" means a business operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.
Serviceable	"Serviceable" means presently useable.
Shall	"Shall" means action is mandatory.
Should	"Should" means action is encouraged.
Shrub	"Shrub" means a woody plant usually greater than three (3) feet but less than twenty (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 three (3) feet tall shall be considered part of the herbaceous layer.)
Sign	"Sign" means 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.
Significant cultural resource (SMA)	"Significant cultural resource (SMA)" means 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].)
Skyline	"Skyline" means 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.

Soil Capability Class	"Soil Capability Class" means a classification system developed by the U.S. Department of Agriculture Soil Conservation Service to group soils as to their capability for agricultural use.
Special habitat area	"Special habitat area" means wetlands, mudflats, shallow water, and riparian vegetation that have high values for waterfowl, shorebirds, raptors, songbirds, upland game, and reptiles.
Special streams	"Special streams" means streams that are primary water supplies for fish hatcheries and rearing ponds.
Stand	"Stand" means a group of trees possessing uniformity in regard to type, age, vigor, or size.
Story	"Story" means a single floor level of a structure, as defined by the International Building Code.
Streams	<p>"Streams" means 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.</p> <p>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.</p>
Structure	"Structure" means 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.
Subsurface testing	"Subsurface testing" means 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.
Submit	"Submit" means 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.
Suitability	"Suitability" means 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.
Thinning (SMA)	"Thinning (SMA)" means 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 over-story layer is zero or less than forty percent (40%) and the under-story layer is less than sixty percent (60%) average canopy closure of trees averaging less than five (5) inches diameter at breast height. A thinning becomes a forest opening in oak woodlands when the total average canopy closure is less than twenty-five percent (25%).
Total canopy closure (SMA)	"Total canopy closure" means 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.
Travelers	"Travelers accommodations" means any establishment having rooms rented or

accommodations	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.
Treatment (SMA)	"Treatment (SMA)" means for forest practices, a site-specific operation that carries out the forest management objectives for an area.
Treaty rights or other rights	"Treaty rights or other rights" means 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.
Tributary fish habitat	"Tributary fish habitat" means streams that are used by anadromous or resident fish for spawning, rearing and/or migration.
Understory (SMA)	"Understory" means for forest practices, the shorter or immature trees below the tall or mature overstory trees.
Undertaking	"Undertaking" means 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 800.2(o)].
Unimproved lands	"Unimproved lands" means lands that generally do not have developments such as buildings or structures.
Upland	"Upland" means 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.
Uses allowed outright	"Uses allowed outright" means 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.
Utility facility	"Utility facility" means Any structure that provides for the transmission or distribution of water, sewer, fuel, electricity, or communications.
Vested Right	"Vested right" means the right to develop or continue to develop a use, a development, or a structure under the regulations in force at the time of when a complete pre-application or application was filed, subject to the application being approved.
Viewshed	"Viewshed" means a landscape unit seen from a key viewing area.
Visual Quality Objective (VQO)	"Visual Quality Objective (VQO)" means a set of visual management goals established by the Forest Service to achieve a desired visual objective. These objectives include retention and partial retention, and others in the Mt. Hood and Gifford Pinchot National Forest Plans.
Visually subordinate	"Visually subordinate" means 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.
Water-dependent	"Water-dependent" means 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.
Water-related	"Water-related" means 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.
Wetlands	"Wetlands" means 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.
Wetlands functions	"Wetlands functions" means 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 non-game 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.
Winery	"Winery" means 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.
Wine sales/tasting room	"Wine sales/tasting room" means 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 pursuant to Section 40.240.290. A wine sales/tasting room is distinct from a winery; each of these uses must be explicitly reviewed and approved.
Woody plant	"Woody plant" means a seed plant (gymnosperm or angiosperm) that develops persistent, hard, fibrous tissues.

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40.240.050 APPLICATIONS AND PROCEDURES

A. Application for Review and Approval.

1. Applications received under this chapter shall be reviewed as Type II procedures specified in Section 40.510.020, except where specified otherwise herein.
2. Prior to initiating any use or development which requires review and approval by the responsible official, an application shall be completed pursuant to Section 40.240.050. The responsible official shall accept and review the application pursuant to Sections 40.240.050(C) through 40.240.400 for consistency with the appropriate guidelines of this rule. Review of a proposed use or development shall commence upon the acceptance of an application by the responsible official. The responsible official will charge a fee for review of applications.
3. Standard application forms shall be available at the Clark County and Columbia River Gorge Commission offices.
4. An application for permit review within the Columbia River National Scenic Area shall submit eight (8) individually bound copies of the following materials, unless a lesser number is specified.
 - a. The original application form provided by the planning responsible official shall be completed and signed by the applicant;
 - b. The pre-application conference summary and a description of information submitted in response to the pre-application conference;
 - c. The following maps of the GIS development packet (as available from the Community Development Department):

- 1 (1) General location map;
- 2 (2) Elevation contours map;
- 3 (3) Aerial photography map (most recent year ~~currently~~ available from the through Clark County
- 4 Community Development Department);
- 5 (4) Aerial photography with contours;
- 6 (5) Current zoning map;
- 7 (6) Current comprehensive plan map;
- 8 (7) Map of C-Tran bus routes, park and trails;
- 9 (8) Water, sewer and storm systems map;
- 10 (9) Soil type map;
- 11 (10) Environmental constraints map; and
- 12 (11) Assessor's quarter-section map.
- 13 d. A narrative explaining how the application meets or exceeds each of the applicable approval
- 14 criteria and standards, and issues identified in the pre-application conference, including the
- 15 minimum area and dimensions of the base zone and a general description of how services will
- 16 be provided to the site.
- 17 (1) *The applicant needs to provide conceptual elevation drawings for the proposed structures*
- 18 *and a description of the height, shape, color, building materials, exterior lighting and*
- 19 *landscaping materials. The drawings should include the appearance of proposed buildings*
- 20 *when built and surrounding final grades (see Section 40.240.800). If the applicant feels the*
- 21 *site is not visible from any key viewing areas this must be demonstrated.*
- 22 (2) *If the site is visible from any key viewing area, the applicant is encouraged to provide*
- 23 *photographs from the key viewing area toward the building site with balloons or other siting*
- 24 *device to verify visual subordination. Photographs can also be used to verify the site is not*
- 25 *visible from any key viewing area, if that is the case.*
- 26 (3) *The height of buildings is required in the applications, even if the site is not visible from a*
- 27 *key viewing area.*
- 28 (4) *The applicant shall address all applicable criteria outlined in Section 40.240.800.*
- 29 e. Information necessary to demonstrate that the subject lot(s) has been created legally:
- 30 (1) *Prior county short plat, subdivision, lot determination or other written approvals, if any, in*
- 31 *which the parcel was formally created or determined to be a legal lot; or*
- 32 (2) *Sales or transfer of deed history, dating back to 1969, or a condition satisfying subsection*
- 33 *(e)(1) above, to include copies of recorded deeds and/or contracts verifying*
- 34 *the date of creation of the parcel in chronological order with each deed identified with the*
- 35 *assessor's lot number;*
- 36 f. A proposed plan drawn to scale. The scale of the plan shall be large enough to allow the
- 37 responsible official to determine the location and extent of the proposed use or development
- 38 and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be
- 39 prepared at a scale of one inch equals 200 feet (1:2,400), or a scale providing greater detail.
- 40 The plan shall clearly depict the following information:
- 41 (1) General Information.
- 42 (a) Applicant's name, mailing address and phone number;
- 43 (b) Owner's name and mailing address;
- 44 (c) Contact person's name, address and phone number;
- 45 (d) North arrow (oriented to the top, left or right of the page), scale and date;
- 46 (e) Proposed name of project;
- 47 (f) Vicinity map covering one-quarter- (1/4-) mile radius from the development site; and
- 48 (g) Area of the site in acres or square feet.
- 49 (2) Existing Conditions. *(For purpose of Fully Complete determination, only those existing*
- 50 *conditions that are shown on the GIS map, known by the applicant or are discussed in the*
- 51 *pre-application conference summary must be included on the proposed plan.)*
- 52 (a) Environmental. On or within one hundred (100) feet of the site:
- 53 i. Topography (at two (2) foot contour intervals if available from a public source);
- 54 ii. Watercourses (streams, rivers, etc.) with thread of stream surveyed for all on-site
- 55 watercourses;

- 1 iii. Areas prone to flooding;
- 2 iv. FEMA designated floodplains, flood fringe, or floodway;
- 3 v. Water bodies and known wetlands;
- 4 vi. Wetland delineation and assessment study for all on-site wetlands four (4) copies
- 5 of study required;
- 6 vii. Any unstable slopes and landslide hazard areas;
- 7 viii. Geotechnical report for all unstable slopes or landslide hazard areas on the site;
- 8 ix. Significant wildlife habitat or vegetation; and
- 9 x. Significant historic, cultural or archaeological resources.
- 10 (b) Land Use and Transportation.
- 11 i. Layout, square footage and dimensions of all parcels;
- 12 ii. Location(s) of any existing buildings(s) on the site and use;
- 13 iii. Location and width of existing easements for access, drainage, utilities, etc.;
- 14 iv. Name, location and width of existing rights-of-way;
- 15 v. Name, location, width and surfacing materials (e.g., gravel, asphalt or concrete,
- 16 etc.) of roadways and easements (private and public);
- 17 vi. Location of existing driveways and those driveways across the street to include
- 18 distance between driveways and roadways (centerline to centerline);
- 19 vii. Location and width of existing pedestrian and bicycle facilities on and within one
- 20 hundred (100) feet of the site; and
- 21 viii. Transit routes and stops within one-quarter- (1/4-) mile of the development site,
- 22 (c) Water and Sewer. Make a note on the plan indicating the following:
- 23 i. Location and direction to the nearest fire hydrant;
- 24 ii. Location of existing sewage disposal systems and wells on the site; and
- 25 iii. Location of existing sewage disposal systems and wells within one hundred (100)
- 26 feet of the site (as available from the health department.
- 27 g. Proposed Improvements.
- 28 (1) Environmental.
- 29 (a) Wetland, stream, steep bank buffer areas/protected areas; and
- 30 (b) Planned enhancement areas.
- 31 (2) Land Use and Transportation.
- 32 (a) Dimensions of all proposed easements;
- 33 (b) Location (i.e., dimensions from property lines) of any existing buildings to remain on the
- 34 site to include square footage. For all structures include the number of stories,
- 35 construction type (e.g., metal, wood, concrete block, etc.) and proposed uses;
- 36 (c) Setbacks from property lines shall be shown on the site plan;
- 37 (d) Location and width of all road rights-of-way;
- 38 (e) Location width (e.g., curb to curb distance) and surface material of all proposed roadways
- 39 (private or public), provided by drawing or note and typical cross-section (from county
- 40 road standards);
- 41 (f) Location of all road segments in excess of fifteen percent (15%) grade that are either on
- 42 the site or within five hundred (500) feet of the site which are being proposed for site
- 43 access;
- 44 (g) Location, width, estimated grade and surface material of off-site roads which will provide
- 45 access to the site within five hundred (500) feet of the site;
- 46 (h) Location and width of proposed driveways for corner lots and driveways where site
- 47 distance standards cannot be met;
- 48 (i) Site distance triangles where site distance standards cannot be met;
- 49 (j) Location and width of proposed pedestrian and bicycle improvements other than those in
- 50 standard locations within road rights-of-way;
- 51 (k) Location and width of proposed easements for access, drainage, utilities, etc. (provided
- 52 by drawing or note);
- 53 (l) Layout of proposed structures including square feet;
- 54 (m) Architectural drawings and sketches, indicating floor plan, elevation, types of materials
- 55 and colors, and type of construction per the International Building Code;

- 1 (n) Narrative on proposed uses, hours of operation, frequency of truck deliveries, and
- 2 construction schedule;
- 3 (o) Location, dimensions and number of off-street parking and loading areas;
- 4 (p) Sign plan; and
- 5 (q) Location and dimensions of recyclable and solid waste storage areas.
- 6 (3) Landscape Plan.
- 7 (a) Location, number, species, size at planting, and spacing of proposed plant materials;
- 8 (b) Location, number, species and size of existing landscape material to be removed and/or
- 9 retained;
- 10 (c) The location, type (such as sod, groundcover or shrub mass) and area (in terms of
- 11 square feet and percentage of site) of all soft landscaped areas and buffers;
- 12 (d) Location, height and materials of fences, buffers, berms, walls and other methods of
- 13 screening;
- 14 (e) Surface water management features integrated with landscape, recreation or open space
- 15 areas;
- 16 (f) Location, size and construction type of hard landscaping features such as pedestrian
- 17 plazas;
- 18 (g) Active or passive recreational or open space features;
- 19 (h) Final site contours; and
- 20 (i) The location of all fire hydrants.
- 21 h. A preliminary stormwater plan pursuant to Section 40.380.060.
- 22 i. A proposed phasing plan (if any proposed) to include transportation and water quality
- 23 improvements;
- 24 j. A transportation impact study, if required, pursuant to Chapter 40.350;
- 25 k. A utility review from the public sewer purveyor or one (1) copy of a preliminary soil suitability
- 26 analysis, or equivalent for on-site systems from the health department;
- 27 l. A utility review from the public water purveyor, noting the ability to meet water pressure and fire
- 28 flow requirements of the fire marshal or current evidence of the availability of suitable
- 29 groundwater where water purveyor has determined public water or community water systems
- 30 cannot be provided;
- 31 m. A completed State Environmental Policy Act (SEPA) checklist;
- 32 n. Applications necessarily associated with the Gorge Permit review, to the extent applicable, for
- 33 variances to *dimensional requirements of the base or overlay zones*, for wetland and habitat
- 34 permits, and for modifications to the road standards in Chapter 40.350;
- 35 o. Any and all existing covenants or restrictions and/or easements that apply to the property;
- 36 p. The corners of each proposed building should be staked and flagged at the time of application;
- 37 q. Appropriate protections of the stream that are on the property need to be taken in accordance
- 38 with Chapter 40.440 and Section 40.240.850;
- 39 r. A Forest Practice application is required for any commercial removal of trees from the property;
- 40 s. In the SMA, applications and/or site plans shall contain the natural resources information
- 41 required in Section 40.240.880;
- 42 t. Any additional information that the applicant feels will assist in the evaluation of the proposal
- 43 including, but not limited to, maps, drawings, and development plans;
- 44 u. The signature of the applicant and property owner or a statement from the property owner
- 45 indicating that he is aware of the application being made on his property; and
- 46 v. The signature of the property owner on a statement that authorizes the responsible official or
- 47 the responsible official's designee reasonable access to the site in order to evaluate the
- 48 application.
- 49 5. Applications for the following uses or developments shall include additional information as required
- 50 by the pre-application staff report or by the responsible official:
- 51 a. All buildings, roads, or mining and associated activities proposed on lands visible from Key
- 52 Viewing Areas, pursuant to Section 40.240.800;
- 53 b. In the GMA, production and/or development of mineral resources
- 54 and expansion of existing quarries pursuant to Sections 40.240.800(B)(14) and (B)(15);
- 55 c. In the GMA, all proposed structural development on sites visible from key viewing areas and

- 1 involving more than two hundred (200) cubic yards of grading, regardless of slope shall require
2 a grading plan, pursuant to Section 40.240.800(B)(26);
- 3 d. In the GMA, all applications for structural development involving more than one hundred (100)
4 cubic yards of grading with slopes greater than ten percent (10%) shall include a grading plan
5 pursuant to Section 40.240.800(B)(26);
- 6 e. In the SMA, all applications for structural development involving more than one hundred (100)
7 cubic yards of grading with slopes greater than ten percent (10%) (except trails) shall include a
8 grading plan, pursuant to Section 40.240.800(B)(26);
- 9 f. Elevation drawings shall show the appearance of proposed structures and shall include natural
10 grade, finished grade, and the geometrical exterior of at least the length and width of structures
11 as seen from a horizontal view. Elevation drawings shall be drawn to scale, pursuant to
12 Section 40.240.800(B)(26);
- 13 g. In the GMA, vegetation management projects in public rights of way along Scenic Travel
14 Corridors, pursuant to Section 40.240.800(D)(4);
- 15 h. Large-scale uses as defined by Section 40.240.820(A)(3)(c) shall include reconnaissance
16 survey reports, pursuant to Sections 40.240.820(A)(3)(f) and (g);
- 17 i. Proposed uses that would alter the exterior architectural appearance of buildings and structures
18 that are fifty (50) years old or older, or would compromise features of the surrounding area that
19 are important in defining the historic or architectural character of buildings that are fifty (50)
20 years old or older, pursuant to Section 40.240.820(A)(3)(h)(3);
- 21 j. In the GMA, new uses located in or providing recreational access to the Columbia River or its
22 fishbearing tributaries, pursuant to Section 40.240.180(A)(1);
- 23 k. In the GMA, any review use in a wetland or within a wetland buffer zone, pursuant to Section
24 40.240.840(A)(2);
- 25 l. In the GMA, any review use in a stream, pond, lake, or within their buffer zones, pursuant to
26 Section 40.240.850(A)(2);
- 27 m. In the GMA, any review use within one thousand (1000) feet of a sensitive wildlife area or site,
28 pursuant to Section 40.240.860(A)(2). Large-scale uses as defined by Section 40.240.860(C)
29 shall also include field survey information, pursuant to Section 40.240.860(C)(5);
- 30 n. In the GMA, any review use within one thousand (1000) feet of a sensitive plant, pursuant to
31 Section 40.240.870(A)(2). Large-scale uses as defined by Section 40.240.870(C) shall also
32 include field survey pursuant to Section 40.240.870(C)(5);
- 33 o. In the GMA, on lands zoned Gorge Large-Scale Agriculture, a single-family dwelling in
34 conjunction with agricultural use, pursuant to Section 40.240.430(A)(9), and if applicable,
35 Section 40.240.430(A)(10);
- 36 p. In the GMA, on lands zoned Gorge Large-Scale Agriculture, a single-family dwelling not in
37 conjunction with agricultural use, pursuant to Section 40.240.430(A)(19);
- 38 q. In the GMA, on lands zoned Gorge Large-Scale Agriculture, a single-family dwelling for an
39 agricultural operator's relative, pursuant to Section 40.240.430(A)(12);
- 40 r. In the SMA, on lands zoned Gorge Forest or Agriculture, a single-family dwelling, pursuant to
41 Section 40.240.510(B)(10);
- 42 s. In the SMA, on lands zoned Gorge Forest or Agriculture, forest practices, pursuant to Section
43 40.240.510(B);
- 44 t. In the SMA, on lands zoned Agriculture or Forest, clearing trees for new agricultural use,
45 pursuant to Section 40.240.510(B)(24);
- 46 u. In the SMA, on lands designated Open Space, any new use or development, pursuant to
47 Section 40.240.800;
- 48 v. In the SMA, on lands zoned Gorge Agriculture or Forest, a single-family dwelling necessary and
49 accessory to agricultural use, pursuant to Section 40.240.430;
- 50 w. In the SMA, on lands zoned Gorge SMA Agriculture or Forest, farm labor housing, pursuant to
51 Section 40.240.430(A)(9);
- 52 x. In the GMA, on lands zoned Gorge Small Woodland, a single-family dwelling pursuant to
53 Section 40.240.510(A)(1);
- 54 y. In the GMA, on lands zoned Gorge Small Woodland, a single-family dwelling in conjunction with
55 agricultural use pursuant to Section 40.240.430(A)(9);

- 1 z. In the GMA, on lands Gorge Woodland, agricultural labor housing, pursuant to Section
2 40.240.510(A)(18); and/or
3 aa. Other uses as deemed necessary by the responsible official.
4 6. Completed application forms shall be submitted directly to the Department of Community
5 Development.
6 7. The requisite fee shall accompany the application.
7

8 B. Pre-application Conference.

9 Within the Columbia River Gorge National Scenic Area pre-application conferences shall be
10 mandatory for land use proposals requiring Type II or Type III review pursuant to Sections 40.510.020
11 or 40.510.030. The purposes of the conference shall be to acquaint the applicant with the
12 substantive and procedural requirements of this chapter, to discuss the principle elements of the
13 proposed action, and to identify guidelines that create opportunities or pose constraints for the
14 proposed action.
15

16 C. Contingent Vesting of Applications.

17 An application that is subject to pre-application review shall earlier contingently vest on the date a
18 complete pre-application is submitted. Contingent vesting shall become final if a fully complete
19 application for substantially the same proposal is submitted within one-hundred eighty (180) calendar
20 days of the date the responsible official issues a written summary of pre-application review pursuant
21 to Section 40.510.030(A)(4).
22

23 D. Acceptance of Application.

24 The responsible official shall review the application for completeness and adequacy within the
25 timeframe pursuant to Section 40.240.050(F)(3). To determine that an application is fully complete
26 refer to Section 40.240.050(A), Application for Review and Approval. Additional submittals additional
27 to Section 40.240.050(A) may be required through reference in the pre-application report.

- 28 1. No application shall be accepted until all documented omissions and deficiencies have been
29 corrected by the applicant. The responsible official shall notify the applicant of all omissions and
30 deficiencies in writing within the time frame pursuant to Section 40.240.050(F)(3).
31 2. No application shall be accepted which the responsible official deems cannot be acted upon
32 reasonably within the time frame pursuant to Section 40.240.050(F)(3) , except when the applicant
33 consents to a longer period for action.
34 3. No application shall be accepted unless accompanied by a list of names and addresses of the
35 adjacent property owners within five hundred (500) feet of the subject parcel. A statement from the
36 County Assessor or appropriate agency confirming the accuracy of the list shall accompany the list.
37 4. No application for a proposed use which is explicitly prohibited by Section 40.240.110 shall be
38 accepted.
39 a. The application shall be returned to the applicant.
40 b. A letter, signed by the responsible official, stating that the proposed use is prohibited and citing
41 the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.
42 c. Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to
43 this title.
44

45 E. Notice of Development Review.

- 46 1. Notice of development review shall be issued pursuant to Sections 40.510.020(E) or 40.510.030(E),
47 and shall provide the following information:
48 a. The notice shall state that the application and supporting documents are available for
49 inspection at Clark County and Gorge Commission offices during normal working hours.
50 b. The notice shall state the applicant must comply with all applicable local, state and federal laws.
51 2. The notice shall be mailed to:
52 a. The Forest Service, Washington Department of Fish and Wildlife, Columbia River Gorge
53 Commission, Indian Tribes, and the applicable city, and local library, and any other party that
54 has requested notice; and

- 1 b. The Washington Department of Natural Resources Natural Heritage Program, if the responsible
2 official or the Columbia River Gorge Commission or its staff determines that such notice is
3 warranted; provided, that if the Columbia River Gorge Commission or its staff determines that
4 such notice is warranted, it shall forward notice to the Heritage Program; and
5 c. As determined by Sections 40.510.020(E) for Type II or 40.510.030 (E) for Type III.
6 3. In addition to notice, fully complete application packets shall be routed to the Gorge Commission
7 and any other party that has requested a fully complete application.
8

9 F. Comment Period.

10 Interested persons shall have fifteen (15) working days from the date which the notice is sent to submit
11 written comments to the responsible official relative to the consistency of the proposed actions with the
12 guidelines of this chapter:

- 13 1. Within seven (7) days of the close of the comment period, the responsible official shall determine if
14 a wildlife management plan pursuant to Section 40.240.860(F) or a rare plant protection and
15 rehabilitation plan pursuant to Section 40.240.870(F) is required.
16 2. For proposed uses or developments where a cultural resources survey (reconnaissance or historic)
17 is required and where the Commission is performing the survey, the survey shall be completed by
18 the close of the comment period. Upon receipt of the completed survey, the responsible official
19 shall forward the survey to the State Historic Preservation Officer (SHPO), and Indian Tribes
20 pursuant to Sections 40.240.510(A)(2) and (B)(2)(a).
21 3. Within seven (7) days of the close of the thirty- (30-) day reconnaissance survey comment period
22 for SHPO and Indian Tribes, the responsible official shall determine if an evaluation of significance
23 pursuant to Section 40.240.510(C) is required.
24

25 G. Decision of the Responsible Official.

- 26 1. In making a decision on a proposed use or development the responsible official shall:
27 a. Consult with the applicant and such agencies as the responsible official deems appropriate;
28 b. Consider information submitted by the applicant and all other relevant information available; and
29 c. Consider all comments submitted pursuant to Section 40.240.050(F), and provide notice and
30 consider the comments of the Forest Service and/or Columbia River Gorge Commission. The
31 absence of timely comments of any parties provided notice shall not automatically preclude the
32 responsible official from issuing a decision.
33 2. The responsible official shall approve a proposed use or development only if it is consistent with
34 the standards of this chapter and other applicable regulations. In approving a proposed
35 development action, the responsible official may impose conditions as necessary to ensure
36 consistency with this chapter.
37 3. The responsible official shall issue a decision on a proposed use or development including
38 findings of fact and conclusions of law and any conditions to ensure consistency with the
39 standards of this chapter and other applicable regulations within the time frame pursuant to
40 Sections 40.510.020(F) or 40.510.030(F) except in one or more of the following situations:
41 a. The applicant consents to an extension of time;
42 b. The responsible official determines that additional information is required pursuant to Section
43 40.240.050(A);
44 c. The responsible official determines that additional information is necessary to evaluate the
45 impacts of the proposed use to scenic, cultural, natural, and recreation resources; and/or
46 d. Unforeseen circumstances including, but not limited to, weather or illness.
47 4. The responsible official shall mail a copy of the decision to the applicant, the Commission, the
48 Forest Service, the applicable state, the Indian Tribes, the applicable county and/or city and each
49 person who submitted comments pursuant to subsection (F). The decision shall set forth the
50 rights of appeal under Sections 40.510.020(H) or 40.510.030(H).
51 5. The decision of the responsible official shall be final unless a Notice of Appeal is filed in
52 accordance with this title.
53 6. The decision of the responsible official approving a proposed development action shall become
54 void:
55 a. When the development action is not undertaken within two (2) years of the decision, or

- 1 b. When the development action is discontinued for any reason for one (1) year or more.
2 7. An applicant may request an extension of the validity of a development approval. Such request
3 shall be considered an administrative action and shall be submitted to the responsible official
4 prior to the expiration of such approval, in writing, stating the reason why an extension should be
5 granted.
6 8. The responsible official may grant an extension of up to twelve (12) months in the validity of a
7 development approval if it is determined that conditions, for which the applicant was not
8 responsible, would prevent the applicant from commencing his operation within the original time
9 limitation. The responsible official shall not grant an extension if the site characteristics and/or
10 new information indicates that the proposed use may adversely affect scenic, cultural, natural or
11 recreation resources in the National Scenic Area.
12 9. The development approval time-lines in this section shall take precedence over the development
13 approval time lines in Section 40.500.010(B).
14

15 H. Standards for Applications and Expirations of Approvals.

- 16 1. Standards for Applications --Complete Application Required. Any proposed use, development or
17 structure shall be reviewed according to the standards in effect on the date an applicant
18 submitted a complete land use application to the reviewing agency. A complete application is
19 one that the reviewing agency determines meets the Management Plan's requirements for:
20 a. a complete application form;
21 b. a complete site plan; and
22 c. all applicable information specified in the parts of the Management Plan titled Resource
23 Protection and Enhancement, Land Use Designations, and Administration.
24 Incomplete applications shall not be reviewed.
25 2. Expirations of Approvals.
26 a. Notice not required. Expiration of any land use approval issued pursuant to this Columbia
27 River Gorge National Scenic Area (Management Plan) shall be automatic. Failure to give
28 notice of expiration shall not affect the expiration of a land use approval.
29 b. Land Use Approvals without Structures. Any land use approval issued pursuant to the
30 Management Plan for a use or development that does not include a structure shall expire two
31 (2) years after the date the land use approval was granted, unless the use or development
32 was established according to all specifications and conditions of approval in the land use
33 approval. For land divisions, "established" means the final deed or plat has been recorded
34 with the county recorder or auditor.
35 c. Land Use Approvals with Structures. Any land use approval issued pursuant to the
36 Management Plan for a use or development that includes a structure shall expire as follows:
37 (1) When construction has not commenced within (2) two years of the date the land use
38 approval was granted, or
39 (2) When the structure has not been completed within (2) two years of the date of
40 commencement of construction.
41 d. Commencement of Construction. As used in subsection (c)(1) above, commencement of
42 construction shall mean actual construction of the foundation or frame of the approved
43 structure. For utilities and developments without a frame or foundation, commencement of
44 construction shall mean actual construction of support structures for an approved above
45 ground utility or development or actual excavation of trenches for an approved underground
46 utility or development. For roads, commencement or construction shall mean actual grading
47 of the roadway.
48 e. Completion of Structure. As used in subsection (c)(2) above, completion of the structure shall
49 mean:
50 (1) completion of the exterior surface(s) of the structure; and
51 (2) compliance with all conditions of approval in the land use approval.
52 f. Extension of Validity of Land Use Approvals. A request for extension of the time frames in
53 subsections (b), (c)(1) or (c)(2) above, shall be submitted in writing before the applicable
54 expiration date.

- (1) A reviewing agency may grant one twelve- (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 subsection (b) above) or commencement of construction (applicable to subsection (c)(1) above) within the original two- (2-) year time frame.
- (2) An agency may also grant one twelve- (12-) month extension if it determines that events beyond the control of the applicant prevented completion of the structure (applicable to subsection (c)(2) above) within the original two-year time frame.
- (3) A request for extension shall state the reason why events beyond the control of the applicant warrant an extension.
- (4) Approval or denial of a request for extension shall be considered an administrative decision.

I. Appeal Process.

Appeals will be handled pursuant to Section 40.510.020(H) for Type II applications or Section 40.510.030(H) for Type III applications.

J. Changes or Alterations to an Approved Action.

Any change or alteration to a development action approved by the Commission or responsible official pursuant to this rule shall be processed as new action, except that the responsible official may approve minor changes or alterations deemed to be consistent with the guidelines of this chapter and the findings and conclusions for the original action. If the responsible official 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.

40.240.060 EXPEDITED DEVELOPMENT REVIEW PROCESS

A. 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, accessory structures between sixty (60) and two hundred (200) square feet in area and ten (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 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 five hundred (500) square feet in area and the addition or covered deck is no larger than two hundred (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 six (6) feet in height and less than or equal to one hundred (100) feet in length.
4. Wire-strand fences other than those allowed outright, provided the fence complies with Section 40.240.860(G) if it is inside deer and elk winter range as delineated in the Gorge Commission/Forest Service natural resource inventories or determined by an appropriate federal or state agency.
5. In the GMA, woven-wire fences for agricultural use that would enclose eighty (80) acres or less.
6. Decks that are:
 - a. uncovered;

- 1 b. attached and accessory to existing dwellings: and
- 2 c. five hundred (500) square feet or less in area and thirty (30) inches or less in height above
- 3 existing grade.
- 4 7. Road closure gates.
- 5 8. Signs, other than those allowed outright.
- 6 9. Outdoor lights.
- 7 10. Air, weather, water and other similar research and monitoring facilities, provided the facilities are
- 8 attached to existing structures or are less than or equal to one-hundred twenty (120) square feet in
- 9 size and less than or equal to twelve (12) feet in height.
- 10 11. Lot line adjustments in the GMA that would not result in the potential to create additional parcels
- 11 through subsequent land divisions, pursuant to Section 40.240.380, except all lot line adjustments
- 12 for parcels designated Open Space, Public Recreation, or Commercial Recreation shall be
- 13 reviewed through the full development review process.
- 14 12. Lot line adjustments in the SMA are subject to the SMA lot line adjustment standards of Section
- 15 40.240.380(B).
- 16 13. Demolition of structures that are less than fifty (50) years old, including wells, septic tanks and fuel
- 17 tanks.
- 18 14. Decommission non-paved roads, including ripping the road surface, barriers, and revegetation.
- 19 15. Trail reconstruction involving up to one thousand (1,000) feet of trail re-routing.
- 20 16. The following transportation facilities, provided they are not a part of larger construction or
- 21 reconstruction projects (which shall be reviewed as a whole):
- 22 a. New guardrails and guardrail ends, other than those allowed outright, and new wire-strand and
- 23 woven-wire access control fences. This category does not include jersey barriers.
- 24 b. New traffic detection devices, vehicle weighing devices, and signal boxes less than or equal to
- 25 one-hundred twenty (120) square feet in size and less than or equal to twelve (12) feet in
- 26 height. This category does not include signs.
- 27 c. Pave existing dirt and gravel roads; provided, that the activity does not increase the width of the
- 28 road or disturb the toe of adjacent embankments, slopes or cut banks.
- 29 d. New weather, air, traffic or other monitoring equipment attached to existing structures or that
- 30 are less than or equal to one-hundred twenty (120) square feet in size and less than or equal to
- 31 twelve (12) feet in height.
- 32 17. New underground utility facilities located inside road, utility or railroad rights-of-way or
- 33 easements that have been disturbed in the past; provided, that (1) no ditch for linear facilities
- 34 would be more than thirty-six (36) inches wide and (2) no excavation for non-linear facilities
- 35 would exceed twenty (20)cubic yards.
- 36 18. The following aboveground and overhead utility facilities:
- 37 a. Modify existing aboveground and overhead utility facilities or develop new aboveground and
- 38 overhead utility facilities including building and equipment foundations, poles, transformers,
- 39 conduit, fencing, pumps, valves, pipes, and water meters; provided, that the development
- 40 would be less than or equal to one-hundred twenty (120) square feet in area and less than or
- 41 equal to twelve (12) feet in height.
- 42 b. Replace existing aboveground and overhead utility facilities including building and equipment
- 43 foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters;
- 44 provided, that the replacement facilities would be in the same location as and no more than
- 45 fifteen percent (15%) larger than the physical size of the existing facilities.
- 46 c. New antennas and associated support structures necessary for public service on existing
- 47 wireless communication poles and towers other than those allowed outright; provided, that the
- 48 size is the minimum necessary to provide the service.
- 49 19. Replacing an existing mobile home in a mobile home space within a mobile home park; provided,
- 50 that:
- 51 a. The mobile home to be replaced, the mobile home space and the mobile home park shall be
- 52 existing, lawful uses according to the definition of existing use or structure and Sections
- 53 (40.240.170) (A) through (D);

- 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 twenty percent (20%) greater than the mobile home to be replaced; and
 - d. the mass and footprint of the replacement mobile home shall be no more than one hundred percent (100%) greater than a single-wide mobile home to be replaced or no more than twenty-five (25%) percent greater than a double-wide mobile home to be replaced.
20. Retaining walls accessory to existing dwellings less than or equal to two (2) feet in height and less than or equal to one hundred (100) feet in length.
21. In the SMA, wind machines for frost control in conjunction with agricultural use.

B. Resource and Treaty Rights Protections Guidelines.

Proposed developments reviewed using the expedited review process shall comply with the following resource protection guidelines:

1. Scenic resources.

- a. In the GMA, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose eighty (80) acres or less.
- b. 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. 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 Section 40.240.300.
- 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).

2. Cultural resources.

- a. The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey or historic survey, pursuant to Section 40.240.820(A)(3).
- b. The GMA guidelines that protect cultural resources and human remains discovered during construction Sections 40.240.820(F) and (G) shall be applied as conditions of approval for all development approved under the expedited development review process.

3. Recreation resources. The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.

4. Natural resources.

- a. Wetlands, Streams, Rivers, Ponds, and Lakes. 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.
 - (1) The development meets one of the following:
 - (a) The development is at least one thousand (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
 - (b) 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
 - (c) For sensitive wildlife, the development is within one thousand (1,000) feet of known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range

1 and turkey habitat), but an appropriate federal or state wildlife agency determines (1) the
2 sensitive wildlife area or site is not active or (2) the proposed development would not
3 compromise the integrity of the wildlife area or site or occur during the time of the year
4 when wildlife species are sensitive to disturbance.

5 (d) For sensitive plants, the development is within one thousand (1,000) feet of known
6 sensitive plants, but the Washington Natural Heritage Program or a person with
7 recognized expertise in botany or plant ecology hired by the applicant has determined
8 that the development would be a least two hundred (200) feet from the sensitive plants.

9 (2) Development eligible for expedited review shall be exempt from the field survey
10 requirements for sensitive wildlife (Section 40.240.860(C)) or sensitive plants (Section
11 40.240.870(C)).
12

13 C. Treaty Rights Protection Guidelines.

14 Proposed developments reviewed using the expedited review process shall comply with the following
15 treaty rights protection guidelines:

- 16 1. Proposed developments shall not affect or modify any treaty or other rights of any Indian tribe.
- 17 2. The expedited development review process shall cease and the proposed development shall be
18 reviewed using the full development review process if an Indian tribe submits substantive written
19 comments during the comment period that identify the treaty rights that exist in the project vicinity
20 and explain how they would be affected or modified by the proposed development.
- 21 3. Except as provided in subsection (2) above, the GMA and SMA treaty rights and consultation
22 goals, policies and guidelines in Chapter 3, Section IV of the Management Plan shall not apply to
23 proposed developments reviewed under the expedited review process.
24

25 D. Procedure for Expedited Review Process.

26 1. Applications.

- 27 a. Prior to initiating any use or development, which requires review and approval by the Executive
28 Director, an application shall be completed pursuant to this section.
- 29 b. The responsible official shall accept and review the application pursuant to this section
30 for consistency with the appropriate guidelines.
- 31 c. Standard application forms shall be available from the department, and shall be provided to
32 the county offices for which this ordinance is effective and the Forest Service.
- 33 d. Applications for uses eligible for expedited review shall include the information required for
34 review uses listed in Section 40.240.050. They shall also include elevation drawings if the
35 proposed development would be visible from a key viewing area. The drawing shall show
36 natural grade and finished grade.

37 2. Acceptance of Applications. Applications shall be accepted pursuant to Sections 40.510.010(A)
38 and (B).

39 3. Notice of Development Review.

- 40 a. Within seven (7) days of the acceptance of an application, the responsible official shall issue
41 notice of a proposed development review. The notice shall provide the following information:
42 (1) The name of the applicant;
43 (2) The general and specific location of the subject property;
44 (3) A brief description of the proposed action;
45 (4) The deadline for rendering a decision; and
46 (5) The deadline for filing comments on the proposed action.
- 47 b. The notice shall state that the application and supporting documents are available for
48 inspection at the county during normal working hours.
- 49 c. The notice shall state the applicant must comply with all applicable local, state, and federal
50 laws.
- 51 d. The notice shall be mailed to the Gorge Commission, Forest Service, the four Indian tribal
52 governments, applicable county or city planning office(s), libraries and other agencies and
53 interested parties that request a notice or that the responsible official determines should be
54 notified.

- 1 4. Comment Period. Any interested person or party shall submit written comments within ten (10)
- 2 days from the date a notice is sent.
- 3 5. Written Decision.
- 4 a. In making a decision on a proposed use or development the responsible official shall:
- 5 (1) Consult with the applicant and such agencies as the responsible official deems appropriate;
- 6 (2) Consider information submitted by the applicant and all other relevant information available;
- 7 (3) Consider all comments submitted pursuant to Section 40.240.050; and
- 8 (4) Solicit and consider the comments of the Forest Service.
- 9 b. The responsible official shall approve a proposed use or development only if it is consistent
- 10 with the standards of Section 6 of the Management Plan and the purposes of the Act (Public
- 11 Lands 99-663).
- 12 (1) In approving a proposed development action, the responsible official may impose
- 13 conditions as necessary to ensure consistency with the guidelines of this chapter.
- 14 (2) Conditions attached to approval of a proposed development action shall be recorded in
- 15 county deeds and records to ensure notice of the conditions to successors in interest. The
- 16 responsible official's decision shall include this requirement.
- 17 c. The responsible official shall issue a decision on a proposed use or development including
- 18 findings of fact and conclusions of law and any conditions to ensure consistency with the
- 19 standards of Section 6 of the Management Plan and the purposes of the Act (Public Lands 99-
- 20 663) within thirty (30) days after acceptance of the application.
- 21 d. The decision of the responsible official shall be final unless a Notice of Appeal is filed in
- 22 accordance with Section 40.510.010(E). An applicant who chooses to proceed with an
- 23 approved development during the appeal period shall assume all associated risks and liabilities.
- 24 6. Notice of Decision and Opportunity to Appeal.
- 25 a. The responsible official shall send a copy of a decision issued under the expedited review
- 26 process to the four Indian tribal governments, the Forest Service, and landowners within two
- 27 hundred (200) feet of the perimeter of the subject parcel.
- 28 b. Any person wishing to appeal a decision issued under the expedited review process shall do so
- 29 pursuant to Section 40.240.050(I).
- 30 7. Expiration of Approvals. Approvals issued under the expedited review process shall expire in
- 31 accordance with the standards for expiration of approvals for review uses in Section 40.240.050(G).
- 32 8. Changes or Alterations to an Approved Action. Changes or alterations to an approval issued under
- 33 the expedited review process shall be made in accordance with the standards for changes or
- 34 alterations to approved actions for review uses in Section 40.240.050(I).
- 35

36 **40.240.070 EMERGENCY/ DISASTER RESPONSE ACTIONS**

37 **A. General Guidelines.**

- 38 1. Actions taken in response to an emergency/disaster event, as defined in Section 40.240.040, are
- 39 allowed in all GMA/SMA land use designations, subject to the notification requirements in
- 40 subsection (2) below.
- 41 2. Following emergency/disaster response actions, best management practices (BMPs) to prevent
- 42 sedimentation and provide erosion control shall be utilized whenever disaster response actions
- 43 necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not
- 44 limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute
- 45 netting, etc.
- 46 3. Structures or development installed or erected for a temporary use (e.g. sandbags, check dams,
- 47 plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following
- 48 an emergency event. If it can be demonstrated that the continued use of these devices is
- 49 necessary to protect life property, public services or the environment, an extension of no more
- 50 than two (2) years may be granted by the responsible official or the Forest Service for federal
- 51 agency actions.
- 52

- 1 4. The new exploration, development (extraction or excavation), and production of mineral
2 resources, used for commercial, private or public works projects, shall not be conducted as an
3 emergency/disaster response activity.
4 5. No spoils resulting from grading or excavation activities shall be deliberately deposited into a
5 wetland, stream, pond, lake or riparian area within the National Scenic Area (NSA) as a part of an
6 emergency/disaster response action. The only exception to this is for construction of a fire line
7 during a wildfire, where avoiding the aquatic area or its buffer zone has been considered and
8 determined to not be possible without further jeopardizing life or property.
9

10 B. Notification Requirements.

- 11 1. Actions taken in response to an emergency/disaster event, as defined, are allowed in all GMA
12 and SMA land use designations, subject to the following notification requirements.
13 a. Notification of an emergency/disaster response activity shall be submitted either within forty-
14 eight (48) hours of the commencement of a response action, or by the next business day
15 following the start of such an action, whichever is sooner. Notification shall be submitted by
16 the party conducting an emergency/disaster response activity or their representatives. In the
17 case of multiple responding parties, the first party to respond shall provide the required
18 notification, unless, upon mutual agreement of responding parties, another responder elects
19 to assume this responsibility.
20 b. Notification shall be submitted by mail, fax, telephone, e-mail or in person. If notification
21 occurs by telephone, a hard copy of the notification shall be submitted by mail or in person
22 within seven (7) days.
23 c. Notification shall be furnished to the responsible official or the Forest Service for federal
24 agency actions.
25 d. At a minimum, the following information shall be required at the time of notification:
26 (1) Nature of emergency/disaster event;
27 (2) Description of emergency/disaster response activities and magnitude of response
28 actions to be taken, if applicable (such as extent of earth movement, erection of
29 structures, etc.);
30 (3) Location of emergency/disaster response activities;
31 (4) Estimated start and duration of emergency/disaster response activities; and
32 (5) Contact person and phone number for the parties conducting emergency/disaster
33 response actions.
34 e. Repair and maintenance of an existing serviceable structure to its previously authorized and
35 undamaged condition are not subject to the above referenced notification requirements.
36 2. Upon notification of an emergency/disaster response action, the responsible official, or Forest
37 Service shall, as soon as possible:
38 a. Review its natural resource inventory data and notify the contact person for the
39 emergency/disaster response actions of all inventoried natural resource sites and their buffers,
40 that are within or adjacent to the response area or that may be adversely affected by response
41 activities;
42 b. Notify the Washington Department of Fish and Wildlife of all noticed
43 emergency/disaster response actions, to provide that agency an opportunity to consult with
44 responding agencies during the event, and;
45 c. Notify the Forest Service, the Office of Washington Office of Archeology and Historic
46 Preservation, and the tribal governments of all emergency/disaster response activities. The
47 Forest Service will review their cultural resource inventory data and notify the contact person
48 for the emergency/disaster response action as soon as possible of all inventoried cultural
49 resource sites, or their buffers, that are within, or adjacent to, emergency/disaster response
50 areas. Upon notification of a response action, the Forest Service shall, as soon as possible,
51 offer the services of a resource advisor to the agency(ies) conducting the response action.
52 The resource advisor will provide on-site advice to minimize impacts to resources from
53 emergency/disaster response actions.
54

1 C. Post-Emergency/Disaster Response Development Review Application Requirements.

- 2 1. Within thirty (30) days following notification, a post-emergency/disaster response application shall
3 be submitted by the party conducting the response action to the responsible official, or Forest
4 Service for federal agency actions. In the case of an event with multiple responding parties, the
5 party providing initial notification as required herein shall submit the application. An exception to
6 this may occur if another responding party, by mutual agreement with the other respondents,
7 elects to submit the application. Requests to extend this submittal deadline may be made in
8 writing and shall include the reason why an extension is necessary. Extensions shall not exceed
9 thirty (30) days in duration and not more than two (2) extensions shall be granted.
- 10 2. Post-emergency/disaster response applications shall only address development activities
11 conducted during an emergency/disaster response. Applications shall specify if development
12 placed during an emergency/disaster event is permanent or temporary. The terms "development
13 activities" and "development" include the disposal of any spoil materials associated with an
14 emergency/disaster response action. Applicants shall be responsible for operations under their
15 control and that of other responders, upon mutual agreement. Responders not agreeing to have
16 another responder address their actions shall be responsible to submit an application for those
17 actions.
- 18 3. Emergency/disaster response actions not involving structural development or ground disturbance
19 with mechanized equipment are exempt from these requirements, except for those actions within
20 five hundred (500) feet of a known cultural resource (as determined in the notification process).
- 21 4. Applications shall include the following information:
22 a. Applicant's name and address.
23 b. Location of emergency/disaster response.
24 c. A written description of the emergency/disaster response, including any structures erected,
25 excavation or other grading activities, or vegetation removal.
26 d. A map of the project area drawn to scale, at a scale of one inch equals two hundred (200) feet
27 (1:2,400) or a scale providing greater detail. The map shall include:
28 (1) North arrow and scale;
29 (2) Boundaries, dimensions and size of subject parcel(s);
30 (3) Bodies of water, watercourses, and significant landforms;
31 (4) Existing roads and structures; and
32 (5) New structures placed and any vegetation removal, excavation or grading resulting
33 from the response actions.
34 e. An exception to the scale requirements in subsection (d) above may be granted for an event
35 encompassing an area greater than one square mile. In such cases, a clear sketch map of
36 the entire response action area shall be provided. In addition, a map of one inch equals two
37 hundred (200) feet (1:2,400) or a scale providing greater detail shall be provided that shows a
38 section of the response area exemplifying the specific actions taken.
- 39 5. Emergency/disaster response review uses may be allowed pursuant to a process that provides at
40 minimum the following:
41 a. Notice of the application to landowners within two hundred (200) feet of the perimeter of the
42 subject parcel, the Forest Service, Gorge Commission, four tribal governments and interested
43 parties;
44 b. A written decision with findings of fact and conclusions of law; and
45 c. An opportunity to request a hearing.

46
47 D. Post-Emergency/Disaster Response Development Review.

48 Actions taken in all land use designations within the GMA/SMA that are in response to an
49 emergency/disaster event, as defined, shall be reviewed for compliance with the following guidelines.

50 1. Scenic Resources.

- 51 a. Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic
52 resources are not adversely affected. Such actions shall be rendered visually subordinate in
53 their landscape setting as seen from key viewing areas to the greatest extent practicable,

- 1 except for actions located in areas exempted from visual subordination requirements in
2 Section 40.240.800(C).
- 3 b. Vegetation shall be used to screen or cover road cuts, structural development, landform
4 alteration, and areas denuded of vegetation, as a result of emergency/disaster response
5 actions.
- 6 c. Areas denuded of vegetation as a result of emergency/disaster response actions shall be
7 revegetated with native plant species, or species commonly found within the applicable
8 landscape setting, to restore the affected areas to its pre-response condition to the greatest
9 extent practicable. Revegetation shall occur as soon as practicable, but no later than one
10 year after the emergency/disaster event. An exception to the one-year requirement may be
11 granted upon demonstration of just cause, with an extension up to one (1) year.
- 12 d. The painting, staining or use of other materials on new structural development shall be used
13 to ensure that the structures are non-reflective, or of low reflectivity, and visually subordinate
14 in their landscape setting as seen from key viewing areas, unless the structure is fully
15 screened from key viewing areas by existing topographic features.
- 16 e. Additions to existing structures, resulting from an emergency/disaster response action, which
17 are smaller in total height, bulk or area than the existing structures may be the same color as
18 the existing development. Additions larger than the existing development shall be visually
19 subordinate in their landscape setting as seen from key viewing areas to the greatest extent
20 practicable.
- 21 f. In the GMA, spoil materials associated with grading, excavation and slide debris removal
22 activities in relation to an emergency/disaster response action shall comply with the
23 following standards:
- 24 (1) The spoil materials shall either be:
- 25 (a) Removed from the NSA;
- 26 (b) Deposited at a site within the NSA permitted by an agency administering a
27 Scenic Area land use ordinance; or
- 28 (c) Recontoured, to the greatest extent practicable, to retain the natural
29 topography, or a topography which emulates that of the surrounding
30 landscape.
- 31 (2) The responsible official shall decide whether an applicant removes the spoil
32 materials, deposits the spoil materials, or (re)contours the spoils materials.
- 33 (3) The responsible official shall select the action in subsection (1) above that, to the greatest
34 extent practicable, best complies with the policies and guidelines in the Management
35 Plan that protect scenic, cultural, recreation, and natural resources.
- 36 (4) Disposal sites created pursuant to subsection (1)(c) above shall only be used for spoil
37 materials associated with an emergency/disaster response action. Spoil materials from
38 routine road maintenance activities shall not be deposited at these sites.
- 39 g. In the SMA, spoil materials associated with grading, excavation
40 and slide debris removal activities in relation to an emergency/disaster response action shall
41 comply with the following standards:
- 42 (1) The spoil materials shall either be:
- 43 (a) Removed from the NSA, or
- 44 (b) Deposited at a site within the NSA permitted by an agency administering a
45 Scenic Area land use ordinance within two (2) years of the emergency.
- 46 (2) After the spoils materials are removed, the emergency disposal site shall be
47 rehabilitated to meet the scenic standard.
- 48 (3) All grading (i.e., recontouring) shall be completed within thirty (30) days after the
49 spoils materials are removed.
- 50 (4) Sites shall be replanted using native plants found in the landscape setting or
51 ecoregion to the maximum extent practicable.
- 52 (5) All revegetation shall take place within one (1) year of the date an applicant
53 completes the grading.

- 1 (6) This provision shall take effect on August 3, 2006, or approval of a disposal site, which
2 ever comes first.
- 3 2. Cultural Resources and Treaty Rights.
- 4 a. To the greatest extent practicable, emergency/disaster response actions shall not adversely
5 affect cultural resources. Emergency/disaster response actions shall not affect tribal treaty
6 rights.
- 7 b. The Forest Service shall determine if a reconnaissance survey or historic survey is
8 necessary within three days after receiving notice that a post-emergency land use application
9 has been received by the responsible official.
- 10 (1) Reconnaissance surveys shall be conducted by the and comply with the standards
11 in Section 40.240.820(A)(3)(d). Reconnaissance survey reports shall comply with
12 the standards in Section 40.240.820(A)(3)(e).
- 13 (2) Historic surveys shall be conducted by the Forest Service and shall describe any adverse
14 effects to historic resources resulting from an emergency/disaster response action.
15 Historic surveys shall document the location, form, style, integrity, and physical condition
16 of historic buildings and structures. Such surveys shall also include original photographs,
17 if available, and maps, and should use archival research, blueprints, and drawings as
18 necessary.
- 19 c. Following the submittal of a post-emergency land use application, in addition to other public
20 notice requirements that may exist, the county shall send a copy of all comments to the Gorge
21 Commission and the tribal governments shall be notified by the responsible official when (1) a
22 reconnaissance survey is required, or (2) cultural resources exist in the project area. Notices
23 shall include a site plan. Tribal governments shall have fifteen (15) calendar days from the date
24 a notice is sent to submit written comments. Written comments should describe the nature and
25 extent of any cultural resources that exist in the project area or treaty rights that exist in the
26 project area and how they have been affected, and identify individuals with specific knowledge
27 about them.
- 28 d. When written comments are submitted in compliance with subsection (c) above, the project
29 applicant shall offer to meet within five calendar days with the interested persons. The five- (5-)
30 day consultation period may be extended upon agreement between the project applicant and
31 the interested persons. A report shall be prepared by the responsible official following the
32 consultation meeting. Consultation meetings and reports shall comply with the standards in
33 Section 40.240.820(B)(1) and Sections 40.240.180(A) and (D).
- 34 e. If cultural resources are discovered within the area disturbed by emergency response actions,
35 the project applicant shall have a qualified professional conduct a survey to gather enough
36 information to evaluate the significance of the cultural resources and what effects the action
37 had on such resources. The survey and evaluation shall be documented in a report that
38 generally follows the standards in Sections 40.240.820(A)(1) and (2), and Section
39 40.240.820(C)(1).
- 40 f. A mitigation plan shall be prepared by the project applicant if the affected cultural resources
41 are significant. The mitigation plan shall be prepared according to the information,
42 consultation, and report guidelines in Section 40.240.820(E).
- 43 g. The responsible official shall submit a copy of all reconnaissance and historic survey reports
44 and treaty rights protection plans to the SHPO and the tribal governments. Survey reports
45 shall include measures to mitigate adverse effects to cultural resources resulting from
46 emergency/disaster response actions. The SHPO and tribal governments shall have fifteen
47 (15) calendar days from the date a survey report is mailed to submit written comments to the
48 Executive Director. The responsible official shall record and address all written comments in
49 the final decision.
- 50 h. The responsible official shall make a final decision on whether the emergency/disaster
51 response actions are consistent with the applicable cultural resource goals, policies, and
52 guidelines. If the final decision contradicts the comments submitted by the SHPO, or those
53 submitted by a tribal government regarding treaty rights, the responsible official shall justify
54 how the opposing conclusion was reached.

- 1 i. The cultural resource protection process may conclude when it has been determined that tribal
2 treaty rights have not been not affected and one of the following conditions exists:
3 (1) The emergency/disaster response action does not require a reconnaissance or
4 historic survey, or a reconnaissance survey demonstrates that no cultural resources are
5 known to exist in the project area, and no substantiated concerns were voiced by
6 interested persons within fifteen (15) calendar days of the date that a notice was mailed.
7 (2) The emergency/disaster response action avoided cultural resources that exist in the
8 project area.
9 (3) Adequate mitigation measures to affected cultural resources have been developed
10 and will be implemented.
11 (4) A historic survey demonstrates that emergency/disaster response actions, and
12 associated development, had no effect on historic buildings or structures because:
13 (a) The SHPO concluded that the historic buildings or structures are clearly not
14 eligible, as determined by using the criteria in the "National Register Criteria for
15 Evaluation" (36 CFR 60.4), or
16 (b) The emergency/disaster response actions did not compromise the historic or
17 architectural character of the affected buildings or structures, or compromise features
18 of the site that are important in defining the overall historic character of the affected
19 buildings or structures, as determined by the guidelines and standards in *The*
20 *Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the
21 Interior, 1990) and *The Secretary of the Interior's Standards for Historic Preservation*
22 *Projects* (U.S. Department of the Interior, 1983).
- 23 3. Natural Resources.
- 24 a. To the greatest extent practicable, emergency/disaster response actions shall not adversely
25 affect natural resources.
- 26 b. Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas,
27 and sites containing rare plants shall be the same as those established in Sections
28 40.240.840, 40.240.850(F), 40.240.860 (F)(4), 40.240.870(G), and 40.240.880(B) and (C).
- 29 c. Wetlands, Streams, Ponds, Lakes, Riparian Areas.
- 30 (1) Emergency/disaster response actions occurring within a buffer zone of wetlands,
31 streams, pond, lakes or riparian areas shall be reviewed by the Washington Department
32 of Fish and Wildlife. These areas are also referred to in this section as aquatic areas.
33 State biologists will help determine if emergency/disaster response actions have affected
34 or have a potential to affect these aquatic areas or their bigger zones. State biologists
35 shall respond within fifteen (15) days of the date the application is mailed.
- 36 (2) When emergency/disaster response activities occur within wetlands, streams, ponds,
37 lakes, riparian areas, or the buffer zones of these areas, the applicant shall demonstrate
38 the following:
- 39 (a) All reasonable measures have been applied to ensure that the response
40 actions have resulted in the minimum feasible alteration or destruction of the
41 functions, existing contours, vegetation, fish and wildlife resources, and
42 hydrology of wetlands, streams, ponds, lakes or riparian areas.
- 43 (b) Areas disturbed by response activities and associated development will be
44 rehabilitated to the maximum extent practicable.
- 45 (3) Impacts to wetlands, streams, ponds, lakes and riparian areas, and their buffers will
46 be offset through mitigation and restoration to the greatest extent practicable. Mitigation
47 and restoration efforts shall use native vegetation, and restore natural functions,
48 contours, vegetation patterns, hydrology and fish and wildlife resources to the maximum
49 extent practicable.
- 50 (4) If the responsible official, in consultation with the Washington Department of Fish and
51 Wildlife, determines that the emergency/disaster response actions had minor effects on
52 the aquatic area or its buffer zone that could be eliminated with simple modifications, a
53 letter shall be sent to the project applicant that describes the effects and measures that
54 need to be taken to eliminate them. The state biologist, or a Forest Service natural

1 resource advisor (as available) in conclusion with the state biologist, shall visit the site in
2 order to make this determination. If the project applicant accepts these
3 recommendations, the Executive Director shall incorporate them into the final order and
4 the aquatic area protection process may conclude.

5 (5) Unless addressed through subsection (4) above, mitigation and restoration efforts shall
6 be delineated in a Rehabilitation Plan. Rehabilitation Plans shall satisfy the standards in
7 Sections 40.240.850(G)(1) and (2). Rehabilitation plans shall also satisfy the following:

- 8 (a) Plans shall include a plan view and cross-sectional drawing at a scale that
9 adequately depicts site rehabilitation efforts. Plans will illustrate final site
10 topographic contours that emulate the surrounding natural landscape.
11 (b) Planting plans shall be included that specify native plant species to be used,
12 specimen quantities and plant locations.
13 (c) The project applicant shall be responsible for the successful rehabilitation of
14 all areas disturbed by emergency/disaster response activities.

15 d. Wildlife Habitat.

- 16 (1) Emergency/disaster response actions occurring within one thousand (1,000) feet of a
17 sensitive wildlife area or site, shall be reviewed by the Washington Department of Fish
18 and Wildlife. State wildlife biologists will help determine if emergency/disaster response
19 actions have affected or have a potential to affect a sensitive wildlife area or site.
20 (2) Site plans for emergency/disaster response sites shall be submitted by the Executive
21 Director to the Washington Department of Fish and Wildlife for review as prescribed in
22 Sections 40.240.860(E)(1) and (2). The wildlife agency shall respond within fifteen (15)
23 days of the date the application is mailed.
24 (3) The wildlife protection process may terminate if the responsible official, in consultation with
25 the Washington Department of Fish and Wildlife, determines (1) the sensitive wildlife area
26 or site was not active, or (2) the emergency/disaster response did not compromise the
27 integrity of the wildlife area or site or occurred at a time when wildlife species are not
28 sensitive to disturbance.
29 (4) If the responsible official, in consultation with the Washington Department of Fish and
30 Wildlife, determines that the emergency/disaster response activities had minor effects on
31 the wildlife area or site that could be eliminated with simple modifications, a letter shall be
32 sent to the project applicant that describes the effects and measures that need to be taken
33 to eliminate them. The state wildlife biologist, or a Forest Service natural resource advisor
34 (as available) in consultation with the state wildlife biologist, shall visit the site in order to
35 make this determination. If the project applicant accepts these recommendations, the
36 responsible official shall incorporate them into the final decision and the wildlife protection
37 process may conclude.
38 (5) If the responsible official, in consultation with the Washington Department of Fish and
39 Wildlife, determines that the emergency/disaster response activities had adverse effect on
40 a sensitive wildlife area or site, the project applicant shall prepare a Wildlife Management
41 Plan. Wildlife Management Plans shall comply with standards in Section 40.240.860(F).
42 Upon completion of the Wildlife Management Plan, the responsible official shall:
43 (a) Submit a copy of the Wildlife Management Plan to the Washington Department of
44 Fish and Wildlife, for review. The Washington Department of Fish and Wildlife will
45 have fifteen (15) days from the date that a plan is mailed to submit written comments
46 to the responsible official.
47 (b) Record any written comments submitted by the Washington Department of Fish and
48 Wildlife, in its development review order. Based on these comments, the Executive
49 Director shall make a final decision on whether the proposed use would be consistent
50 with the wildlife policies and guidelines. If the final decision contradicts the
51 comments submitted by the Washington Department of Fish and Wildlife, the
52 Executive Director shall justify how the opposing conclusion was reached.

- 1 (c) Require the project applicant to revise the Wildlife Management Plan as
 2 necessary to ensure that the proposed use would not adversely affect a sensitive
 3 wildlife area or site.
- 4 e. Deer and Elk Winter Range. Any fencing permanently erected within deer and elk winter
 5 range, as a result of an emergency/disaster response, shall comply with the standards in
 6 Section 40.240.860(G).
- 7 f. Rare Plants.
- 8 (1) Emergency/disaster response actions occurring within one thousand (1,000) feet of a
 9 sensitive plant, shall be reviewed by the Washington Natural Heritage Program. State
 10 heritage staff will help determine if emergency/disaster response actions have occurred
 11 within the buffer zone of a rare plant.
- 12 (2) Site plans for emergency/disaster response sites shall be submitted to the Washington
 13 Natural Heritage Program by the responsible official. State natural heritage staff will,
 14 within fifteen (15) days from the date the application is mailed, identify the location of the
 15 affected plants and delineate a two hundred- (200-) foot buffer zone on the applicant's site
 16 plan.
- 17 (3) The rare plant protection process may conclude if the responsible official, in consultation
 18 with the state natural heritage program, determines that emergency/disaster response
 19 activities occurred outside of a rare plant buffer zone.
- 20 (4) If the responsible official, in consultation with the state natural heritage program,
 21 determines that the emergency/disaster response activities had minor effects on rare
 22 plants or the rare plant buffer zone, a letter shall be sent to the project applicant that
 23 describes the effects and measure that need to be taken to eliminate them. The state
 24 natural heritage staff, or a Forest Service natural resources advisor (as available) in
 25 consultation with the state natural heritage staff, shall visit the site in order to make this
 26 determination. If the project applicant accepts these recommendations, the Executive
 27 Director shall incorporate them into the final decision order and the rare plant protection
 28 process may conclude.
- 29 (5) If emergency/disaster response activities occurred within a rare plant buffer zone that
 30 had adverse affects on rare plants or their buffer zone, the project applicant shall
 31 prepare a protection and rehabilitation plan that meets the standards in Section
 32 40.240.870(F).
- 33 (6) The responsible official shall submit a copy of all protection and rehabilitation plans to the
 34 state heritage program for review. The state natural heritage program will have fifteen
 35 (15) days from the date the protection and rehabilitation plan is mailed to submit written
 36 comments to the responsible official.
- 37 (7) The responsible official shall record any written comments submitted by the state natural
 38 heritage program in its development review order. Based on these comments, the
 39 responsible official shall make a final decision on whether the proposed use would be
 40 consistent with the rare plant policies and guidelines. If the final decision contradicts the
 41 comments submitted by the state natural heritage program, the responsible official shall
 42 justify how the opposing conclusion was reached.
- 43 (8) The responsible official shall require the project applicant to revise the protection
 44 and rehabilitation plan as necessary to ensure that the proposed use would not
 45 adversely affect a rare plant site.
- 46 4. Recreational Resources.
- 47 a. To the greatest extent practicable, emergency/disaster response actions shall not adversely
 48 affect recreational resources.
- 49 b. Mitigation measures shall be implemented to mitigate any adverse effects on existing
 50 recreation resources caused by emergency/disaster response activities to the maximum extent
 51 practicable.
- 52
 53
 54

1 E. Post-Emergency Construction.

2 Placement of structures necessary for continued public safety and the protection of private property
3 and essential public services damaged during an emergency/disaster event is allowed in all land use
4 designations in accordance with Sections 40.240.050, 40.240.100 through 180 (as applicable), and
5 40.240.800 through 900. This includes replacement of temporary structures erected during such
6 events with permanent structures performing an identical or related function. Land use applications
7 shall be submitted within twelve (12) months following an emergency/disaster event.
8

9 **GENERAL GUIDELINES**

10
11 **40.240.100 EXEMPT LAND USES AND ACTIVITIES**

12
13 A. This chapter shall not apply to:

- 14 1. Any treaty or other rights of any Indian tribes.
15 2. Lands held in trust by the Secretary of the Interior for Indian tribes or for individual members of
16 Indian tribes, and lands acquired by the U.S. Army Corps of Engineers and administered by the
17 Secretary of the Interior for the benefit of Indian tribes or of individual members of Indian tribes.
18 This exemption shall extend to lands selected by the U.S. Army Corps of Engineers as "in lieu"
19 fishing sites pursuant to Public Law 100-581 before or after the effective date of the Management
20 Plan. For those "in lieu" sites chosen after the effective date of the Management Plan, the
21 exemption shall commence upon selection by the U.S. Army Corps of Engineers.
22 3. Rights to surface or ground water.
23 4. Water transportation activities on the Columbia River or its tributaries. The term "activities"
24 includes those facilities necessary for navigation.
25 5. The operation, maintenance and modification of existing transmission facilities of the Bonneville
26 Power Administration.
27 6. Laws, rules or regulations pertaining to hunting or fishing.
28 7. The operation, maintenance and improvement of navigation facilities at Bonneville Dam pursuant
29 to federal law, except for the offsite disposal of excavation material.
30 8. In the GMA, the rights and responsibilities of non-federal timber
31 landowners under the Washington Forest Practices Act, or under county regulations that
32 supersede those acts.
33

34 B. Neither the Forest Service nor the Gorge Commission may establish any buffer zones or protective
35 perimeters outside the boundaries of the Scenic Area.
36
37

38 **40.240.110 PROHIBITED LAND USES AND ACTIVITIES**

39
40 The following land uses and activities shall not be allowed within the Columbia River Gorge National
41 Scenic Area in Clark County:

- 42
43 A. Solid waste disposal sites or sanitary landfills within the SMA.
44
45 B. New industrial development in the Scenic Area outside of the Urban Areas.
46
47

48 **40.240.120 USES ALLOWED OUTRIGHT**

49
50 A. All Land Use Designations Except Open Space.

- 1 1. The following uses may be allowed without review in all GMA and SMA land use designations,
 2 except GMA and SMA Open Space:
- 3 a. In the GMA, agricultural uses except new cultivation. Any operation that would cultivate
 4 land that has not been cultivated, or has lain idle, for more than five (5) years shall be
 5 considered new cultivation. For this guideline, cultivation and vegetation removal may be
 6 allowed in conjunction with a home garden.
 - 7 b. In the SMA, agricultural uses within previously disturbed and regularly worked fields or areas.
 - 8 c. Forest practices in the GMA that do not violate conditions of approval for other approved uses
 9 and developments.
 - 10 d. Repair, maintenance and operation of existing structures, including, but not limited to,
 11 dwellings, agricultural structures, trails, roads, railroads, and utility facilities.
 - 12 e. Accessory structures sixty (60) square feet or less in area and ten (10) feet or less in height,
 13 unless within the buffer zone of a wetland, stream, pond, lake or riparian area. This category
 14 does not include fences, outdoor lights, retaining walls, flagpoles, transportation facilities, or
 15 utility facilities.
 - 16 f. Wire-strand or woven-wire fences used for gardens, yards, livestock, and similar uses less
 17 than or equal to five hundred (500) feet in length and less than or equal to ten (10) feet in
 18 height that are accessory to an existing dwelling; provided, that woven-wire fences are brown
 19 or black if visible from key viewing areas. Height is measured from the ground to the top wire.
 - 20 g. Wire-strand fences less than or equal to forty-eight (48) inches in height that are outside deer
 21 and elk winter range as delineated in the Gorge Commission/Forest Service natural resource
 22 inventories or determined by an appropriate federal or state agency. Height is measured from
 23 the ground to the top wire. This category does not include fences associated with
 24 transportation facilities or utility facilities.
 - 25 h. The following transportation facilities:
 - 26 (1) Replace existing safety or protective structures, including guardrails, access control
 27 fences and gates, barriers, energy attenuators, safety cables, and traffic signals and
 28 controllers; provided, that the replacement structures are (1) the same location and size
 29 as the existing structures and (2) the same building materials as the existing structures,
 30 or building materials that are dark brown with a flat, non-reflective finish, or building
 31 materials consistent with a scenic highway corridor strategy for Washington State Route
 32 14 prepared according to the GMA policies in the section of the Scenic Resources
 33 chapter of the Management Plan titled "Scenic Travel Corridors."
 - 34 (2) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes;
 35 provided, that the replacement structures are (1) the same location and size as the
 36 existing structures and (2) the same building materials as the existing structures, or
 37 building materials that are dark brown with a flat, non-reflective finish, or building
 38 materials consistent with a scenic highway corridor strategy for Washington State Route
 39 14 prepared according to the GMA policies in the section of the Scenic Resources
 40 chapter of the Management Plan titled "Scenic Travel Corridors."
 - 41 (3) New raised pavement markers, guide posts, object markers, inlay markers, and
 42 pavement markings and striping.
 - 43 (4) Permanent public regulatory, guide, and warning signs, except those excluded below;
 44 provided, that (1) the signs comply with the Manual on Uniform Traffic Control Devices
 45 and (2) the support structures and backs of all signs are dark brown with a flat, non-
 46 reflective finish. This category does not include specific service signs; destination and
 47 distance signs; variable message signs; or signs that bridge or are cantilevered over the
 48 road surface.
 - 49 (5) Extensions of existing guardrails less than or equal to fifty (50) feet in length and new
 50 guardrail ends for existing guardrails; provided, that the guardrails and guardrail ends are
 51 (1) located inside rights-of-way that have been disturbed in the past and (2) constructed
 52 of materials that match the existing structure, natural wood, weathering steel (e.g.,
 53 Corten), or materials consistent a scenic highway corridor strategy for Washington State
 54 Route 14 prepared according to the GMA policies in the section of the Scenic Resources
 55 chapter of the Management Plan titled "Scenic Travel Corridors."

- (6) New guardrails and guardrail ends; provided, that the structures are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of natural wood, weathering steel (e.g., Corten), or materials consistent with a scenic highway corridor strategy for 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.
- (7) In the GMA, replace and/or expand existing culverts; provided, that 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.
- (8) In the SMA, replace and/or expand existing culverts for ephemeral streams or ditches; provided, that the visible ends of culverts shall be dark and non-reflective.
- (9) Resurface or overlay existing paved roads; provided, that the activity does not:
 - (a) increase the width of a road;
 - (b) disturb the toe of adjacent embankments, slopes or cut banks; or
 - (c) change existing structures or add new structures.
- (10) Apply dust abatement products to non-paved road surfaces.
- (11) Grade and gravel existing road shoulders; provided, that the activity does not:
 - (a) increase the width of a road;
 - (b) disturb the toe of adjacent embankments, slopes or cut banks; or
 - (c) change existing structures or add new structures.
- (12) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or equal to thirty (30) feet in length and less than or equal to one thousand (1,000) square feet in area. This category does not include guardrails or the substructure of bridges (e.g., foundations, abutments).

i. The following underground utility facilities:

- (1) 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, that no excavation would extend beyond the depth and extent of the original excavation.
- (2) 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 railroad rights-of-way or easements that have been disturbed in the past; provided, that:
 - (a) no excavation would extend more than twelve (12) inches beyond the depth and extent of the original excavation;
 - (b) no ditch for linear facilities would be more than twenty-four (24) inches wide;
 - (c) no excavation for non-linear facilities would exceed ten (10) cubic yards; and
 - (d) no recorded archaeological site is located within five hundred (500) feet of the development.

To comply with subsection (d) above, the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation and obtain a letter or other document stating no recorded archaeological site is located within five hundred (500) feet of the development.

j. The following above-ground and overhead utility facilities:

- (1) Replace existing above-ground 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, that the replacement facilities would have (1) the same location and size as the existing facilities and (2) 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* or a scenic highway corridor strategy for 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."
- (2) Replace existing utility poles; provided, that the replacement poles are:

- 1 (3) New raised pavement markers, guide posts, object markers, inlay markers, and
2 pavement markings and striping.
- 3 (4) Permanent public regulatory, guide, and warning signs, except those excluded below;
4 provided, that (1) the signs comply with the Manual on Uniform Traffic Control Devices,
5 and (2) the support structures and backs of all signs are dark brown with a flat, non-
6 reflective finish. This category does not include specific service signs; destination and
7 distance signs; variable message signs; or signs that bridge or are cantilevered over the
8 road surface.
- 9 (5) Extensions of existing guardrails less than or equal to fifty (50) feet in length and new
10 guardrail ends for existing guardrails; provided, that the guardrails and guardrail ends are
11 (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of
12 materials that match the existing structure, natural wood, weathering steel (e.g., Corten),
13 or materials consistent with the *Historic Columbia River Highway Master Plan* for the
14 Historic Columbia River Highway or Washington State Route 14 prepared according to the
15 GMA policies in the section of the Scenic Resources chapter of the Management Plan
16 titled "Scenic Travel Corridors."
- 17 (6) New guardrails and guardrail ends, provided the structures are (1) located inside
18 rights-of-way that have been disturbed in the past and (2) constructed of natural wood,
19 weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River*
20 *Highway Master Plan* or a scenic highway corridor for Washington State Route 14
21 prepared according to the GMA policies in the section of the Scenic Resources chapter of
22 the Management Plan titled "Scenic Travel Corridors." This category does not include
23 jersey barriers.
- 24 (7) In the GMA, replace and/or expand existing culverts; provided, that the entity or person
25 owning or operating the culvert shall obtain all necessary federal and state permits that
26 protect water quality and fish and wildlife habitat before construction.
- 27 (8) In the SMA, replace and/or expand existing culverts for ephemeral streams or ditches;
28 provided, that the visible ends of culverts shall be dark and non-reflective.
- 29 (9) Resurface or overlay existing paved roads; provided, that the activity does not:
30 (a) increase the width of a road;
31 (b) disturb the toe of adjacent embankments, slopes or cut banks; or
32 (c) change existing structures or add new structures.
- 33 (10) Apply dust abatement products to non-paved road surfaces.
- 34 (11) Grade and gravel existing road shoulders; provided, that the activity does not:
35 (a) increase the width of a road;
36 (b) disturb the toe of adjacent embankments, slopes or cut banks; or
37 (c) change existing structures or add new structures.
- 38 (12) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or
39 equal to thirty (30) feet in length and less than or equal to one thousand (1,000) square
40 feet in area. This category does not include guardrails or the substructure of bridges
41 (e.g., foundations, abutments).
- 42 c. The following underground utility facilities:
43 (1) Replace or modify existing underground utility facilities located inside road, utility or
44 railroad rights-of-way or easements that have been disturbed in the past or co-locate new
45 underground utility facilities with existing underground facilities located inside road, utility
46 or railroad rights-of-way or easements that have been disturbed in the past; provided, that
47 no excavation would extend beyond the depth and extent of the original excavation.
- 48 (2) Replace or modify existing underground utility facilities located inside road, utility or
49 railroad rights-of-way or easements that have been disturbed in the past or co-locate new
50 underground utility facilities with existing underground facilities located inside road, utility
51 or railroad rights-of-way or easements that have been disturbed in the past; provided, that:
52 (a) no excavation would extend more than twelve (12) inches beyond the depth and
53 extent of the original excavation;
54 (b) no ditch for linear facilities would be more than twenty-four (24) inches
55 wide;

- 1 (a) located within five (5) feet of the original poles;
 2 (b) no more than five (5) feet taller and six (6) inches wider than the original poles; and
 3 (c) constructed of natural wood, weathering steel (e.g., Corten), materials that match the
 4 original poles, or materials that are dark brown with a flat, non-reflective finish.
 5 (3) New whip antennas for public service less than or equal to eight (8) feet in height and
 6 less than or equal to two (2) inches in diameter, cables, wires, transformers, and other
 7 similar equipment; provided, that all such structures are on existing utility poles or towers.
 8 k. Flagpoles that are accessory to the principal building on a parcel; provided, that the height of
 9 the flagpole is less than or equal to the height of the highest ridgeline or parapet of the
 10 principal building.
 11 l. The following signs:
 12 (1) Election signs. Removal must be accomplished within thirty (30) days of election day.
 13 (2) "For sale" signs not greater than twelve (12) square feet. Removal must be accomplished
 14 within thirty (30) days of close of sale.
 15 (3) Temporary construction site identification, public service company, safety, or
 16 information signs not greater than thirty-two (32) square feet. Exceptions may be granted
 17 for public highway signs necessary for public safety and consistent with the Manual on
 18 Uniform Traffic Control Devices. Removal must be accomplished within thirty (30) days
 19 of project completion.
 20 (4) Signs posted on private property warning the public against trespassing, danger from
 21 animals, the private nature of a road, driveway or premise, or signs prohibiting or
 22 otherwise controlling fishing or hunting; provided, that such signs are not greater than six
 23 (6) square feet in the GMA and two (2) square feet in the SMA.
 24 (5) Temporary signs advertising civil, social, or political gatherings and activities; provided
 25 that such signs do not exceed twelve (12) square feet. Removal must be accomplished
 26 within thirty (30) days of the close of the event.
 27 (6) Signs posted by governmental jurisdictions giving notice to the public. Such signs
 28 shall be no larger than that required to convey the intended message.
 29 (7) In the GMA, signs associated with the use of a building or buildings, if placed flat on the
 30 outside walls of buildings (not on roofs or marquees).
 31 m. In the GMA, wind machines for frost control in conjunction with agricultural use.
 32
 33 B. GMA and SMA Open Space.
 34 1. The following uses may be allowed without review in GMA and SMA Open Space:
 35 a. Repair, maintenance and operation of existing structures, including, but not limited to,
 36 dwellings, agricultural structures, trails, roads, railroads, and utility facilities.
 37 b. The following transportation facilities:
 38 (1) Replace existing safety or protective structures, including guardrails, access control
 39 fences and gates, barriers, energy attenuators, safety cables, and traffic signals and
 40 controllers; provided, that the replacement structures are (1) the same location and size as
 41 the existing structures and (2) the same building materials as the existing structures, or
 42 building materials that are dark brown with a flat, non-reflective finish, or building materials
 43 consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia
 44 River Highway or Washington State Route 14 prepared according to the GMA policies in
 45 the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel
 46 Corridors."
 47 (2) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes;
 48 provided, that the replacement structures are (1) the same location and size as the
 49 existing structures and (2) the same building materials as the existing structures, or
 50 building materials that are dark brown with a flat, non-reflective finish, or building materials
 51 consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia
 52 River Highway or Washington State Route 14 prepared according to the GMA policies in
 53 the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel
 54 Corridors."

- (c) no excavation for non-linear facilities would exceed ten (10) cubic yards; and
- (d) no recorded archaeological site is located within five hundred (500) feet of the development.

To comply with subsection (d) above, the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation and obtain a letter or other document stating no recorded archaeological site is located within five hundred (500) feet of the development.

d. The following above-ground and overhead utility facilities:

- (1) Replace existing above-ground 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, that the replacement facilities would have (1) the same location and size as the existing facilities and (2) 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 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."
- (2) Replace existing utility poles; provided, that the replacement poles are:
 - (a) located within five (5) feet of the original poles;
 - (b) no more than five (5) feet taller and six (6) inches wider than the original poles; and
 - (c) constructed of natural wood, weathering steel (e.g., Corten), or materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.
- (3) New whip antennas for public service less than or equal to eight (8) feet in height and less than or equal to two (2) inches in diameter, cables, wires, transformers, and other similar equipment; provided, that all such structures are on existing utility poles or towers.

e. The following signs:

- (1) Election signs. Removal must be accomplished within thirty (30) days of election day.
- (2) "For sale" signs not greater than twelve (12) square feet. Removal must be accomplished within thirty (30) days of close of sale.
- (3) Temporary construction site identification, public service company, safety, or information signs not greater than thirty-two (32) square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the Manual on Uniform Traffic Control Devices. Removal must be accomplished within thirty (30) days of project completion.
- (4) 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, that such signs are not greater than six (6) square feet.
- (5) Temporary signs advertising civil, social, or political gatherings and activities; provided, that such signs do not exceed twelve (12) square feet. Removal must be accomplished within thirty (30) days of the close of the event.
- (6) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.
- (7) In the GMA, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

40.240.130 AGRICULTURAL BUFFER ZONES IN THE GENERAL MANAGEMENT AREA

All new buildings shall comply with the setbacks in Table 40.240.130-1 when proposed to be located on a parcel adjacent to lands zoned Gorge Large-Scale or Small-Scale Agriculture and which are currently used for or are suitable for agricultural use:

1 A. Setback Guidelines.

2

Table 40.240.130-1: Type of Buffer (feet from property line of adjacent Agricultural parcel)			
Existing Type of Agriculture	Open or Fenced	Natural or Created Vegetation Barrier	8-foot Berm or Terrain Barrier
Orchards	250'	100'	75'
Row crops/vegetables	300'	100'	75'
Livestock grazing, pasture, haying	100'	15'	20'
Grains	200'	75'	50'
Berries, vineyards	150'	50'	30'
Other	100'	50'	30'

3 B. Earth berms may be used to satisfy, in part, the setback guidelines. Berms shall be a minimum of
 4 eight (8) feet in height, and contoured at 3:1 slopes to look natural. Shrubs, trees and/or grasses
 5 shall be planted on the berm to control erosion and achieve a finished height of fifteen (15) feet.
 6

7 C. The planting of a continuous vegetative screen may be used to satisfy, in part, the setback
 8 guidelines. Trees shall be at least six (6) feet high when planted and reach an ultimate height of at
 9 least fifteen (15) feet. The vegetation screen shall be planted along the appropriate parcel line(s),
 10 and be continuous.
 11

12 D. The necessary berming and/or planting must be completed during the first phase of development
 13 and maintained in good condition.
 14

15 E. If several crops or crop rotation is involved in the adjacent operation, the greater setback shall apply.
 16

17 F. A variance to buffer setbacks may be granted upon a demonstration that the guidelines of Section
 18 40.240.150 have been satisfied.
 19
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22 **40.240.140 BUFFERS FROM EXISTING RECREATION SITES**

23 If new buildings or structures may detract from the use and enjoyment of established recreation sites, an
 24 appropriate buffer shall be established between the building/structure and the parcel.
 25
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 27

28 **40.240.150 VARIANCES FROM SETBACKS AND BUFFERS (GMA)**

29 A. Variances from setbacks and buffers within the GMA shall be reviewed under Administrative Variance
 30 criteria of Section 40.550.020, including variance requests in excess of twenty-five (25%), which shall
 31 be subject to a Type II review. When setbacks or buffers for the protection of scenic, cultural, natural,
 32 recreation, agricultural or forestry resources, or non-resource uses, overlap or conflict, the setbacks or
 33 buffers may be varied upon a demonstration that:

- 34 1. A setback or buffer to protect one resource or use would cause the proposed use to fall
 35 within a setback or buffer to protect another resource, and
- 36 2. Variation from the specified setbacks or buffers would, on balance, best achieve the
 37 protection of the affected resources.
 38
 39

- 1 B. A setback or buffer for protection of scenic, cultural, natural, recreation, agricultural or forestry
 2 resources, or non-resource uses, may be varied to allow a residence to be built on a parcel of
 3 land upon a demonstration that:
 4 1. The land use designation otherwise authorizes a residence on the tract;
 5 2. No site exists on the tract (all contiguous parcels under the same ownership) on which a
 6 residence could practicably be placed in full compliance with the setback or buffer; and
 7 3. The variance from the specified setback or buffer is the minimum necessary to allow the
 8 residence.
 9
- 10 C. The responsible official may grant a variance to the setback and buffer requirements in Section
 11 40.240.890, upon finding that the following conditions exist:
 12 1. The proposed project is a public use, resource-based recreation facility providing or
 13 supporting either recreational access to the Columbia River and its tributaries, or
 14 recreational opportunities associated with a Scenic Travel Corridor.
 15 2. All reasonable measures to redesign the proposed project to comply with required setbacks
 16 and buffers have been explored, and application of those setbacks and buffers would
 17 prohibit a viable recreation use of the site as proposed.
 18 3. Resource impacts have been mitigated to less than adverse levels through design provisions
 19 and mitigation measures.
 20 4. The variance is the minimum necessary to accommodate the use.
 21
 22

23 **40.240.160 APPLYING NEW LESS-STRINGENT REGULATIONS TO DEVELOPMENT**
 24 **APPROVED UNDER PRIOR SCENIC AREA REGULATIONS**

25
 26 A landowner may submit a land use application to alter conditions of approval for an existing use or
 27 structure approved under prior Scenic Area regulations (e.g., *Columbia River Gorge National Scenic Area*
 28 *Final Interim Guidelines*, original Management Plan), subject to the following standards:
 29

- 30 A. The applicant shall apply for the same development that was reviewed in the original decision.
 31
 32 B. The development shall remain in its current location.
 33
 34 C. The agency that currently has jurisdiction over the applicant's property shall review the application
 35 and send notice of the application to agencies and other parties entitled to receive notice under the
 36 current rules.
 37
 38 D. The agency shall review the entire development to ensure that it would fully comply with all the
 39 current guidelines (i.e., land use, treaty rights, scenic resources, cultural resources, recreation
 40 resources and natural resources).
 41
 42 E. The agency shall issue a new decision that supersedes the original decision.
 43
 44 F. The new decision may remove or revise original conditions or approval or add new conditions or
 45 approval to ensure full compliance with all the current guidelines.
 46

47 **40.240.170 EXISTING AND DISCONTINUED USES**

- 48
 49 A. Except as otherwise provided, existing uses or structures in the Clark County portion of the Scenic
 50 Area may continue, so long as it is used in the same manner and for the same purpose.

- 1
2 B. Replacement of Existing Structures Not Damaged or Destroyed by Disaster.
3 Except as provided in Section 40.240.170(C) below, an existing structure may be replaced if a
4 complete land use application for a replacement structure is submitted to the reviewing agency within
5 one (1) year of the date the use of the original structure was discontinued. The replacement structure
6 shall comply with the following standards:
- 7 1. The replacement structure shall be used in the same manner and for the same purpose as the
8 original structure.
 - 9 2. The replacement structure may have a different size and/or location than the original structure.
10 An existing mobile home may be replaced with a framed residence and an existing framed
11 residence may be replaced with a mobile home.
 - 12 3. The replacement structure shall be subject to:
13 a. scenic, cultural, recreation and natural resources guidelines;
14 b. treaty rights guidelines; and
15 c. land use designations guidelines involving agricultural buffer zones, approval criteria for fire
16 protection, and approval criteria for siting of dwellings on forest land.
 - 17 4. The original structure shall be considered discontinued if a complete land use application for a
18 replacement structure is not submitted within the one year time frame.
19
- 20 C. Replacement of Existing Structures Damaged or Destroyed by Disaster.
21 An existing structure damaged or destroyed by fire, flood, landslide or other similar disaster may be
22 replaced if a complete land use application for a replacement structure is submitted to the reviewing
23 agency within two (2) years of the date the original structure was damaged or destroyed. The
24 replacement structure shall comply with the following standards:
- 25 1. The replacement structure shall be used in the same manner and for the same purpose as
26 the original structure. An existing mobile home may be replaced with a framed residence.
 - 27 2. The replacement structure shall be in the same location as the original structure. An
28 exception may be granted and the replacement structure may be sited in a different location
29 if the following conditions exist:
30 a. A registered civil engineer, registered geologist, or other qualified and licensed
31 professional hired by the applicant demonstrates the disaster made the original building
32 site physically unsuitable for reconstruction.
33 b. The new building site is no more visible from key viewing areas than the original building
34 site. An exception may be granted if a registered civil engineer, registered geologist, or
35 other qualified and licensed professional hired by the applicant demonstrates the subject
36 parcel lacks alternative building sites physically suitable for construction that are no more
37 visible from key viewing areas than the original building site.
38 c. The new building site complies with the cultural resources, natural resources, and treaty
39 rights protection guidelines.
 - 40 3. The replacement structure shall be the same size and height as the original structure;
41 provided, that:
42 a. The footprint of the replacement structure may be up to ten percent (10%) larger than the
43 footprint of the original structure.
44 b. The walls of the replacement structure shall be the same height as the walls of the
45 original structure unless a minor increase is required to comply with standards in the
46 current jurisdictional building code.
 - 47 4. The replacement structure shall only be subject to the following scenic resources standards:
48 a. The replacement structure shall comply with the scenic resources guidelines regarding
49 color and reflectivity. These guidelines shall be applied to achieve the applicable scenic
50 standard (visually subordinate or not visually evident) to the maximum extent practicable.
51 b. Decks, verandas, balconies and other open portions of the original structure shall not be
52 rebuilt as enclosed (walls and roof) portions of the replacement structure.
53 c. In the GMA, the replacement structure shall comply with the scenic resources guidelines
54 regarding landscaping. These guidelines shall be applied to achieve the applicable scenic
55 standard (visually subordinate) to the maximum extent practicable; provided, that:

- 1 (1) Except as provided in Section 40.240.170(C)(4)(c)(2), the percent of the replacement
2 structure screened by vegetation as seen from key viewing areas shall not exceed the
3 percent of the original structure that was screened by vegetation as seen from key
4 viewing areas. Coniferous vegetation shall be replaced with coniferous vegetation
5 and deciduous vegetation shall be replaced with deciduous vegetation unless the
6 applicant chooses to use all coniferous vegetation.
- 7 (2) In situations where the original structure was approved under Scenic Area regulations
8 (e.g., Final Interim Guidelines, land use ordinance), the percent of the replacement
9 structure screened by vegetation shall comply with any conditions of approval that
10 required a landowner to preserve existing vegetation and/or plant and maintain new
11 vegetation to screen the original structure as seen from key viewing areas.
- 12 (3) To help determine how much vegetation may be required under Sections
13 40.240.170(C)(4)(c)(1) and (2), land use applications shall include all available
14 documentation (photographic or otherwise) on the amount and type of vegetation
15 that screened the original structure from key viewing areas. At a minimum,
16 development review decisions shall include findings that address the following:
- 17 (a) The percent of original structure facing each key viewing area that was screened
18 by coniferous vegetation, for each key viewing area from which the structure was
19 visible.
- 20 (b) The percent of original structure facing each key viewing area that was screened
21 by deciduous vegetation, for each key viewing area from which the structure was
22 visible.
- 23 (c) Elevation drawings showing the replacement structure and the amount of
24 coniferous and deciduous vegetation that would screen the structure from key
25 viewing areas in ten (10) years.
- 26 (4) The height of any new trees shall not be required to exceed five (5) feet.
- 27 (5) The time frame for achieving visual subordination shall be ten (10) years or less from
28 the commencement of construction.
- 29 d. In the SMA, the replacement structure shall comply with the scenic resources guidelines
30 regarding landscaping. These guidelines shall be applied to achieve the applicable scenic
31 standard (visually subordinate or not visually evident) to the maximum extent practicable;
32 provided, that:
- 33 (1) The Scenic Resources Implementation Handbook shall be utilized to determine
34 approvable species and minimum approvable sizes of new trees planted (based on
35 average growth rates expected for approvable species).
- 36 (2) The height of any new trees shall not be required to exceed five (5) feet.
- 37 (3) The time frame for achieving the applicable scenic standard (visually subordinate or not
38 visually evident) shall be ten (10) years.
- 39 5. The replacement structure shall be pursuant to Sections 40.240.170(B)(1) and B(3) if it would
40 not comply with Sections 40.240.170(C)(2) and (C)(4).
- 41 6. The original structure shall be considered discontinued if a complete land use application for a
42 replacement structure is not submitted within the two- (2-) year time frame.
- 43
- 44 D. Changes to Existing Uses and Structures.
- 45 Except as otherwise provided, any change to an existing use or modification to the exterior of an
46 existing structure shall be subject to review and approval pursuant to this chapter.
- 47 1. Expansion of Existing Commercial and Multifamily Residential Uses. In the Special
48 Management Area, existing commercial and multi-family residential uses may expand as
49 necessary for successful operation on the dedicated site, pursuant to Sections 40.240.800
50 through 40.240.900 to minimize adverse effects on scenic, cultural, natural and recreation
51 resources. Expansion beyond the dedicated site is prohibited.
- 52 2. Expansion of Existing Industrial Uses. In the GMA existing industrial uses may expand as
53 necessary for successful operation on the dedicated site. Expansion beyond the dedicated site
54 is prohibited.

- 1 3. Conversion of Existing Industrial Uses. In the GMA, existing industrial uses may convert to less
 2 intensive uses. A less intensive use is a commercial, recreation or residential use with fewer
 3 adverse effects upon scenic, cultural, natural and recreation resources.
- 4 4. Existing Development or Production of Mineral Resources. In the GMA, existing development
 5 or production of mineral resources may continue unless the Gorge Commission determines that
 6 the uses adversely affect the scenic, cultural, natural or recreation resources of the Scenic
 7 Area. These uses will be considered discontinued and subject to this chapter if any of the
 8 following conditions exist:
 9 (a) The mined land has been reclaimed naturally or artificially to a point where it is revegetated
 10 to fifty percent (50%) of its original cover (considering both basal and canopy) or has
 11 reverted to another beneficial use, such as grazing. Mined land shall not include terrain
 12 which was merely leveled or cleared of vegetation.
 13 (b) The site has not maintained a required state permit.
 14 (c) The site has not operated legally within five (5) years before the date of adoption of the
 15 Management Plan.
- 16 5. Existing Development or Production of Mineral Resources. In the SMA, uses involving the
 17 exploration, development or production of sand, gravel or rock may continue if both of the
 18 following conditions exist:
 19 (a) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to
 20 manage or harvest forest products in the Special Management Area; and
 21 (b) A determination by the Forest Service finds that the use does not adversely affect the
 22 scenic, cultural, natural or recreation resources.

23
 24 **E. Discontinuance of Existing Uses and Structures.**

25 Except as provided in Section 40.240.170(C), any use or structure that is discontinued for one (1)
 26 year or more shall not be considered an existing use or structure. Proof of intent to abandon is not
 27 required to determine that an existing use or use of an existing structure has been discontinued.

- 28 1. Multiple Uses: An existing use or structure with more than one legally established use may
 29 discontinue one of the uses without discontinuing the others.
 30 2. Change in Use: An existing use or structure shall become discontinued if the use or use of
 31 the structure changes.

32
 33 **F. Discontinued Uses and Structures.**

34 Re-establishment or replacement of any use or structure that has been discontinued shall be subject
 35 to all applicable policies and guidelines in the Management Plan, including, but not limited to,
 36 guidelines for land use designations and scenic, cultural, recreation and natural resources
 37
 38

39 **40.240.180 INDIAN TRIBAL TREATY RIGHTS AND CONSULTATION**

40
 41 **A. New uses located in, or providing recreation river access to, the Columbia River or its fishbearing**
 42 **tributaries shall include the following supplemental information:**

- 43 1. The site plan map shall show adjacent river areas at least one-half (½-) mile upstream and
 44 downstream from the project site, the locations at which river access is planned, and the locations
 45 of all tribal fishing sites known to the project applicant.
 46 2. The site plan text shall include an assessment of the potential effects that new uses may have
 47 on Indian treaty rights. The assessment shall:
 48 a. Describe the type of river access and uses proposed, estimated period when the
 49 development would be used, and anticipated levels of use (people, boats, and other uses)
 50 during peak-use periods.
 51 b. List tribal commercial fishing seasons in the project vicinity, as established by the four treaty
 52 tribes.
 53 c. List tribal ceremonial fishing seasons in the project vicinity.

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- d. 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 twenty (20) calendar days from the date a notice is mailed to submit substantive written comments to the responsible official. 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.
- D. Tribal Government Consultation.
 - 1. When substantive written comments are submitted to a responsible official in a timely manner, the project applicant shall offer to meet with the responsible official and the Indian tribal government that submitted comments within ten (10) calendar days. The ten- (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.
 - 2. 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.
 - 3. The responsible official shall submit all protection plans to the Indian tribal governments. Indian tribal governments shall have thirty (30) calendar days from the date a protection plan is mailed to submit written comments to the responsible official.
- E. Conclusion of the Treaty Rights Protection Process.
 - 1. The responsible official 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 responsible official must justify how it reached an opposing conclusion.
 - 2. The treaty rights protection process may conclude if the responsible official determines that the proposed uses would not affect or modify treaty or other fights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.
 - 3. A finding by the responsible official 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.
- F. For new development and uses in the SMA, the Forest Service shall determine effects on treaty rights and shall notify the responsible official of the determination.

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2 **USES AND STRUCTURES ALLOWED IN VARIOUS LAND USE DESIGNATIONS**
3

4 **40.240.200 AGRICULTURAL BUILDINGS**
5

- 6 A. The size of proposed agricultural buildings shall not exceed the size needed to serve the current
7 agricultural use and, if applicable, the proposed agricultural use.
8
9 B. To satisfy Section 40.240.200(A), applicants shall submit the following information with their land use
10 application:
11 1. A description of the size and characteristics of current agricultural use.
12 2. An agricultural plan for any proposed agricultural use that specifies agricultural use (e.g., crops,
13 livestock, products), agricultural areas and acreages (e.g., fields, pastures, enclosures),
14 agricultural structures (e.g., irrigation systems, wind machines, storage bins) and schedules
15 (e.g., plowing, planting, grazing).
16 3. A floor plan showing intended uses of the agricultural building (e.g., space for equipment,
17 supplies, agricultural products, livestock).
18
19

20 **40.240.210 TEMPORARY USE HARDSHIP DWELLINGS**
21

- 22 Temporary use hardship dwellings shall be permitted in the GMA and SMA on parcels containing a
23 principal residential dwelling, subject to the following:
24 A. The temporary placement of a mobile home may be granted under the following circumstances:
25 1. A family hardship exists where conditions relate to the necessary care for a member of the family
26 occupying the principal dwelling and where medical conditions relate to the infirm or aged.
27 2. The hardship dwelling shall use the same subsurface sewage disposal system and well used by
28 the existing dwelling, or utilize existing public sewer and water systems. In all cases well and
29 septic systems shall be used in a manner and location to minimize impacts to resource lands.
30 3. The hardship dwelling is found to be consistent with the guidelines for protection of scenic,
31 cultural, natural and recreation resources of Sections 40.240.800 through 40.240.900.
32
33 B. A permit may be issued for a two- (2-) year period, subject to annual review for compliance with the
34 provisions of this rule and any other conditions of approval.
35
36 C. Upon expiration of the permit or cessation of the hardship, whichever comes first, the mobile home
37 shall be removed within thirty (30) days. A new permit may be granted upon a finding that a family
38 hardship continues to exist.
39
40

41 **40.240.220 SEWER AND WATER SERVICES**
42

- 43 A. Sewer lines may be extended from an urban area into a rural area to serve:
44 1. Areas with a documented health hazard.
45 2. Recreation uses open to the public, only upon a demonstration by the local government that
46 there is no practicable alternative to providing service to the area. In such cases, the lines shall
47 be engineered and sized solely to serve the defined area or use. Such lines shall not be relied
48 upon as the sole justification for revision to an Urban Area boundary.
49
50 B. New uses authorized in this chapter may hook up to existing sewer and water lines in rural areas.
51

1 **40.240.230 DOCKS AND BOATHOUSES**

- 2
- 3 A. New, private docks and boathouses serving only one (1) family and (1) one property shall be allowed,
4 up to one-hundred twenty (120) square feet in size.
- 5
- 6 B. New, private docks, and boathouses serving more than one (1) family and property shall be allowed,
7 up to two hundred (200) square feet in size.
- 8
- 9 C. Public docks open and available for public use shall be allowed.
- 10
- 11 D. Boathouses may be allowed under Sections 40.240.230(A) and (B) only when accessory to a dwelling
12 and associated with a navigable river or lake.
- 13

14 **40.240.240 HOME OCCUPATIONS AND COTTAGE INDUSTRIES**

15
16 Home occupations and cottage industries may be established as authorized in specified land use
17 designations consistent with the following guidelines:

- 18
- 19 A. A home occupation may employ only residents of the home.
- 20
- 21 B. A cottage industry may employ up to three (3) outside employees.
- 22
- 23 C. No more than twenty-five percent (25%) of the total actual living space of the dwelling may be used for
24 the home occupation or cottage industry.
- 25
- 26 D. No more than five hundred (500) square feet of an accessory structure may be used for a home
27 occupation or cottage industry.
- 28
- 29 E. There shall be no outside, visible evidence of the home occupation or cottage industry,
30 including outside storage.
- 31
- 32 F. Exterior structural alterations to the residence for the home occupation or cottage industry shall
33 not be permitted. New structures shall not be constructed for the primary purpose of
34 housing a home occupation or cottage industry.
- 35 G. No retail sales may occur on the premises, except incidental sales at lodging establishments
36 authorized in this chapter.
- 37
- 38 H. One (1) non-animated, non-illuminated sign, not exceeding two (2) square feet in area, may be
39 permitted on the subject structure or within the yard containing the home occupation or
40 cottage industry.
- 41
- 42 I. Parking not associated with residential use shall be screened so it is not visible from key
43 viewing areas.
- 44
- 45 J. In the GMA, a bed and breakfast lodging establishment that is two (2) bedrooms or less is considered
46 a home occupation and shall meet the guidelines of Sections 40.240.240 and 40.240.250.
- 47
- 48 K. In the SMA, a bed and breakfast lodging establishment that is two (2) bedrooms or less is considered
49 a home occupation and shall meet the guidelines of Sections 40.240.240 and 40.240.250, except
50 40.240.250(A)(4).
- 51
- 52

1 **40.240.250 BED AND BREAKFAST INNS**

2
3 Bed and breakfast inns may be established as authorized in specified land use designations
4 pursuant to Section 40.260.050, and the following:

- 5
6 A. Guests may not occupy a facility for more than fourteen (14) consecutive days.
7
8 B. One non-animated, non-illuminated sign not exceeding four (4) square feet in area may be permitted
9 on the structure or within the yard containing the structure.
10
11 C. Parking areas shall be screened so as to not be visible from key viewing areas.
12
13 D. In the SMA, bed and breakfast inns associated with residential use shall be allowed only in structures
14 that are included in, or eligible for inclusion in, the National Register of Historic Places.
15
16

17 **40.240.260 SMALL-SCALE FISHING SUPPORT AND FISH PROCESSING OPERATIONS**

18
19 Small-scale fishing support and fish processing operations in conjunction with a family-based commercial
20 fishing business may be allowed on parcels designated GMA Residential, GMA Small Woodland, or GMA
21 Small-Scale Agriculture, subject to the following conditions:

- 22
23 A. The operation shall comply with Section 40.240.180. In addition, if the operation will be located on
24 land designated Small Woodland, then it shall also comply with Sections 40.240.540 and
25 40.240.550.
26
27 B. The following fishing support activities may be allowed:
28 1. maintenance, repair, and storage of boats, nets, fish totes and other commercial fishing
29 equipment that is used in the family based commercial fishing business; and
30 2. garaging of fish hauling trucks, trailers and all other related equipment that is used in the family-
31 based commercial fishing business.
32
33 C. The following fish processing activities may be allowed: cleaning, gutting, heading, and icing or
34 freezing of fish that is caught by the family-based commercial fishing business. Other fish processing
35 activities shall not be allowed, including, but not limited to, canning, smoking, salting or brining for
36 wholesale or retail sale.
37
38 D. The operation shall be located on a lawful parcel that is contiguous with and has direct access to the
39 Columbia River.
40
41 E. The subject parcel shall include a lawful dwelling, and the permanent resident of the dwelling shall
42 participate in the fishing support and fish processing operation.
43
44 F. The operation may only employ residents of the dwelling and up to three (3) outside employees.
45
46 G. No more than twenty-five percent (25%) of the total actual living space of the dwelling may be used
47 for the fishing support and fish processing operation.
48
49 H. The operation may take place in an existing or new lawful accessory building or an existing
50 agricultural building on the subject parcel. A new building constructed for the purpose of housing a
51 fishing support and fish processing operation shall be considered an accessory building. An existing
52 agricultural building shall not be expanded and a new agricultural building shall not be constructed for
53 the purpose of housing a fishing support and fish processing operation.

- 1
2 I. An accessory building used in the fishing support and fish processing operation may be allowed
3 up to twenty-five hundred (2,500) square feet.
4
5 J. Docks may be allowed as follows:
6 1. One (1) dock serving a parcel with an approved fishing support and fish processing operation
7 may be allowed up to five hundred (500) square feet in size.
8 2. For multiple contiguous parcels each with approved fishing support and fish processing
9 operation, the area of the docks authorized in subsection (J)(1) above may be combined into
10 one (1) dock; provided, that the total size of the dock shall not exceed two thousand (2,000)
11 square feet.
12
13 K. There shall be no outside visible evidence of the fishing support and fish processing operation,
14 including storage, other than boats and docks.
15
16 L. No retail sales may occur on the parcel.
17
18 M. The operation shall only support and process fish caught by residents of the dwelling and up to
19 three (3) outside employees.
20
21 N. Before beginning the operation, applicants shall demonstrate that they have obtained and
22 complied with federal, state and/or local water quality and wastewater permits.
23
24

25 **40.240.270 RESOURCE ENHANCEMENT PROJECTS**

- 26
27 A. Applications for resource enhancement projects must describe the goals and benefits of the proposed
28 enhancement project. They must also thoroughly document the condition of the resource before and
29 after the proposed enhancement project.
30
31 B. In addition to other guidelines that protect scenic, cultural, recreation, and natural resources, quarry
32 enhancement projects shall comply with the following guidelines:
33 1. Application Requirements. In addition to other applicable requirements, land use applications for
34 quarry enhancement projects shall include perspective drawings of the site as seen from key
35 viewing areas as specified in Section 40.240.800 (B)(15) and a reclamation plan that provides all
36 the applicable information specified in Sections 40.240.800(A)(6)(a) through (e), except: (1) the
37 words "pre-reclamation" and "post-reclamation" should replace the words "pre-mining" and "post-
38 mining," respectively, and (2) the appropriate state agency or local government does not have to
39 approve the reclamation plan.
40 2. Scenic Resource Standard. Quarry enhancement projects shall restore the site to a natural
41 appearance that blends with and emulates surrounding landforms to the maximum extent
42 practicable.
43 3. Natural Resource Standard. Sites shall be replanted using native plants found in the landscape
44 setting or ecoregion to the maximum extent practicable.
45 4. Time Frames. The following time frames shall apply to quarry enhancement projects:
46 a. All grading (e.g., excavating, filling and re-contouring) shall be completed within one (1) year
47 of the date an applicant begins on-the-ground work.
48 b. All landscaping shall be planted within one (1) year of the date an applicant completes the
49 grading.
50 c. An applicant may request one- (1-) year extension to the one year grading time frame if a
51 project is unexpectedly delayed by adverse weather or emergency/disaster. Such requests
52 shall be considered an administrative action. An applicant shall submit such a request to the

- 1 reviewing agency after grading has commenced and before the one (1) year grading time
2 frame has expired.
- 3 d. An applicant may also request one six- (6-) month extension to the one- (1-) year landscaping
4 time frame if a project is unexpectedly delayed by adverse weather or emergency/disaster.
5 Such requests shall be considered an administrative action. An applicant shall submit such a
6 request to the reviewing agency after landscaping has commenced and before the one- (1-)
7 year landscaping time frame has expired.
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10 **40.240.280 DISPOSAL SITES FOR SPOIL MATERIALS FROM PUBLIC ROAD MAINTENANCE**

11 **ACTIVITIES**

12
13 **A. Application Requirements.**

14 In addition to other applicable requirements, land use applications for disposal sites shall include the
15 same information that applicants are required to submit for expansion of existing quarries and
16 production and/or development of mineral resources in the GMA, including, but not limited to:

- 17 1. A reclamation plan that provides all the applicable information specified in Sections
18 40.240.800(A)(6)(a) through (e), except (1) the words "pre-disposal" and "post-disposal"
19 should replace the words "pre-mining" and "post-mining" and (2) the appropriate state
20 agency or local government does not have to approve the reclamation plan.
- 21 2. Perspective drawings of the site as seen from key viewing areas as specified in Section
22 40.240.800(B)(15).
- 23 3. Cultural resource reconnaissance and historic surveys, as required by Section
24 40.240.820(A)(3)(a) and (b), respectively. Disposal sites shall be considered a "large-scale use"
25 according to Section 40.240.820(A)(3)(c).
- 26 4. Field surveys to identify sensitive wildlife areas or sites and sensitive plants as described in
27 Sections 40.240.860(C) and 40.240.870(C).
28

29 **B. Siting Standard.**

30 The proposed disposal site shall only be approved if the applicant demonstrates it is not practicable to
31 locate the disposal site outside the Scenic Area or inside an Urban Area. At a minimum, the applicant
32 shall submit a feasibility and suitability analysis that compares the proposed disposal site to existing
33 or potential disposal sites located both outside the Scenic Area and inside an Urban Area.
34

35 **C. Scenic Resource Standards.**

36 Disposal sites shall comply with the same scenic resources protection standards as expansion of
37 existing quarries and production and/or development of mineral resources in the GMA, as follows:

- 38 1. Sites more than three (3) miles from the nearest key viewing area shall be visually
39 subordinate as seen from any key viewing area, pursuant to Section 40.240.800(B). An interim
40 period to achieve compliance with this requirement shall be established before approval. The
41 period shall be based on site-specific topographic and visual conditions, but shall not exceed
42 three (3) years beyond the start of on-the-ground activities.
- 43 2. Sites less than three (3) miles from the nearest key viewing area shall be fully screened from
44 any key viewing area, pursuant to Section 40.240.800(B). An interim period to achieve
45 compliance with this requirement shall be established before approval. The period shall be based
46 on site-specific topographic and visual conditions, but shall not exceed one (1) year beyond the
47 start of on-the-ground activities. Disposal activity occurring before achieving compliance with full
48 screening requirements shall be limited to activities necessary to provide such screening
49 (creation of berms, etc.).
- 50 3. Reclamation plans shall restore the site to a natural appearance that blends with and
51 emulates surrounding landforms and vegetation patterns to the maximum extent practicable.

1 **40.240.290 COMMERCIAL EVENTS**

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- 3 A. Commercial events include weddings, receptions, parties and other small-scale gatherings that are
- 4 incidental and subordinate to the primary use on a parcel.
- 5
- 6 B. Commercial events may be allowed in the GMA except on lands designated Open Space or
- 7 Commercial Forest, subject to compliance with the following conditions and the scenic, cultural, natural
- 8 and recreation resources guidelines:
- 9 1. The use must be in conjunction with a lawful winery, wine sales/tasting room, bed and breakfast
- 10 inn, or commercial use. If the use is proposed on a property with a building on or eligible for the
- 11 National Register of Historic Places, it shall be subject to Section 40.240.310 and not the
- 12 requirements of this section.
- 13 2. The owner of the subject parcel shall live on the parcel and shall operate and manage the use.
- 14 3. A single commercial event shall host no more than one hundred (100) guests.
- 15 4. The use shall comply with the following parking requirements:
- 16 a. A single commercial event shall include no more than fifty (50) vehicles for guests.
- 17 b. All parking shall occur on the subject parcel;
- 18 c. At least two hundred (200) square feet of parking space shall be required for each vehicle;
- 19 d. Parking areas may be developed using paving blocks, gravel, or other pervious surfaces;
- 20 asphalt, concrete and other imperious materials shall be prohibited; and
- 21 e. All parking areas shall be fully screened from key viewing areas.
- 22 5. The owner of the subject parcel may conduct eighteen (18) single events up to one (1) day in
- 23 length per year.
- 24 6. The owner of the subject parcel shall notify the reviewing agency and all owners of land within five
- 25 hundred (500) feet of the perimeter of the subject parcel of each planned event. The notice shall
- 26 be in writing and shall be mailed at least seven (7) calendar days before an event.
- 27 7. Tents, canopies, portable restrooms and other similar temporary structures necessary for a
- 28 commercial event may be allowed; provided, that all such structures are erected or placed on the
- 29 subject parcel no more than two (2) days before the event and removed no more than two (2) days
- 30 after the event. Alternatively, temporary structures may remain in place for up to ninety (90) days
- 31 if they are fully screened from key viewing areas.
- 32 8. The use may be allowed upon demonstration that the following conditions exist to protect any
- 33 nearby agricultural and forest operations:
- 34 a. The use would not force a change in or increase the cost of accepted agricultural practices on
- 35 surrounding lands.
- 36 b. The use would be set back from any abutting parcel designated Large Scale or Small Scale
- 37 Agriculture, as required in Section 40.240.130 or designated Commercial Forest Land or Large
- 38 or Small Woodland, as required in Section 40.240.550.
- 39 c. A declaration has been signed by the landowner and recorded into county deeds and records
- 40 specifying that the owners, successors, heirs and assigns of the subject parcel are aware that
- 41 adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices
- 42 on lands designated Large Scale or Small Scale Agriculture, Commercial Forest Land or Large
- 43 or Small Woodland.
- 44 d. All owners of land in areas designated Large Scale or Small Scale Agriculture, Commercial
- 45 Forest Land, or Large or Small Woodland that is within five hundred (500) feet of the perimeter
- 46 of the subject parcel on which the use is proposed to be located have been notified and given
- 47 at least ten (10) days to comment prior to a decision.
- 48 e. Counties may impose additional requirements to address potential impacts to surrounding
- 49 neighbors. For example, they may limit noise, lighting and operating hours.
- 50 f. Land use approvals for commercial events shall not be valid for more than two (2) years.
- 51 Landowners must reapply for the use after a land use approval expires.
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1 **40.240.300 SIGNS**

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- 3 A. Signs may be allowed pursuant in all zoning districts in the GMA to the following provisions:
- 4 1. Except for signs along public highways necessary for public safety, traffic control or road
- 5 construction which are consistent with the Manual on Uniform Traffic Control Devices, the
- 6 following signs are prohibited:
- 7 a. Luminous signs or those with intermittent or flashing lights. These include neon signs,
- 8 fluorescent signs, light displays and other signs which are internally illuminated, exclusive of
- 9 seasonal holiday light displays.
- 10 b. New billboards;
- 11 c. Signs with moving elements; and
- 12 d. Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of
- 13 the vehicle.
- 14 2. Any sign which does not conform with a provision of this section and has existed prior to adoption
- 15 of the Management Plan shall be considered non-conforming and subject to the following:
- 16 a. Alteration of existing non-conforming signs shall comply with this section.
- 17 b. Any non-conforming sign used by a business must be brought into conformance concurrent
- 18 with any expansion or change in use which requires a development permit.
- 19 3. All signs shall meet the following guidelines unless they conflict with the Manual on Uniform Traffic
- 20 Control Devices for public safety, traffic control or highway construction signs. In such cases, the
- 21 standards in the Manual on Uniform Traffic Control Devices shall supersede these guidelines.
- 22 a. The support structure shall be unobtrusive and have low visual impact.
- 23 b. Lettering colors with sufficient contrast to provide clear message communication shall be
- 24 allowed. Colors of signs shall blend with their setting to the maximum extent practicable.
- 25 c. Backs of all signs shall be unobtrusive, non-reflective, and blend in with the setting.
- 26 d. Spot lighting of signs may be allowed where needed for night visibility. Backlighting is not
- 27 permitted for signs.
- 28
- 29 B. Signs in the SMA shall be allowed pursuant to the following provisions:
- 30 1. Prohibited Signs.
- 31 a. Advertising billboards.
- 32 b. Signs that move or give the appearance of moving, except signs used for highway
- 33 construction, warning or safety.
- 34 c. Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of
- 35 the vehicle, except for signs used for highway construction, warning or safety.
- 36 2. Pre-existing signs are allowed to continue; provided, that no changes occur in size, structure,
- 37 color, or message.
- 38 3. New signs shall be allowed as specified in the applicable zoning district.
- 39 4. No sign shall be erected or placed in such a manner that it may interfere with, be confused with,
- 40 or obstruct the view of any traffic sign, signal, or device.
- 41 5. Except for signs allowed without review pursuant to Section 40.240.120, all new signs shall meet
- 42 the following guidelines, and be consistent with the Manual on Uniform Traffic Control Devices:
- 43 a. Signs shall be maintained in a neat clean and attractive condition.
- 44 b. The character and composition of sign materials shall be harmonious with the landscape
- 45 and/or related to and compatible with the main structure upon which the sign is attached.
- 46 c. Signs shall be placed flat on the outside walls of buildings, not on roofs or marquees.
- 47 d. Signs shall be unobtrusive and have low contrast with the setting.
- 48 e. The visual impact of the support structure shall be minimized.
- 49 f. Outdoor sign lighting shall be used for purposes of illumination only, and shall not be
- 50 designed for, or used as, an advertising display, except for road safety signs.
- 51 g. Backs of all signs shall be visually unobtrusive, non-reflective, and blend in with the setting.
- 52 h. Sign internal illumination or backlighting shall not be permitted except for highway
- 53 construction, warning or safety.

- 1 6. Public signs shall meet the following guidelines in addition to subsections (B)(2) through (B)(5)
- 2 above:
- 3 a. The Graphic Signing System provides design guidelines for public signs in and adjacent to
- 4 public road rights-of-way. All new and replacement public signs, except those transportation
- 5 regulatory, guide, and warning signs allowed outright shall conform to the guidelines in this
- 6 system. Types of signs addressed include recreation site entry, interpretive, specific service
- 7 signs, destination and distance signs, variable message signs, or signs that bridge or are
- 8 cantilevered over the road surface.
- 9 b. Signs located outside public road rights-of-way are encouraged to be designed in such a way
- 10 as to be consistent with similar purpose signs described in the Graphic Signing System.
- 11 c. Signs posted by governmental jurisdictions giving notice to the public shall be no larger than
- 12 that required to convey the intended message.
- 13 7. Signs for public and commercial recreation facilities, home occupations, and commercial uses
- 14 shall meet the following guidelines in addition to subsections (B)(2) through (B)(6) above:
- 15 a. Any sign advertising or relating to a business which is discontinued for a period of thirty (30)
- 16 consecutive days shall be presumed to be abandoned and shall be removed within thirty (30)
- 17 days thereafter, unless permitted otherwise by the jurisdictional authority.
- 18 b. Any signs relating to, or advertising, a business shall be brought into conformance with these
- 19 sign guidelines prior to any expansion or change in use which is subject to review.
- 20 c. Off-site and on-site directional signs on approach roads to recreational facilities may be
- 21 permitted. Name and interpretive signs may be permitted on-site, but should be kept to the
- 22 minimum required to achieve the purpose(s) of the facilities.
- 23 d. Commercial recreation businesses approved in conjunction with a recreational facility may
- 24 have a name sign not exceeding sixteen (16) square feet.
- 25 e. Recreation developments may have one on-premise name sign at each principal entrance.
- 26 Such signs are encouraged to be of a low profile, monument type, and shall conform to the
- 27 Graphic Signing System.
- 28 8. Sign clutter and other negative visual effects from excessive signs along all roads and highways,
- 29 and at parking lots and recreation facilities, shall be reduced.
- 30
- 31

32 **40.240.310 SPECIAL USES IN HISTORIC BUILDINGS**

33 Special uses in historic buildings are allowed pursuant to the following:

- 34 A. For the purposes of this section, 'historic buildings' means buildings either on or eligible for the
- 35 National Register of Historic Places. Eligibility for the National Register shall be determined pursuant
- 36 to Section 40.240.310(C)(1)(a).
- 37
- 38
- 39 B. Additional review uses for historic buildings.
- 40 1. Properties in all GMA land use designations except Open Space and Agriculture-Special with
- 41 buildings included on the National Register of Historic Places shall be permitted to hold
- 42 commercial events, subject to the guidelines of Sections 40.240.800 through 40.240.900, and
- 43 subsections 40.240.310(C)(1)(b) through (e) and 40.240.310(C)(2) through (4).
- 44 2. Properties in all GMA land use designations except Open Space and Agriculture-Special with
- 45 buildings included on the National Register of Historic Places and which were former restaurants
- 46 and/or inns shall be permitted to re-establish these former uses, subject to the guidelines of
- 47 Sections 40.240.800 through 40.240.900, and subsections 40.240.310(C)(1)(b)(1) and (2),
- 48 40.240.310(C)(1)(c) through (e), and 40.240.310(C)(2) through (4). The capacity of restaurant
- 49 use and overnight accommodation shall be limited to that existing in the former use, and the
- 50 former use shall be contained within the limits of the building as of January 1, 2006. Banquets,
- 51 private parties, and other special events that take place entirely within an approved restaurant
- 52 facility shall be considered a restaurant use allowed under this section.
- 53

- 1 3. Properties in all GMA land use designations except Open Space and Agriculture-Special with
2 buildings included on the National Register of Historic Places shall be permitted to be open for
3 public viewing, interpretive displays, and an associated gift shop that is no larger than one
4 hundred (100) square feet and incidental and subordinate to the primary use of the property,
5 subject to the guidelines of Sections 40.240.800 through 40.240.900, and subsections
6 40.240.310(C)(1)(b)(1) and (2), 40.240.310(C)(1)(c) through (e), and 40.240.310(C)(2) through
7 (4). Voluntary donations and/or fees to support maintenance, preservation and enhancement of
8 the cultural resource may be accepted by the landowner.
- 9 4. The following additional review uses may be allowed in all GMA land use designations except
10 Open Space and Agriculture-Special on a property with a building either on or eligible for the
11 National Register of Historic Places and that was fifty (50) years old or older as of January 1,
12 2006, subject to the guidelines of Sections 40.240.800 through 40.240.900, and Section
13 40.240.310(C):
 - 14 a. Establishments selling food and/or beverages, limited to historic buildings that originally had
15 kitchen facilities. The seating capacity of such establishments shall be limited to the building
16 as the building existed on January 1, 2006, including any decks, terraces, or patios also
17 existing as of that date. Banquets, private parties, and other special events that take place
18 entirely within approved establishments selling food and/or beverages shall be considered
19 part of the approved use.
 - 20 b. Overnight accommodations, and the room capacity of such accommodations shall be limited
21 to the number of existing rooms in the historic building as of January 1, 2006.
 - 22 c. Commercial events in the building or on the subject property, incidental and subordinate to
23 the primary use of the property.
 - 24 d. Wineries, upon a showing that processing of wine is from grapes grown on the subject parcel
25 or the local region, within a historic building, as the building existed on January 1, 2006.
 - 26 e. Sales/tasting rooms in conjunction with an on-site winery, within a historic building, as the
27 building existed on January 1, 2006.
 - 28 f. Conference and/or retreat facilities within a historic building, as the building existed on
29 January 1, 2006.
 - 30 g. Artists studios and galleries within a historic building, as the building existed on January 1,
31 2006.
 - 32 h. Gift shops within a historic building, as the building existed on January 1, 2006, that are:
33 (1) incidental and subordinate to another approved use included in Section
34 40.240.310(B)(4), and
35 (2) no larger than one hundred (100) square feet.
 - 36 i. Interpretative displays, picnic areas or other recreational day use activities on the subject
37 property.
 - 38 j. Parking areas on the subject property to support any of the uses in this subsection.
- 39 5. Uses in subsections (B)(1) and (B)(4)(C) are not subject to the requirements of Section
40 40.240.290. Commercial events at historic properties are regulated by this section. Applications
41 for commercial events shall meet the requirements of Section 40.240.310(C)(1)(b)(4). The
42 following apply to commercial events at historic buildings:
 - 43 a. Commercial events include weddings, receptions, parties, and other gatherings that are
44 incidental and subordinate to the primary use of the parcel.
 - 45 b. The owner of the subject property shall notify the reviewing agency and all owners of land
46 within five hundred (500) feet of the perimeter of the subject property of each event. The
47 notice shall be in writing and shall be mailed at least seven (7) calendar days before an
48 event.
- 49 6. Uses in subsections (B)(3) and (B)(4)(I) are not subject to the parking limits in Sections
50 40.240.890 and 40.240.900.
- 51 7. Land use approvals for special uses in historic buildings shall be subject to review by the local
52 government every five years from the date the original approval was issued. As part of this
53 review, the applicant shall submit to the responsible official documentation on the progress made
54 in implementing the Protection and Enhancement Plan required by Section 40.240.310(C)(1)(b).

1 The responsible official shall submit a copy of such documentation to the State Historic
2 Preservation Officer (SHPO). The SHPO shall have thirty (30) calendar days from the date this
3 information is mailed to submit written comments to the responsible official. If the responsible
4 official's determination contradicts comments from the SHPO, the responsible official shall justify
5 how the opposing conclusion was reached. The responsible official shall revoke the land use
6 approval if the owner has failed to implement the actions described in the Protection and
7 Enhancement Plan according to the schedule for completing such actions in this plan. The
8 responsible official, however, may allow such a use to continue for up to one (1) additional year
9 from the date it is determined that the applicant has failed to implement the actions if the
10 applicant submits a written statement describing unforeseen circumstances that prevented the
11 applicant from completing the specified actions according to the approved schedule, what
12 progress the applicant has made towards completing such actions, and a proposed revised
13 schedule for completing such actions.

- 14 8. In the event a court enters a judgment that one or more of the use authorizations provided for in
15 subsections (B)(1) through (B)(4) are invalid, the authorizations for other uses in this subsection
16 are severed and will remain in effect.
17

18 C. Additional resource protection standards for uses in historic buildings. The following standards apply
19 to the proposed uses listed in subsection (B) above, in addition to the requirements of Sections
20 40.240.800 through 40.240.900:

21 1. Cultural resources.

- 22 a. All applications for uses listed in Section 40.240.310(B)(4) shall include a historic survey and
23 evaluation of eligibility for the National Register of Historic Places, to be prepared by a
24 qualified professional hired by the applicant. The evaluation of eligibility shall not be required
25 for buildings previously determined to be eligible. For such properties, documentation of a
26 prior eligibility determination shall be included in the application. The historic survey shall
27 meet the requirements specified in "Historic Surveys and Reports" (Management Plan, page
28 I-58). The evaluation of eligibility shall follow the process and include all information specified
29 in the National Register Bulletin "How to Apply the National Register Criteria for Evaluation"
30 (National Park Service, National Register Bulletin #15). Eligibility determinations shall be
31 made by the responsible official, based on input from the SHPO. The responsible official
32 shall submit a copy of any historic survey and evaluation to the SHPO. The SHPO shall have
33 thirty (30) calendar days from the date this information is mailed to submit written comments
34 on the eligibility of the property to the responsible official. If the responsible official's
35 determination contradicts comments from the SHPO, the responsible official shall justify how
36 the opposing conclusion was reached.

- 37 b. Applications for Special Uses for Historic Buildings shall include a Protection and
38 Enhancement Plan which shall include the following:

- 39 (1) A description of how the proposed use will significantly contribute to the protection and
40 enhancement of the historic resource, including specific actions that will be taken towards
41 restoration, protection and enhancement, and adequate maintenance of the historic
42 resource, and a proposed schedule for completing such actions.
43 (2) A statement addressing consistency of the proposed use with the *Secretary of the*
44 *Interior's Standards for Rehabilitation of Historic Properties* and the *Secretary of the*
45 *Interior's Standards for Preservation of Historic Properties*.
46 (3) Detailed architectural drawings and building plans that clearly illustrate all proposed
47 exterior alterations to the building associated with the proposed use. Any exterior
48 additions to the building or outdoor components of the proposed use (e.g., parking areas,
49 site for temporary structures, interpretive displays) shall be shown on the use plan.
50 (4) Any proposal for commercial events at a historic property shall include an Operation Plan
51 for Commercial Events, to be incorporated into the Protection and Enhancement Plan.
52 The Operational Plan shall include sufficient information to demonstrate how the
53 commercial events will remain incidental and subordinate to the primary use of the
54 property, and shall, at a minimum, address:

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- (a) Number of events to be held annually;
 - (b) Maximum size of events, including number of guests and vehicles at the proposed parking area;
 - (c) Provisions for temporary structures, including location and type of structures anticipated; and
 - (d) How the proposed commercial events will contribute to protection and enhancement of the historic resource.
- c. The responsible official shall submit a copy of the Protection and Enhancement Plan to the SHPO. The SHPO shall have thirty (30) calendar days from the date this information is mailed to submit written comments to the responsible official. The SHPO 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. The proposed use has been determined by the responsible official 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 responsible official's final decision contradicts the comments submitted by the SHPO, the responsible official shall justify how it reached its opposing conclusion.
 - e. Proposed alterations to the building or surrounding area associated with the proposed use have been determined by the responsible official 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 responsible official's final decision contradicts the comments submitted by the SHPO, the responsible official shall justify how it reached its opposing conclusion.
- 2. Scenic Resources.
 - a. New parking areas associated with the proposed use shall be located on the subject property as it existed on January 1, 2006. Such parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt 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 (i.e., tents, canopies, portable restrooms) shall be placed on the subject property no earlier than two (2) days before the event and removed within two (2) days after the event. Alternatively, temporary structures may remain in place for up to ninety (90) days after the event if the responsible official determines that they will be visually subordinate from key viewing areas.
 - 3. Recreation resources. The proposed use shall not detract from the use and enjoyment of existing recreation resources on nearby lands.
 - 4. 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 five hundred

1 (500) feet of the perimeter of the subject property on which the use is proposed to be located
2 have been notified and given at least ten (10) days to comment prior to a decision on an
3 application for a Special Use for a Historic Building.
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6 **LAND DIVISIONS AND LOT LINE ADJUSTMENTS**
7

8 **40.240.370 LAND DIVISIONS AND CLUSTER DEVELOPMENT**
9

- 10 A. New land divisions in the SMA are not allowed, unless the creation of a new parcel will facilitate land
11 acquisition by the federal government to achieve the policies and guidelines in the Management Plan.
12
- 13 B. New land divisions shall be permitted in the GMA if the following are met:
14 1. Proposed land divisions comply with Chapters 40.510 and the procedural requirements of
15 Chapters 40.520 and 40.540. Divisions of land resulting in four (4) or fewer lots shall be reviewed
16 under the procedures of Section 40.540.030 and Section 40.510.020. Divisions of land resulting
17 in five (5) or more lots shall be reviewed under the procedures of Section 40.540.040 and Section
18 40.510.030.
19 2. Lots resulting from such proposed land divisions shall comply with all applicable provisions of this
20 chapter, including minimum specified lot sizes and associated zoning maps.
21
- 22 C. Unless otherwise specified, creation of a parcel, regardless of size, or any division of land shall be
23 subject to the guidelines of this chapter.
24
- 25 D. At the time of creation of one or more new parcels, consolidation of access shall be considered in
26 order to reduce adverse effects on scenic, cultural, natural and recreation resources.
27
- 28 E. Where authorized in Sections 40.240.430(A)(20), 40.240.510(A)(20), and 40.240.650(F) a land
29 division in the GMA may create parcels smaller than the designated minimum size and may include a
30 bonus, as specified under Section 40.240.370(G) below, in order to cluster new dwellings. Approval
31 of cluster development shall be contingent upon submission of plans specifying dwelling sites and
32 areas of permanent, undeveloped open land. To approve a cluster development, the local
33 government must find that clustering new dwellings will provide a siting opportunity not available
34 through conventional parcel-by-parcel development. These opportunities include siting the new
35 dwellings to:
36 1. Be located in areas with screening vegetation or other features that reduce visibility of
37 development as seen from key viewing areas;
38 2. Avoid significant landscape features;
39 3. Protect the existing character of the landscape setting;
40 4. Reduce interference with movement of deer or elk in winter range;
41 5. Avoid areas of known cultural resources;
42 6. Consolidate road access, septic drainfields, or other development features to reduce impacts
43 associated with grading or ground disturbance;
44 7. Reduce adverse effects to riparian areas, wetlands, natural areas, rare plants, sensitive
45 wildlife sites, or other natural resources; and
46 8. Increase the likelihood of agricultural or forest management on the undeveloped land left by
47 the cluster development.
48
- 49 F. In the GMA, following cluster development, there may be no further division of any resulting parcel for
50 residential purposes until the subject parcel is included within the boundary of an Urban Area. The
51 local government shall ensure permanent protection for open areas created by cluster development.
52 No parcel in a cluster development may be smaller than one (1) acre in a five- (5-) acre Residential or

1 ten- (10-) acre Residential designation or two (2) acres in a Small-Scale Agriculture or Small
2 Woodland designation.

- 3
- 4 G. In the GMA, cluster development may create up to twenty-five percent (25%) more parcels than
5 otherwise allowed by the minimum parcel size on lands designated five- (5-) acre Residential or ten-
6 (10-) acre Residential and up to fifty percent (50%) more on lands designated Small-Scale Agriculture
7 or Small Woodland. Any division in a cluster development under this guideline may create at least
8 one additional parcel.
- 9
- 10 H. In the GMA, at least seventy-five percent (75%) of land subject to a cluster development shall be
11 permanently protected as undeveloped land.
- 12
- 13 I. In the GMA, contiguous parcels in the same ownership or in separate ownership may be consolidated
14 and redivided to take advantage of cluster development bonuses.
- 15
16

17 **40.240.380 LOT LINE ADJUSTMENTS**

18

19 A. The following guidelines shall apply to lot line adjustments in the GMA:

- 20 1. Lot line adjustments for parcels in all land use designations except Open Space, Commercial,
21 Public Recreation, or Commercial Recreation shall comply with the following standards:
- 22 a. The lot line adjustment shall not result in the creation of any new parcel(s).
- 23 b. The lot line adjustment shall not result in the potential to create a new parcel(s) or
24 residential development in excess of the minimum density allowed by the land use
25 designation(s) for the affected parcels.
- 26 c. The lot line adjustment shall not allow a parcel that is equal to or larger than the minimum
27 parcel size before the lot line adjustment to become less than the minimum parcel size after
28 the lot line adjustment, except to allow a public or non-profit entity to acquire land for the
29 purpose of protecting and enhancing scenic, cultural, recreation or natural resources;
30 provided, that the land to be acquired would be protected by a conservation easement or other
31 similar property restriction that precludes future land divisions and development.
- 32 d. The lot line adjustment shall not allow a parcel that is smaller than the minimum parcel size to
33 be reduced in size, except to accomplish one of the following purposes:
- 34 (1) Resolve boundary disputes, correct physical encroachments, provide reasonable access,
35 or meet buffer or set back requirements; provided, that (1) the parcel to be enlarged
36 would not become eligible for a subsequent land division and (2) the amount of land
37 transferred would be the minimum necessary to resolve the issue.
- 38 (2) Allow a public or non-profit entity to acquire land for the purpose of protecting
39 and enhancing scenic, cultural, recreation or natural resources; provided, that the land to
40 be acquired would be protected by a conservation easement or other similar property
41 restriction that precludes future land divisions and development.
- 42 e. The lot line adjustment shall not allow the boundary of a parcel designated Large-Scale
43 Agriculture, Commercial Forest Land, Large Woodland or Open Space to be extended into
44 another land use designation for the purpose of establishing a dwelling under less stringent
45 guidelines (e.g., extending a parcel designated GMA Large-Scale Agriculture into a parcel
46 designated Rural Center or Residential).
- 47 f. The lot line adjustment shall not allow previously approved parcels or developments to
48 violate conditions of approval or become out of compliance or further out of compliance with
49 existing land use and resource protection guidelines, including, but not limited to,
50 requirements for buffer zones and landscaping.
- 51 g. The lot line adjustment shall not result in a parcel that cannot comply with existing land
52 use and resource protection guidelines, including, but not limited to requirements for
53 buffer zones and landscaping.

- 1 2. Lot line adjustments for parcels designated Open Space shall comply with the following
2 standards:
- 3 a. The lot line adjustment may be allowed upon demonstration that it is necessary to
4 facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources.
5 There is no specified minimum parcel size for parcels designated Open Space.
- 6 b. The lot line adjustment shall comply with subsections (A)(1)(a), (e), (f) and (g) above.
- 7 3. Lot line adjustments for parcels designated Commercial shall comply with subsections
8 (A)(1)(a), (e), (f) and (g) above.
- 9 4. Lot line adjustments for parcels designated Public Recreation or Commercial Recreation shall
10 comply with the following standards:
- 11 a. The lot line adjustment may be allowed upon demonstration that it is necessary to
12 facilitate, enhance, or otherwise improve recreation uses on the parcel. There are no
13 specified minimum parcel sizes for parcels designated Public Recreation or Commercial
14 Recreation.)
- 15 b. The lot line adjustment shall comply with subsections (A)(1) (a), (e), (f) and (g) above.
- 16
- 17 B. The following guidelines shall apply to lot line adjustments in the SMA:
- 18 1. The proposed lot line adjustment shall not result in the creation of any new parcel(s).
- 19 2. A lot line adjustment shall not result in a parcel greater than or equal to forty (40) acres
20 becoming less than forty (40) acres.
- 21 3. A lot line adjustment shall not result in a parcel less than forty (40) acres becoming forty (40)
22 acres or greater.
- 23 4. A parcel that is smaller than forty (40) acres shall not be reduced in size, except to accomplish
24 one of the following purposes:
- 25 a. Resolve boundary line disputes, correct physical encroachments, provide reasonable
26 access, or meet buffer or set back requirements; provided, that (1) the parcel to be
27 enlarged would not become forty (40) acres or greater and (2) the amount of land
28 transferred would be the minimum necessary to resolve the issue.
- 29 b. Allow a public or non-profit entity to acquire land for the purpose of protecting and
30 enhancing scenic, cultural, recreation or natural resources; provided, that the land to be
31 acquired would be protected by a conservation easement or other similar property
32 restriction that precludes residential development.
- 33 5. The lot line adjustment shall not cause previously approved parcels or development to violate
34 conditions of approval or become out of compliance or further out of compliance with existing
35 land use and resource protection guidelines, including, but not limited to, requirements for
36 buffer zones and landscaping.
- 37 6. The lot line adjustment shall not result in a parcel that cannot comply with existing resource
38 protection guidelines, including, but not limited to requirements for buffer zones and
39 landscaping.
- 40
- 41

42 **40.240.390 CONSOLIDATION OF LOTS**

- 43
- 44 A. A unit of land shall be consolidated with adjacent lands in the same ownership if the unit of land:
- 45 1. is smaller than the current minimum parcel size;
- 46 2. is located within a final subdivision, division of land created by record of survey, or division of
47 land created by other mean of greater than four (4) lots; and
- 48 3. is older than five (5) years from the date of filing.
- 49 B. No portion of a consolidated plat shall be considered a separate parcel solely because an existing
50 parcel overlays, and possibly fragments, that consolidated subdivision.
- 51
- 52 C. Section 40.240.390(A) shall not be applied to consolidate two (2) or more units of land where each
53 unit of land is developed with a dwelling that qualifies as an existing use or is subject to a fully

1 complete application to develop a dwelling. One or more undeveloped units of land shall be
2 consolidated with one or more developed units of land.

3
4
5 **LAND USE DESIGNATIONS**
6

7 **40.240.400 AGRICULTURAL LAND DESIGNATIONS**

8
9 Sections 40.240.400 through 40.240.470 shall apply to those areas zoned Gorge Large-Scale or Small-
10 Scale Agriculture, Gorge SMA-Agriculture, on the Scenic Area Land Use Designation Map.
11
12

13 **40.240.410 USES ALLOWED OUTRIGHT-AGRICULTURAL LAND**

14
15 The uses listed in Section 40.240.120(A) are allowed without review on lands designated Large-Scale
16 Agriculture, Small-Scale Agriculture, or SMA Agriculture.
17
18

19 **40.240.420 USES ALLOWED THROUGH THE EXPEDITED DEVELOPMENT REVIEW PROCESS-**
20 **AGRICULTURAL LAND**

21
22 The uses listed in Section 40.240.060 are allowed with review through the expedited development review
23 process on lands designated Large-Scale Agriculture, Small-Scale Agriculture, or SMA Agriculture.
24
25

26 **40.240.430 REVIEW USES--AGRICULTURAL LAND**

- 27
28 A. The following uses may be allowed on lands zoned Gorge Large-Scale or Small-Scale Agriculture
29 pursuant to compliance with Sections 40.240.800 through 40.240.900:
30 1. New cultivation, pursuant to compliance with Sections 40.240.820 through 40.240.870.
31 2. Agricultural structures, except buildings, in conjunction with agricultural use.
32 3. Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed
33 agricultural use that a landowner would initiate within (1) one year and complete within five (5)
34 years, pursuant to Section 40.240.200.
35 4. Accessory structures for an existing or approved dwelling that are not otherwise allowed
36 outright, eligible for the expedited development review process, or allowed in subsections (A)(5)
37 and (6) below.
38 5. Accessory building(s) larger than two hundred (200) square feet in area or taller than ten (10)
39 feet in height for a dwelling on any legal parcel less than or equal to (ten) 10 acres in size are
40 subject to the following additional standards:
41 a. The combined footprints of all accessory buildings on a single parcel shall not exceed fifteen
42 hundred (1,500) square feet in area. This combined size limit refers to all accessory
43 buildings on a parcel, including buildings allowed without review, existing buildings
44 and proposed buildings.
45 b. The height of any individual accessory building shall not exceed twenty-four (24) feet.
46 6. Accessory buildings(s) larger than two hundred (200) square feet in area or taller than ten (10)
47 feet in height for a dwelling on any legal parcel larger than ten (10) acres in size are subject to
48 the following additional standards:
49 a. The combined footprints of all accessory buildings on a single parcel shall not exceed
50 twenty-five hundred (2,500) square feet in area. This combined size limit refers to all

- 1 accessory buildings on a parcel, including buildings allowed without review, existing
 2 buildings and proposed buildings.
- 3 b. The footprint of any individual accessory building shall not exceed fifteen twenty-four (24)
 4 (1,500) square feet.
- 5 c. The height of any individual accessory building shall not exceed twenty-four (24) feet.
- 6 7. The temporary use of a mobile home in the case of a family hardship, pursuant to Section
 7 40.240.210.
- 8 8. On lands zoned Gorge Large-Scale Agriculture, a single-family dwelling in conjunction with
 9 agricultural use, upon a demonstration that all of the following conditions exist:
- 10 a. The subject farm or ranch (including all of its constituent parcels, contiguous or otherwise) has
 11 no other dwellings that are vacant or currently occupied by persons not directly engaged in
 12 farming or working on the subject farm or ranch and that could be used as the principal
 13 agricultural dwelling; and
- 14 b. The farm or ranch upon which the dwelling will be located is currently devoted to agricultural
 15 use, where the day-to-day activities of one or more residents of the agricultural dwelling will
 16 be principally directed to the agricultural use of the land. Current use includes a minimum
 17 area which would satisfy Section 40.240.430(A)(9)(c)(4) below; and
- 18 c. The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the
 19 following factors:
- 20 (1) Size of the entire farm or ranch, including all land in the same ownership;
- 21 (2) Type(s) of agricultural uses (crops, livestock) and acreage;
- 22 (3) Operational requirements for the particular agricultural use that are common to other
 23 agricultural operations in the area; and
- 24 (4) Income capability. The farm or ranch, and all its constituent parcels, is capable of producing
 25 at least \$40,000 in gross annual income. This determination shall be made using the
 26 following formula:

27

28 $(A)(B)(C) = I$ where

- 29 A = Average yield of the commodity per acre, or unit of production
- 30 B = Average price of the commodity
- 31 C = Total acres suitable for production, or total units of production that can be
 32 sustained, on the subject farm or ranch
- 33 I = Income Capability
- 34

- 35 9. On lands zoned Gorge Large-Scale Agriculture, a second single-family dwelling in conjunction
 36 with agricultural use when the dwelling would replace an existing dwelling which is included in,
 37 or is eligible for inclusion in, the National Register of Historic Places, in accordance with the
 38 criteria for use in evaluating the eligibility of cultural resources contained in the National
 39 Register Criteria for Evaluation (36 CFR 60.4).
- 40 10. On lands zoned Gorge Small-Scale Agriculture, a single-family dwelling on any legally existing
 41 parcel.
- 42 11. On lands zoned Gorge Large-Scale Agriculture, a single-family dwelling for an agricultural
 43 operator's relative; provided, that all of the following conditions exist:
- 44 a. The dwelling would be occupied by a relative of the agricultural operator or of the agricultural
 45 operator's spouse who will be actively engaged in the management of the farm or ranch.
 46 Relative means grandparent, grandchild, parent, child, brother or sister;
- 47 b. The dwelling would be located on the same parcel as the dwelling of the principal operator;
 48 and
- 49 c. The operation is a commercial enterprise as determined by Section 40.240.430(A)(9)(c).
- 50 12. Construction, reconstruction or modifications of roads not in conjunction agriculture.
- 51 13. Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or
 52 natural resources, pursuant to Section 40.240.270. These projects may include new structures
 53 (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused
 54 roads, recontouring abandoned quarries).

- 1 14. Towers and fire stations for forest fire protection.
- 2 15. Agricultural labor housing upon a showing that:
 - 3 a. The proposed housing is necessary and accessory to a current agricultural use;
 - 4 b. The housing shall be seasonal unless it is shown that an additional full-time dwelling is
 - 5 necessary to the current agricultural use of the subject farm or ranch unit. Seasonal use
 - 6 shall not exceed nine (9) months; and
 - 7 c. The housing will be located to minimize the conversion of lands capable of production of
 - 8 farm crops or livestock and shall not force a significant change in or significantly increase the
 - 9 cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.
- 10 16. On lands designated Gorge Large-Scale Agriculture, on a parcel which was legally created and
- 11 existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural
- 12 use upon a demonstration that all of the following conditions exist:
 - 13 a. The dwelling will not force a change in or increase the cost of accepted agricultural practices
 - 14 on surrounding lands.
 - 15 b. The subject parcel is predominantly unsuitable for the production of farm crops and
 - 16 livestock, considering soils, terrain, location and size of the parcel. Size alone shall not be
 - 17 used to determine whether a parcel is unsuitable for agricultural use. An analysis of
 - 18 suitability shall include the capability of the subject parcel to be utilized in conjunction with
 - 19 other agricultural operations in the area.
 - 20 c. The dwelling shall be set back from any abutting parcel designated Gorge Large-Scale, or
 - 21 Small-Scale Agriculture, as required in Section 40.240.130(A) or any abutting parcels zoned
 - 22 Gorge Large or Small Woodland, as required in Section 40.240.140(A).
 - 23 d. A declaration has been signed by the landowner and recorded into county deeds and
 - 24 records specifying that the owners, successors, heirs and assigns of the subject property are
 - 25 aware that adjacent and nearby operators are entitled to carry on accepted agriculture or
 - 26 forest practices on lands zoned Gorge Large-Scale or Small-Scale Agriculture, or Gorge
 - 27 Small Woodland.
 - 28 e. All owners of land in areas zoned Gorge Large-Scale or Small-Scale Agriculture, or Gorge
 - 29 Small Woodland within five hundred (500) feet of the perimeter of the subject parcel on
 - 30 which the dwelling is proposed to be located have been notified and given at least ten (10)
 - 31 days to comment prior to a decision.
- 32 17. On parcels in Small-Scale Agriculture, a land division creating parcels smaller than the
- 33 designated minimum parcel size, pursuant to Section 40.240.370. If the designated minimum
- 34 parcel size is twenty (20) acres, this provision will apply to parcels forty (40) acres in size or
- 35 larger. Similarly, if the designated minimum parcel size is forty (40), eighty (80), or one-
- 36 hundred sixty (160) acres, this provision will apply to parcels eighty (80) acres or larger, on-
- 37 hundred sixty (160) acres or larger, or three-hundred twenty (320) acres or larger,
- 38 respectively.
- 39 18. Life estates, pursuant to Section 40.240.450.
- 40 19. Land divisions, pursuant to Section 40.240.370.
- 41 20. Lot line adjustments that would result in the potential to create additional parcels through
- 42 subsequent land divisions, pursuant to Section 40.240.380.
- 43 21. Additions to existing buildings greater than two hundred (200) square feet in area or greater
- 44 than the height of the existing building.
- 45 22. Docks and Boathouses, pursuant to Section 40.240.230.
- 46 23. Removal/demolition of structures that are fifty (50) or more years old, including wells, septic
- 47 tanks and fuel tanks.
- 48 24. Commercial events, pursuant to Section 40.240.290.
- 49 25. Placement of structures necessary for continued public safety and the protection of private
- 50 property and essential public services damaged during an emergency/disaster event. This
- 51 includes the replacement of temporary structures erected during such events with permanent
- 52 structures performing an identical or related function. Land use proposals shall be submitted
- 53 within twelve (12) months following an emergency/disaster event.
- 54

1 B. The following uses may be allowed on lands zoned Gorge SMA-Agriculture, pursuant to compliance
2 with Sections 40.240.800 through 40.240.900. The use or development shall be sited to minimize the
3 loss of land suitable for the production of agricultural crops or livestock:

4 1. New cultivation or new agricultural use outside of previously disturbed and regularly worked fields
5 or areas. Clearing trees for new agricultural use is subject to the additional requirements of
6 Section 40.240.510(B)(24).

7 2. Forest uses and practices as allowed in Section 40.240.510(B)(25).

8 3. A single-family dwelling necessary for and accessory to agricultural use upon a demonstration
9 that all of the following conditions exist:

10 a. The proposed dwelling would be the only dwelling on the subject farm or ranch, including
11 contiguous lots/parcels.

12 b. The farm or ranch upon which the dwelling will be located is currently devoted to agricultural,
13 use, where the day-to-day activities of one (1) or more residents of the dwelling will be
14 principally directed to the agricultural use of the land. The farm or ranch must currently satisfy
15 guideline (c)(4) below.

16 c. The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of
17 the following criteria:

18 (1) Size of the entire farm or ranch, including all land in the same ownership.

19 (2) Type(s) of agricultural uses (crops, livestock, orchard, etc.) and acreage.

20 (3) Operational requirements for the particular agricultural use that are common to other
21 agricultural operations in the area.

22 (4) Income capability. The farm or ranch, and all its contiguous parcels, must be capable of
23 producing at least \$40,000 in gross annual income. This determination can be made
24 using the following formula with periodic adjustments for inflation:

25
26
$$(A)(B)(C) = I \quad \text{where}$$

27 A = Average yield of the commodity per acre or unit of production

28 B = Average price of the commodity

29 C = Total acres suitable for production, or total units of production that can be
30 sustained, on the subject farm or ranch

31 I = Income capability

32 d. Minimum parcel size of forty (40) contiguous acres.

33
34 4. Farm labor housing on a parcel with an existing dwelling under the following conditions:

35 a. The proposed housing is necessary and accessory to a current agricultural use and a
36 showing that the operation is a commercial agricultural enterprise as determined by Section
37 40.240.430(B)(3)(c).

38 b. The housing shall be seasonal unless it is shown that an additional full-time dwelling is
39 necessary for the current agricultural use. Seasonal use shall not exceed nine months.

40 c. The housing shall be located to minimize the conversion of lands capable of production of
41 farm crops and livestock and shall not force a significant change in or significantly increase
42 the cost of accepted agricultural uses employed on nearby lands devoted to agricultural use.

43 5. Agricultural structures, except buildings, in conjunction with agricultural use.

44 6. Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed
45 agricultural use that a landowner would initiate within one (1) year and complete within five (5)
46 years, pursuant to Section 40.240.200.

47 7. Accessory structures for an existing or approved dwelling that are not otherwise allowed outright,
48 eligible for the expedited development review process, or allowed in subsections (B)(8) and
49 (B)(9) below.

50 8. Accessory building(s) larger than two hundred (200) square feet in area or taller than ten (10) feet
51 in height for a dwelling on any legal parcel less than or equal to ten (10) acres in size are subject
52 to the following additional standards.

53 a. The combined footprints of all accessory buildings on a single parcel shall not exceed fifteen

- 1 hundred (1,500) square feet in area. This combined size limit refers to all accessory buildings
 2 on a parcel, including buildings allowed without review, existing buildings and proposed
 3 buildings.
- 4 b. The height of any individual accessory building shall not exceed twenty-four (24) feet.
- 5 9. Accessory building(s) larger than two hundred (200) square feet in area or taller than ten (10) feet
 6 in height for a dwelling on any legal parcel larger than ten (10) acres in size are subject to the
 7 following additional standards:
- 8 a. The combined footprints of all accessory buildings on a single parcel shall not exceed twenty-
 9 five hundred (2,500) square feet in area. This combined size limit refers to all accessory
 10 buildings on a parcel, including buildings allowed without review, existing buildings and
 11 proposed buildings.
- 12 b. The footprint of any individual accessory building shall not exceed fifteen hundred (1,500)
 13 square feet.
- 14 c. The height of any individual accessory building shall not exceed twenty-four (24) feet.
- 15 10. Home occupations pursuant to Section 40.240.240. The use or development shall be compatible
 16 with agricultural use. Buffer zones should be considered to protect agricultural practices from
 17 conflicting uses.
- 18 11. Bed and breakfast inns pursuant to Section 40.240.250. The use or development shall be
 19 compatible with agricultural use. Buffer zones should be considered to agricultural practices from
 20 conflicting uses.
- 21 12. Fruit stands and produce stands upon a showing that sales will be limited to products raised on
 22 the property and other agriculture properties in the local region.
- 23 13. Aquaculture.
- 24 14. Exploration, development, and production of sand, gravel, and crushed as defined by Section
 25 40.240.010(B), for the construction, maintenance, or reconstruction of roads used to manage or
 26 harvest commercial forest products on lands with SMA pursuant to Sections 40.240.010(B) and
 27 40.240.800, and all applicable Federal, State and county standards.
- 28 15. Utility facilities necessary for public service upon a showing that:
- 29 a. There is no alternative location with less adverse effect on Agriculture lands.
- 30 b. The size is the minimum necessary to provide the service.
- 31 16. Temporary asphalt/batch plant operations related to public road projects, not to exceed six (6)
 32 months.
- 33 17. Community facilities and non-profit facilities related to agricultural resource management.
- 34 18. Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or
 35 natural resources, pursuant to Section 40.240.270. These projects may include new structures
 36 (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused
 37 roads, recontouring abandoned quarries).
- 38 19. Expansion of existing non-profit group camps, retreats, and conference or education centers for
 39 the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.
- 40 20. Public recreation, commercial recreation, interpretive and educational developments and uses
 41 consistent with Section 40.240.900.
- 42 21. Road and railroad construction and reconstruction.
- 43 22. Agricultural product processing and packaging, upon demonstration that the processing will be
 44 limited to products produced primarily on or adjacent to the property. "Primarily" means a clear
 45 majority of the product as measured by volume, weight, or value.
- 46 23. On a parcel of forty (40) acres or greater with an existing dwelling, the temporary use of a mobile
 47 home in the case of a family hardship, pursuant to Section 40.240.210.
- 48 24. Additions to existing buildings greater than two hundred (200) square feet in area or greater than
 49 the height of the existing building.
- 50 25. Docks and boathouses, pursuant to Section 40.240.230.
- 51 26. Demolition of structures that are fifty (50) or more years old, including wells, septic tanks and fuel
 52 tanks.
- 53 27. Disposal sites managed and operated by the Washington State Department of Transportation or
 54 a Gorge county public works department for earth materials and any intermixed vegetation

1 generated by routine or emergency/disaster public road maintenance activities within the Scenic
2 Area, pursuant to Section 40.240.280.

- 3 28. Placement of structures necessary for continued public safety and the protection of private
4 property and essential public services damaged during an emergency/disaster event. This
5 includes the replacement of temporary structures erected during such events with permanent
6 structures performing an identical or related function. Land use proposals shall be submitted
7 within twelve (12) months following an emergency/disaster event.
8
9

10 **40.240.440 REVIEW USES WITH ADDITIONAL APPROVAL CRITERIA, LARGE-SCALE**

11 **OR SMALL-SCALE AGRICULTURE DESIGNATIONS**

12
13 The following uses may be allowed on lands zoned Gorge Large-Scale or Small-Scale Agriculture,
14 subject to compliance with Sections 40.240.800 through 40.240.900, consistent with Section 40.240.460:
15

- 16 A. Utility facilities and railroads necessary for public service upon a showing that:
17 1. There is no practicable alternative location with less adverse effect on agricultural or forest lands;
18 and
19 2. The size is the minimum necessary to provide the service.
20
21 B. Home occupations in existing residential or accessory structures, pursuant to Section 40.240.240.
22
23 C. Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on
24 the subject farm and other farms in the local region.
25
26 D. Wineries, in conjunction with on-site viticulture, upon a showing that processing of wine is from
27 grapes grown on the subject farm or in the local region.
28
29 E. Wine tasting rooms, in conjunction with an on-site winery.
30
31 F. Agricultural product processing and packaging, upon a showing that the processing will be limited to
32 products grown primarily on the subject farm and sized to the subject operation.
33
34 G. Exploration of mineral and geothermal resources pursuant to Section 40.240.800.
35
36 H. Development and production of mineral and geothermal resources, as defined by Section
37 40.240.040, and pursuant to Section 40.240.800 and all other applicable Federal, State and county
38 standards, including those of Section 40.250.020. Type IV review procedures specified under Section
39 40.510.040 shall be required.
40
41 I. Personal-use airstrips including associated accessory structures such as a hangar. A personal-use
42 airstrip is an airstrip restricted, except for aircraft emergencies, to use by the owner and on an
43 infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection
44 with agricultural operations. No aircraft may be based on a personal use airstrip other than those
45 owned or controlled by the owner of the airstrip.
46
47 J. Agriculture.
48
49 K. Recreation development, pursuant to Section 40.240.890.
50
51 L. Boarding of horses.
52

- 1 M. Temporary portable asphalt/batch plants related to public road projects, not to exceed six (6) months.
 2
 3 N. Bed and breakfast inns in single-family dwellings, pursuant to Section 40.240.250 and provided that
 4 the residence:
 5 1. Is included in the National Register of Historic Places; or
 6 2. Is listed on the Washington State Register of Historic Places maintained by the Washington
 7 Office of Archaeology and Historic Preservation.
 8
 9 O. Non-profit, environmental learning or research facilities.
 10
 11 P. Expansion of existing schools or places of worship.
 12
 13 Q. On parcels designated Small-Scale Agriculture, small-scale fishing support and fish processing
 14 operations on parcels that are contiguous with and have direct access to the Columbia River, subject
 15 to Section 40.240.260.
 16
 17 R. Disposal sites managed and operated by the Washington State Department of Transportation, for
 18 earth materials and any intermixed vegetation generated by routine or emergency/disaster public road
 19 maintenance activities within the Scenic Area, pursuant to Section 40.240.280.
 20
 21 S. Special uses in historic buildings, pursuant to Section 40.240.310.
 22
 23

24 **40.240.450 APPROVAL CRITERIA FOR LIFE ESTATES - GORGE LARGE-SCALE OR**

25 **SMALL-SCALE AGRICULTURE ZONES**

26
 27 A landowner who sells or otherwise transfers real property on lands zoned Gorge Large-Scale or
 28 Small-Scale Agriculture may retain a life estate in a dwelling and a tract of land surrounding the dwelling.
 29 The life estate tract shall not be considered a parcel as defined in Section 40.240.040. A second dwelling
 30 in conjunction with agricultural use may be allowed, subject to compliance Sections 40.240.800 through
 31 40.240.900 and upon findings that:
 32

- 33 A. The proposed dwelling is in conjunction with agricultural use, using guidelines from Section
 34 40.240.230(A)(9).
 35
 36 B. Upon termination of the life estate, the original or second dwelling shall be removed.
 37
 38

39 **40.240.460 APPROVAL CRITERIA FOR SPECIFIED REVIEW USES ON LANDS ZONED**

40 **GORGE LARGE-SCALE OR SMALL-SCALE AGRICULTURE**

41
 42 Uses identified in Section 40.240.440 may be allowed only if they meet both of the following criteria:
 43

- 44 A. The use is compatible with agricultural uses and would not force a change in or significantly increase
 45 the cost of accepted agricultural practices on nearby lands devoted to agricultural use; and
 46
 47 B. The use will be sited to minimize the loss of land suitable for the production of crops or livestock.
 48
 49

1 **40.240.470 DIMENSIONAL STANDARDS**

2
3 The following dimensional standard provisions shall apply to lands zoned Gorge Large or Small-Scale
4 Agriculture, or Gorge SMA Agriculture unless otherwise noted herein. In the event of conflict between
5 other Title 40 chapters and this chapter, the provisions of this chapter shall prevail.

- 6 A. All new land divisions shall comply with Section 40.240.370 and all applicable county regulations.
7 Newly created lots shall comply with the following minimum lot size requirements:
8 1. Gorge Large-Scale Agriculture 80 (GLSA-80), 80 acres.
9 2. Gorge Large-Scale Agriculture 40 (GLSA-40), 40 acres.
10 3. Gorge Small-Scale Agriculture (GSA), 20 acres.
11 4. Gorge SMA Agriculture (GSA) 40 acres for a new residence. New land division shall be permitted
12 in the SMA only when the creation of new parcels facilitates Federal acquisition of lands to
13 achieve the policies of the overall Management Plan.
14
15 B. Minimum lot width of six-hundred sixty (660) feet for newly created lots.
16
17 C. No minimum lot depth requirement.
18
19 D. Minimum front setback of fifty (50) feet for all buildings from public road right-of-way or private road
20 easement.
21
22 E. Minimum side setback of two hundred (200) feet for all residential buildings, and twenty-five (25) feet
23 for non residential buildings.
24
25 F. Minimum street side setback of twenty-five (25) feet for all buildings.
26
27 G. Minimum rear setback of two hundred (200) feet for all residential buildings, and twenty-five (25) feet
28 for non residential buildings.
29
30 H. Setbacks shall comply with provisions of Sections 40.240.130 and 40.240.150.
31
32 I. Maximum height restriction of thirty-five (35) feet for residential structures, unless superceded by
33 Scenic Review Criteria of Section 40.240.800 or Section 40.240.810.
34
35 J. Where larger setbacks are not required by Section 40.240.130, parcels which are non-conforming as
36 to minimum lot size or width and depth requirements may observe building setbacks of fifty (50) feet
37 from all property lines except side setbacks adjacent to streets, which may observe building setbacks
38 of twenty-five (25) feet.
39
40

41 **40.240.480 FOREST LAND DESIGNATIONS**

42
43 Sections 40.240.140 and 40.240.480 through 40.240.570 shall apply to those areas zoned Gorge Small
44 Woodland and SMA-Forest.
45

46 **40.240.490 USES ALLOWED OUTRIGHT - FOREST LAND**

47
48 The uses listed in Section 40.240.120(A) are allowed without review on lands designated Commercial
49 Forest Land, Large Woodland, Small Woodland, or SMA Forest.
50
51

1 **40.240.500 USES ALLOWED THROUGH THE EXPEDITED DEVELOPMENT REVIEW PROCESS**
2 **- FOREST LAND**

3
4 The uses listed in Section 40.240.060 are allowed with review through the expedited development review
5 processes on lands designated Commercial Forest Land, Large Woodland, Small Woodland, or SMA
6 Forest.
7

8 **40.240.510 REVIEW USES - FOREST LAND**

- 9
10 A. The following uses may be allowed on lands zoned Gorge Small Woodland subject to compliance
11 with Sections 40.240.800 through 40.240.900:
- 12 1. On lands designated Gorge Small Woodland, one single-family dwelling on a legally created
13 parcel upon the parcels enrollment in the state's forest assessment program. Upon a showing that
14 a parcel cannot qualify, a parcel is entitled to one (1) single-family dwelling. In either case, the
15 location of a dwelling shall comply with Sections 40.240.140 and 40.240.540. A declaration shall
16 be signed by the landowner and recorded into county deeds and records specifying that the
17 owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby
18 operators are entitled to carry on accepted farm or forest practices on lands designated gorge
19 Small Woodland, or Gorge Large-Scale or Small-Scale Agriculture.
 - 20 2. One (1) single-family dwelling if shown to be in conjunction with and substantially contribute to the
21 current agricultural use of a farm pursuant to Section 40.240.430(A)(9). The siting of the dwelling
22 shall comply with Section 40.240.540.
 - 23 3. Temporary on-site structures which are auxiliary to and used during the term of a particular forest
24 operation. "Auxiliary" means a use or alteration of a structure or land which provides help or is
25 directly associated with the conduct of a particular forest practice. An auxiliary structure shall be
26 located on-site, temporary in nature, and not designed to remain for the forests entire growth cycle
27 from planting to harvesting. An auxiliary use is removed when the particular forest practice for
28 which it was approved has concluded.
 - 29 4. Temporary portable facilities for the primary processing of forest products grown on a parcel or
30 contiguous parcels in the same ownership where the facility is to be located. The facility shall be
31 removed upon completion of the harvest operation.
 - 32 5. Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or
33 natural resources, pursuant to Section 40.240.270. These projects may include new structures
34 (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads,
35 recontouring abandoned quarries).
 - 36 6. Structures associated with hunting and fishing operations.
 - 37 7. Towers and fire stations for forest fire protection.
 - 38 8. Agricultural structures, except buildings, in conjunction with an agricultural use, pursuant to Section
39 40.240.540.
 - 40 9. Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed
41 agricultural use that a landowner would initiate within one (1) year and complete within five (5)
42 years, pursuant to Sections 40.240.200 and 40.240.540.
 - 43 10. Accessory structures for an existing or approved dwelling that are not otherwise allowed outright,
44 eligible for the expedited development review process, or allowed in subsections (11) or (12)
45 below.
 - 46 11. Accessory building(s) larger than two hundred (200) square feet in area or taller than ten (10) feet
47 in height for a dwelling on any legal parcel less than or equal to ten (10) acres in size are pursuant
48 to Sections 40.240.540 and 40.240.550, and the following additional standards:
 - 49 a. The combined footprints of all accessory buildings on a single parcel shall not exceed fifteen
50 hundred (1,500) square feet in area. This combined size limit refers to all accessory buildings
51 on a parcel, including buildings allowed without review, existing buildings and proposed

- 1 buildings.
- 2 b. The height of any individual accessory building shall not exceed twenty-four (24) feet.
- 3 12. Accessory buildings(s) larger than two hundred (200) square feet in area or taller than ten (10) feet
- 4 in height for a dwelling on any legal parcel larger than ten (10) acres in size are pursuant to
- 5 Sections 40.240.540 and 40.240.550 and the following additional standards:
- 6 a. The combined footprints of all accessory buildings on a single parcel shall not exceed twenty-
- 7 five hundred (2,500) square feet in area. This combined size limit refers to all accessory
- 8 buildings on a parcel, including buildings allowed without review, existing buildings and
- 9 proposed buildings.
- 10 b. The footprint of any individual accessory building shall not exceed fifteen hundred (1,500)
- 11 square feet.
- 12 c. The height of any individual accessory building shall not exceed twenty-four (24) feet.
- 13 13. The temporary use of a mobile home in the case of a family hardship, pursuant to Sections
- 14 40.240.210, 40.240.540, and 40.240.550.
- 15 14. A second single-family dwelling for a farm operator's relative, pursuant to Sections 40.240.140,
- 16 40.240.430(A)(9) and 40.240.540.
- 17 15. Private roads serving a residence, pursuant to Sections 40.240.140 and 40.240.540.
- 18 16. Recreation development, pursuant to Section 40.240.890 and the Recreation Development Plan
- 19 (Management Plan, Part III, Chapter 1).
- 20 17. Construction or reconstruction of roads or modifications not in conjunction with forest use or
- 21 practices.
- 22 18. Agricultural labor housing upon a showing that:
- 23 a. The proposed housing is necessary and accessory to a current agricultural use.
- 24 b. The housing shall be seasonal unless it is shown that an additional full-time dwelling is
- 25 necessary to the current agricultural use of the subject agricultural unit. Seasonal use shall not
- 26 exceed nine months.
- 27 c. The housing shall be located to minimize the conversion of lands capable of production of farm
- 28 crops and livestock and will not force a significant change in or significantly increase the cost
- 29 of accepted agricultural practices employed on nearby lands devoted to agricultural use.
- 30 19. On parcels in Small Woodland, a land division creating parcels smaller than the designated
- 31 minimum parcel size, pursuant to Section 40.240.370. If the designated minimum parcel size is
- 32 twenty (20) acres, this provision will apply to parcels forty (40) acres in size or larger. Similarly, if
- 33 the designated minimum parcel size is forty (40) or eighty (80) acres, this provision will apply to
- 34 parcels eighty (80) acres or larger or one-hundred sixty (160) acres or larger, respectively.
- 35 20. New cultivation, subject to compliance with Sections 40.240.820, and 40.240.840 through
- 36 40.240.870.
- 37 21. Life Estates on lands Gorge Small Woodland, pursuant to Section 40.240.560.
- 38 22. Land divisions, pursuant to Section 40.240.370(B)(1).
- 39 23. Placement of structures necessary for continued public safety and the protection of private
- 40 property and essential public services damaged during an emergency/disaster event. This
- 41 includes the replacement of temporary structures erected during such events with permanent
- 42 structures performing an identical or related function. Land use proposals shall be submitted within
- 43 twelve (12) months following an emergency/disaster event.
- 44 24. Lot line adjustments that would result in the potential to create additional parcels through
- 45 subsequent land divisions, pursuant to Section 40.240.380.
- 46 25. Additions to existing buildings greater than two hundred (200) square feet in area or greater than
- 47 the height of the existing building.
- 48 a. Docks and boathouses, pursuant to Section 40.240.230.
- 49 b. Removal/demolition of structures that are fifty (50) or more years old, including wells, septic
- 50 tanks and fuel tanks.
- 51 c. Commercial events on lands designated Large Woodland or Small Woodland, pursuant to
- 52 Section 40.240.290.
- 53

- 1 B. The following uses may be allowed on lands zoned Gorge SMA Forest pursuant to Sections
2 40.240.800 through 40.240.900. The use or development will be sited to minimize the loss of land
3 suitable for the production of forest products:
- 4 1. Any use listed in Section 40.240.430(B).
 - 5 2. New Cultivation or new agricultural use outside of previously disturbed and regularly worked
6 fields or areas. Clearing trees for new agricultural use is subject to the additional
7 requirements of subsection (24) below.
 - 8 3. Railroad and road construction or reconstruction.
 - 9 4. Exploration, development, and production of sand, gravel, or crushed rock, as defined in Section
10 40.240.040, for the construction, maintenance, or reconstruction of roads used to manage or
11 harvest commercial forest products in the SMA, pursuant to Sections
12 40.240.800 and 40.250.020, and all other applicable Federal, State and county standards.
 - 13 5. Silvicultural nurseries.
 - 14 6. Utility facilities for public service upon a finding that:
 - 15 a. There is no alternative location with less adverse effect on Forest Land, and
 - 16 b. The size is the minimum necessary to provide the service.
 - 17 7. Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or
18 natural resources, pursuant to Section 40.240.270. These projects may include new structures
19 (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused
20 roads, recontouring abandoned quarries).
 - 21 8. Fish hatcheries and agricultural facilities.
 - 22 9. Public recreation, commercial recreation, interpretive and educational developments and uses
23 consistent with Section 40.240.810.
 - 24 10. One (1) single family dwelling on a parcel of forty (40) contiguous acres or larger if an approved
25 Forest Management Plan demonstrates that such dwelling is necessary for and accessory to
26 forest uses. The Forest Management Plan shall demonstrate the following:
 - 27 a. The dwelling will contribute substantially to the growing, propagation, and harvesting of
28 trees. The principal purpose for allowing a dwelling on forest lands is to enable the
29 resident to conduct efficient and effective management. This requirement shall indicate a
30 relationship between ongoing forest management and the need for dwelling on the
31 subject property.
 - 32 b. The subject parcel has been enrolled in the states forest assessment program.
 - 33 c. A plan for management of the parcel has been approved by the Washington Department
34 of Natural Resources and the responsible official. The plan must indicate the condition
35 and productivity of lands to be managed; the operations the owner will carry out (thinning,
36 harvest, planting, etc.); a chronological description of when the operations will occur,
37 estimates of yield, labor, and expenses; and how the dwelling will contribute towards the
38 successful management of the property.
 - 39 d. There are no other dwellings on the parcel that are vacant or currently occupied by
40 persons not engaged in forest management of the subject parcel.
 - 41 e. The dwelling complies with all applicable building code and fire protection guidelines.
 - 42 f. A declaration has been signed by the landowner and recorded into county deeds and
43 records specifying that the owners, successors, heirs, and assigns of the subject property
44 are aware that adjacent and nearby operations are entitled to carry on accepted
45 agricultural or forest practices.
 - 46 11. Accessory structures for an existing or approved dwelling that are not otherwise allowed outright,
47 eligible for the expedited development review process, or allowed in subsections (12) or (13),
48 below.
 - 49 12. Accessory building(s) larger than two hundred (200) square feet in area or taller than ten (10) feet
50 in height for a dwelling on any legal parcel less than or equal to ten (10) acres in size are subject
51 to the following additional standards.
 - 52 a. The combined footprints of all accessory buildings on a single parcel shall not exceed
53 fifteen hundred (1,500) square feet in area. This combined size limit refers to all accessory
54 buildings on a parcel, including buildings allowed without review, existing buildings and
55 proposed buildings.

- 1 b. The height of any individual accessory building shall not exceed twenty-four (24) feet.
- 2 13. Accessory building(s) larger than two hundred (200) square feet in area or taller than ten (10) feet
- 3 in height for a dwelling on any legal parcel larger than ten (10) acres in size are subject to the
- 4 following additional standards:
- 5 a. The combined footprints of all accessory buildings on a single parcel shall not exceed
- 6 twenty-five hundred (2,500) square feet in area. This combined size limit refers to all
- 7 accessory buildings on a parcel. Including buildings allowed without review, existing
- 8 buildings and proposed buildings.
- 9 b. The footprint of any individual accessory building shall not exceed fifteen hundred (1,500)
- 10 square feet.
- 11 c. The height of any individual accessory building shall not exceed twenty-four (24) feet.
- 12 14. Home occupations, pursuant to Section 40.240.240.
- 13 15. Temporary portable facility for the processing of forest products.
- 14 16. Towers and fire stations for forest fire protection.
- 15 17. Community facilities and nonprofit facilities related to forest resource management.
- 16 18. Expansion of existing nonprofit group camps, retreats, or conference or education centers,
- 17 necessary for the successful operation of the facility on the dedicated site. Expansion beyond
- 18 the dedicated site shall be prohibited.
- 19 19. On a parcel of forty (40) acres or greater with an existing dwelling, the temporary use of a mobile
- 20 home in the case of a family hardship pursuant to Section 40.240.210.
- 21 20. Additions to existing buildings greater than two hundred (200) square feet in area or greater than
- 22 the height of the existing building.
- 23 21. Docks and boathouses, pursuant to Section 40.240.230.
- 24 22. Demolition of structures that are fifty (50) or more years old, including wells, septic tanks and fuel
- 25 tanks.
- 26 23. Disposal sites managed and operated by the Washington State Department of Transportation,
- 27 or a Gorge county public works department for earth materials and any intermixed vegetation
- 28 generated by routine or emergency/disaster public road maintenance activities within the Scenic
- 29 Area, subject to compliance with Section 40.240.280.
- 30 24. Clearing trees for new agricultural use with the following steps and subject to the following
- 31 additional guidelines:
- 32 a. A stewardship Plan pursuant to Section 40.420.510(B)(25)(c) shall be submitted and
- 33 deemed complete by the responsible official and submitted to the Forest Service for review.
- 34 b. Clearing trees for new agricultural use shall be limited to fifteen (15) acres.
- 35 c. If the Stewardship Plan proves that the above guideline is detrimental to the proposed
- 36 agricultural use, the final size of the clearing shall be determined by the application of
- 37 subsection 24(d) below and pursuant to subsection 24(j) below.
- 38 d. After a thirty- (30-) day public comment period, the Forest Service shall review the
- 39 Stewardship Plan using the following criteria:
- 40 (1) Scenic Resource guidelines in Sections 40.240.510(B)(25)(d)(1) and (5).
- 41 (2) Applicable guidelines of Sections 40.240.800 through 40.240.900.
- 42 (3) The Natural Resource Conservation Service (NRCS) soil unit description shall
- 43 indicate that soils are suitable for the proposed agricultural use. The woodland
- 44 management tables shall be used as part of the analysis of suitability for both
- 45 agricultural and forest uses.
- 46 (4) The size, shape and pattern on the landscape of the clearing for the new agricultural
- 47 use shall blend with the surrounding landscape pattern either because the existing
- 48 pattern includes agricultural openings or because the new agricultural opening is
- 49 designed to appear natural.
- 50 e. The Forest Service shall send the review statement to the responsible official. The Forest
- 51 Service shall state whether or not the new agricultural use should proceed including any
- 52 conditions that are recommended to be required by the responsible official.
- 53 f. The responsible official will accept an application for new agricultural use on forested lands
- 54 after receipt of a positive review statement from the Forest Service.

- 1 g. The forest practice portion of the new agricultural use shall not be approved by the state
2 forestry department or responsible official until a decision on the new agricultural use is
3 issued by the responsible official.
- 4 h. The new agricultural use shall be operational within two (2) years of the time frame
5 described in the approved Stewardship Plan.
- 6 i. New agricultural uses with an approved Stewardship Plan requiring more than fifteen (15)
7 acres shall attain the final approved size sequentially. After the first fifteen (15) cleared
8 acres is operational, each subsequent clearing shall not occur until the previous clearing is
9 operational.
- 10 25. Forest practices in accordance with an approved forest practices application (see Section
11 40.240.050), and pursuant to Section 40.240.570.
- 12 a. The following information, in addition to general site plan requirements Section 40.240.050
13 shall be required:
- 14 (1) Delineate the following on a recent aerial photo or detailed map:
- 15 (a) The size, shape, and exact location of the proposed treatment area including any
16 clumps of leave trees to remain. If more than one silvicultural prescription is to be
17 used, code each on the photo;
- 18 (b) Other important natural features of the subject parcel such as steep areas,
19 streams, wetlands, rock outcrops, etc.;
- 20 (c) Road and structure construction and/or reconstruction location;
- 21 (d) Location of proposed rock or aggregate sources;
- 22 (e) Major skid trails, landings, and yarding corridors;
- 23 (f) Commercial firewood cutting areas; and
- 24 (g) Protection measures for scenic, cultural, natural, and recreation resources, such
25 as road closures.
- 26 (2) A description of the existing forest in terms of species, ages, sizes, landscape pattern
27 (including how it fits into the surrounding landscape pattern) and canopy closure for all
28 canopy layers.
- 29 (3) A description of how the forest practice will fit into the existing landscape pattern and
30 how it will meet scenic and natural resource standards in Sections 40.240.510(B)(25)(d)
31 and (e).
- 32 (4) Written silvicultural prescriptions with projected post-treatment forest condition specified
33 in terms of species, ages, sizes, landscape pattern (including how it fits into the
34 surrounding landscape pattern) and canopy closure for all canopy layers.
- 35 (5) Road and structure construction and/or reconstruction design.
- 36 (6) Existing and proposed rock pit development plans.
- 37 (7) A discussion of slash disposal methods.
- 38 (8) A reforestation plan as reviewed by the appropriate state forest practices agency.
- 39 b. As part of the application, flag, stake or mark buffers, any trees or downed wood to be
40 retained or removed (whichever makes the most sense), and areas for placing fill or
41 removing material in preparation for a field visit by the reviewer.
- 42 c. Stewardship Plan Requirements: The following information, in addition to the applicable
43 portions of the forest practice application requirements above and general site plan
44 requirements shall be provided:
- 45 (1) An outline of the long term goals, proposed operations, and future sustainability of the
46 subject parcel.
- 47 (2) A description of the time frame and steps planned to reach the long term goals.
- 48 (3) For Forest Practices, describe how the proposed activities fit into the long term goals
49 and sustainability of the parcel and/or forest health. The following shall be addressed:
- 50 (a) The range of natural conditions expected in the forest in terms of tree
51 species, structure, and landscape pattern;
- 52 (b) What the resulting tree species, structure, and landscape pattern will be after
53 the proposed activities;
- 54 (c) A clear explanation of how a deviation from the applicable guidelines may better
55 achieve forest health objectives; and

- 1 (d) A clear explanation how and why the proposed activities will lead the forest
2 towards its range of natural viability and result in reaching sustainability, resiliency to
3 disturbances.
- 4 (4) For clearing trees for new agricultural use, the following shall be addressed in addition
5 to Sections 40.240.510(B)(25)(c)(1) and (2) above:
- 6 (a) How each NRCS soil unit will be affected by the proposed clearing or treatment;
7 (b) A clear explanation, based on the needs of the operation, as to the exact size of
8 the clearing needed and how it will meet the natural and scenic requirements set forth
9 in Sections 40.240.570(B)(4)(d)(1) through (4);
10 (c) Describe in sufficient detail for evaluation the proposed agricultural use, the
11 improvements needed on the parcel, time line for its establishment, and its
12 marketability; and
13 (d) Evidence that an agricultural specialist, such as the county extension agent,
14 has examined and found the proposed agricultural use reasonable and viable.
- 15 d. For forest practices, the following scenic resource guidelines shall apply:
- 16 (1) Forest practices shall meet the design guidelines and scenic standards for the applicable
17 landscape setting and zone.
- 18 (2) In the western portion (to White Salmon River) of the SMA Coniferous Woodland
19 Landscape Setting, no more than eight percent (8%) of the composite key viewing area
20 view shed from which the forest practice is topographically visible shall be in created
21 forest openings at one time. The view shed boundaries shall be delineated by the Forest
22 Service. The Forest Service will assist (as available) in calculating and delineating the
23 percentage of the composite key viewing area view shed that is in crated forest openings
24 at one time.
- 25 (3) For all other landscape settings, created forest openings visible at one time shall be
26 within the desired range for the vegetation type as set forth in Natural Resources
27 guidelines in Sections 40.240.510(B)(25)(e)(1) through (4).
- 28 (4) Size, shape, and dispersal of created forest openings shall maintain the desired natural
29 patterns in the landscape as set forth in Natural Resources guidelines in Sections
30 40.240.510(B)(25)(e)(1) through (3).
- 31 (5) The maximum size of any created forest opening is set forth by the "Desired" vegetation
32 type in the Forest Structure and Pattern Table.
- 33 (a) If the treatment is proposed to go beyond the above guideline based on forest health
34 or ecosystem function requirements, a Stewardship Plan shall be required.
- 35 (b) If the Stewardship Plan proves that the above guideline is detrimental to either forest
36 health or ecosystem function, the size of the created forest opening shall be within the
37 natural range for the vegetation type as listed in the Desired Forest Structure and
38 Pattern Table for each vegetation type, shall not mimic catastrophic fires, and shall
39 maintain scenic standards.
- 40 (6) Created forest openings shall not create a break or opening in the vegetation in the
41 skyline as viewed from a key viewing area.
- 42 e. Forest practices shall maintain the following in addition to applicable natural resources
43 guidelines in Section 40.240.800:
- 44 (1) Silvicultural prescriptions shall maintain the desired natural forest stand structures (trees
45 species, spacing, layering, and mixture of sizes) based on forest health and ecosystem
46 function requirements. Forest tree stand structure shall meet the requirements listed in
47 the Desired Forest Structure and Pattern Table for each vegetation type. Forest tree
48 stand structure is defined as the general structure of the forest in each vegetation type
49 within which is found forest openings.
- 50 (2) Created forest openings shall be designed as mosaics not to exceed the limits defined as
51 Desired in the Desired Forest Structure and Pattern Table unless proposed as a
52 deviation as allowed under the scenic resource guideline in Section 40.240.510(B)(12).
- 53 (3) Snag and down wood requirements shall be maintained or created as listed in the
54 Desired Forest Structure and Pattern Table for each vegetation type.

1 (4) If the treatment is proposed to deviate from the snag and down wood requirements, a
2 Stewardship Plan shall be required and shall show and prove why a deviation from the
3 snag and down wood requirements based on forest health or ecosystem function
4 requirements, a Stewardship Plan shall be required.

5 26. Placement of structures necessary for continued public safety and the protection of private
6 property and essential public services damaged during an emergency/disaster event. This
7 includes the replacement of temporary structures erected during such events with permanent
8 structures performing an identical or related function. Land use proposals
9 shall be submitted within twelve (12) months following an emergency/disaster event.
10
11

12 **40.240.520 REVIEW USES WITH ADDITIONAL APPROVAL CRITERIA FOR GORGE**

13 **SMALL WOODLAND DESIGNATIONS**

14
15 The following uses may be allowed on lands designated Gorge Small Woodland, subject to compliance
16 with Sections 40.240.800 through 40.240.900, and consistent with Section 40.240.530:
17

- 18 A. Utility facilities and railroads necessary for public service upon a showing that (1) there is no
19 practicable alternative location with less adverse effect on agricultural and forest lands and on scenic,
20 cultural, natural and recreation resources, and (2) the size is the minimum necessary to provide the
21 service.
22
- 23 B. Home occupations in an existing residence or accessory structure, pursuant to Section 40.240.240.
24
- 25 C. Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on
26 the subject farm and other farms in the local region.
27
- 28 D. Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes
29 grown on the subject farm or in the local region.
30
- 31 E. Wine tasting rooms, in conjunction with an on-site winery.
32
- 33 F. Agricultural product processing and packaging, upon a showing that the processing will be limited to
34 products grown primarily on the subject farm and sized to the subject operation.
35
- 36 G. Exploration of mineral and geothermal resources, pursuant to Sections 40.240.800 through
37 40.240.900.
38
- 39 H. Development, and production of mineral and geothermal resources, as defined by Section
40 40.240.040, pursuant to Section 40.240.800 and all other applicable Federal, State and county
41 standards, including those of Section 40.250.020. Type III review procedures specified under Section
42 40.510.030 shall be required.
43
- 44 I. Aquaculture.
45
- 46 J. Boarding of horses.
47
- 48 K. Temporary portable asphalt/batch plants related to public road projects, not to exceed six (6) months.
49
- 50 L. Expansion of existing nonprofit group camps, retreats, or conference centers.
51

- 1 M. Bed and breakfast inns in single-family dwellings, pursuant to Section 40.240.250 and provided that
- 2 the residence:
- 3 1. Is included in the National Register of Historic Places, or
- 4 2. Is listed on the Washington State Register of Historic Places maintained by the Washington
- 5 Office of Archaeology and Historic Preservation.
- 6
- 7 N. Nonprofit, environmental learning or research facilities.
- 8
- 9 O. On parcels designated small woodland, small-scale fishing support and fish processing operations on
- 10 parcels that are contiguous with and have direct access to the Columbia River, pursuant to Section
- 11 40.240.260.
- 12
- 13 P. Disposal sites managed and operated by the Washington State Department of Transportation, or a
- 14 Gorge County public works department for earth materials and any intermixed vegetation generated
- 15 by routine or emergency/disaster public road maintenance activities within the Scenic Area, pursuant
- 16 to Section 40.240.280.
- 17
- 18 Q. Special uses in historic buildings, pursuant to Section 40.240.310.
- 19
- 20

21 **40.240.530 APPROVAL CRITERIA FOR SPECIFIED REVIEW USES ON LANDS ZONED**

22 **GORGE SMALL WOODLAND**

23
24 Uses identified in Section 40.240.520 may be allowed only if they meet the following criteria:

- 25
- 26 A. The owners of land designated Gorge Small Woodland, or Gorge Large-Scale or Small-Scale
- 27 Agriculture that lies within five hundred (500) feet of the perimeter of the subject parcel have been
- 28 notified of the land use application and have been given at least ten (10) days to comment prior to a
- 29 final decision;
- 30
- 31 B. The use will not interfere seriously with accepted forest or agricultural practices on nearby lands
- 32 devoted to resource use;
- 33
- 34 C. The use will be sited in a way that minimizes the loss of forest or agricultural land and minimizes the
- 35 chance of interference with accepted forest or agricultural practices on nearby lands; and
- 36
- 37 D. The use will not significantly increase fire hazard, fire suppression costs or risks to fire suppression
- 38 personnel and will comply with Section 40.240.540.
- 39
- 40

41 **40.240.540 APPROVAL CRITERIA FOR FIRE PROTECTION IN FOREST DESIGNATIONS (GMA)**

42
43 All uses, as specified, shall comply with the following fire safety guidelines within the GMA:

- 44
- 45 A. All buildings shall be surrounded by a maintained fuel break of at least fifty (50) feet. Hazardous fuels
- 46 shall be removed within the fuel break area. Irrigated or fire resistant vegetation may be planted
- 47 within the fuel break. This could include green lawns and low shrubs (less than twenty-four (24)
- 48 inches in height). Trees should be spaced greater than fifteen (15) feet between the crowns and
- 49 pruned to remove dead and low (less than eight (8) feet) branches. Accumulated leaves, needles,
- 50 and other dead vegetation shall be removed from beneath trees.

- 1
2 B. Buildings with plumbed water systems shall install at least one standpipe a minimum of fifty (50) feet
3 from the structure(s).
4
5 C. A pond, stream, tank or sump with storage of not less than one thousand (1,000) gallons, or a well or
6 water system capable of delivering twenty (20) gallons per minute shall be provided. If a well pump is
7 located on-site, the electrical service shall be separate from the dwelling.
8
9 D. Access drives shall be constructed to a minimum of twelve (12) feet in width and not exceed a grade
10 of twelve percent (12%). Turnouts shall be provided at a minimum of every five hundred (500) feet.
11 Access drives shall be maintained to a level that is passable to fire equipment. Variances to road
12 guidelines may be made only after consultation with the Director of Public Works, local rural fire
13 district, and the Washington Department of Natural Resources.
14
15 E. Within one (1) year of the occupancy of a dwelling, the responsible official shall conduct a review of
16 the development to assure compliance with these guidelines.
17
18 F. Telephone and power supply systems shall be underground whenever possible.
19
20 G. Roofs of structures should be constructed of fire-resistant materials such as fiberglass shingle or tile.
21 Roof materials such as cedar shake and shingle should not be used.
22
23 H. Any chimney or stovepipe on any structure for use with a woodstove or fireplace should be screened
24 with no coarser than quarter-inch mesh metal screen that is noncombustible and corrosion resistant
25 and should be equipped with a spark arrestor.
26
27 I. All structural projections such as balconies, decks and roof gables should be built with fire resistant
28 materials equivalent to that specified in the International Building Code.
29
30 J. Attic openings, soft vents, foundation louvers or other ventilation openings on dwellings and
31 accessory structures should be screened with no coarser than quarter-inch mesh metal screen that is
32 noncombustible and corrosion resistant.
33
34 K. Proposed uses shall comply with all applicable provisions of CCC Title 15 Fire Prevention, including
35 Chapter 15.13 and Chapter 14.05. Section 40.240.540 requirements shall prevail in the event of
36 conflict with these county codes.
37
38

39 **40.240.550 APPROVAL CRITERIA FOR SITING OF DWELLINGS ON FOREST LAND**

40
41 The approval of new dwellings and accessory structures on or immediately adjacent to lands within a
42 Forest zone in the GMA shall comply with the following guidelines:
43

- 44 A. The dwelling and structures shall be sited on the parcel so that they will have the least impact on
45 nearby or adjoining forest operations. Dwellings shall be set back at least two hundred (200) feet
46 from adjacent parcels within the Forest zone. The responsible official may grant a variance to this
47 setback under the provisions of Section 40.240.150.
48
49 B. The amount of forest land used to site dwellings, structures, access roads, and service corridors
50 shall be minimized. This can include locating new dwellings and structures as close to existing
51 public roads as possible, thereby minimizing the length of access roads and utility corridors; or
52 locating the dwelling, access road, and service corridors on portions of the parcel that are least or

1 poorly suited for forestry. Areas may not be suitable for forestry because of existing non-forest
2 uses, adjacent dwellings, or land productivity.

- 3
4 C. Dwellings shall be located to minimize the risks associated with fire. Dwellings should be located
5 on gentle slopes and in any case not on slopes which exceed forty percent (40%). Narrow
6 canyons and draws should be avoided. Dwellings should be located to minimize the difficulty in
7 gaining access to the structure in the case of fire. Dwellings should be located to make the access
8 roads as short and flat as possible.
9
10 D. Grouping proposed development closer to existing development on adjacent lands may be used to
11 minimize impacts on nearby or adjacent forest operations.
12
13

14 **40.240.560 APPROVAL CRITERIA FOR LIFE ESTATES IN GORGE SMALL WOODLAND**

15
16 A landowner who sells or otherwise transfers real property on lands zoned Gorge Small Woodland may
17 retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not
18 be considered a parcel. A second dwelling unit on lands designated Gorge Small Woodland may be
19 allowed, pursuant to Sections 40.240.800 through 40.240.900 and upon findings that:
20

- 21 A. The proposed dwelling is in conjunction with agricultural use pursuant to Section 40.240.430(A)(9).
22
23 B. On lands designated Gorge Small Woodland, the proposed dwelling complies with Section
24 40.240.510(A)(1).
25
26 C. Upon termination of the life estate, the original or second dwelling shall be removed.
27
28

29 **40.240.570 DIMENSIONAL STANDARDS—FOREST LAND**

30
31 The following dimensional standard provisions shall apply to lands designated Gorge Small Woodland,
32 Gorge SMA Forest unless otherwise noted herein. In the event of conflict between other Title 40 chapters
33 and this chapter, the provisions of this chapter shall prevail.
34

- 35 A. All new land divisions shall comply with Section 40.240.370 and applicable county regulations. Newly
36 created lots shall comply with the following minimum lot size requirements:
37 1. Gorge Small Woodland 40 (GSW-40), 40 acres.
38 2. Gorge Small Woodland 20 (GSW-20), 20 acres.
39 3. Gorge SMA Forest (GSF), 40 acres for a new residence. New land division shall be permitted in
40 the SMA only when the creation of new parcels facilitates Federal acquisition of lands to achieve
41 the policies of the overall Management Plan.
42
43 B. Minimum lot width of six-hundred sixty (660) feet for newly created lots.
44
45 C. No minimum lot depth requirement.
46
47 D. Minimum front setback of fifty (50) feet for all buildings from public road right-of-way or private road
48 easement.
49
50 E. Minimum side setback of two hundred (200) feet for all residential buildings, twenty-five (25) feet for
51 non-residential buildings.

- 1
2 F. Minimum street side setback of twenty-five (25) feet for all buildings.
3
4 G. Minimum rear setback of two hundred (200) feet for all residential buildings, twenty-five (25) feet for
5 non residential buildings.
6
7 H. Setbacks shall also comply with Sections 40.240.130.
8
9 I. Medium height restriction of thirty-five (35) feet for residential structures, unless superceded by
10 Scenic Review Criteria of Section 40.240.800 or Section 40.240.810.
11
12

13 **40.240.580 OPEN SPACE DESIGNATIONS**

14
15 Sections 40.240.580 through 40.240.610 shall apply to those areas zoned Gorge Open Space and Gorge
16 SMA-Open Space on the Scenic Area Land Use Designation Map.
17
18

19 **40.240.590 USES ALLOWED OUTRIGHT - OPEN SPACE**

20
21 The uses listed in Section 40.240.120(B) are allowed without review on lands designated open space.
22
23

24 **40.240.600 USES ALLOWED THROUGH THE EXPEDITED DEVELOPMENT REVIEW PROCESS**
25 **- OPEN SPACE**

26
27 The uses in Section 40.240.060 may be allowed with review through the expedited development review
28 process on lands designated Open Space.
29
30

31 **40.240.610 REVIEW USES - OPEN SPACE**

- 32
33 A. The following uses may be allowed on all lands zoned Gorge GMA Open Space subject to
34 compliance with Sections 40.240.800 through 40.240.900:
35 1. Low intensity recreation, pursuant to Section 40.240.900(B).
36 2. Land divisions to facilitate efforts to protect and enhance scenic, cultural, natural or recreation
37 resources. Such land divisions shall be pursuant to Section 40.240.370. There shall be no
38 minimum size requirement for newly created lots.
39 3. Repair, maintenance, operation and improvement of existing structures, trails, roads, railroads,
40 utility facilities and hydroelectric facilities.
41 4. Removal of timber, rocks or other materials for purposes of public safety and placement of
42 structures for public safety.
43 5. Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or
44 natural resources pursuant to Section 40.240.270. These projects may include new structures
45 (e.g. fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused
46 roads, recontouring abandoned quarries).
47 6. Removal/demolition of structures that are fifty (50) or more years old, including wells, septic tanks
48 and fuel tanks.
49 7. Lot Line adjustments pursuant to Section 40.240.380.
50

- 1 B. The following uses may be allowed on lands designated Gorge GMA Open Space – State Parks
 2 Recreation Areas within publicly-owned lands:
 3 1. All uses listed in Section 40.240.610(A);
 4 2. Fish and wildlife management uses conducted by federal, state or tribal resource agencies;
 5 3. Soil, water or vegetation uses performed in accordance with a conservation plan approved by a
 6 local conservation district;
 7 4. Harvesting of wild crops, with written approval of from the public agency owning or operating the
 8 land; and
 9 5. Educational or scientific research.
- 10
 11 C. The following uses may be allowed on lands zoned Gorge SMA-Open Space, subject to compliance
 12 with Sections 40.240.800 through 40.240.900, and when consistent with an open space plan
 13 approved by the Forest Service pursuant to subsection (E) below:
 14 1. Changes in existing uses including reconstruction, replacement, and expansion of existing
 15 structures and transportation facilities, except for commercial forest practices.
 16 2. Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or
 17 natural resources, pursuant to Section 40.240.270. These projects may include vegetation
 18 management and forest practices (pursuant to Section 40.240.510(B)(25)) for the restoration of
 19 forest health, new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing
 20 and revegetating unused roads, recontouring abandoned quarries).
 21 3. Low intensity recreation and uses and developments, including educational and interpretive
 22 facilities, consistent with Section 40.240.900.
 23 4. Utility facilities for public service upon a showing that:
 24 a. There is no alternative location with less adverse effect on Open Space land, and
 25 b. The size is the minimum necessary to provide the service.
 26 5. Demolition of structures that are fifty (50) or more years old, including wells, septic tanks and fuel
 27 tanks.
- 28
 29 D. An SMA Open Space plan shall be completed by the primary managing agency or landowner prior to
 30 any new land uses or development, and shall be reviewed by the Forest Service. The Open Space
 31 plan shall include the following:
 32 1. Direction for resource protection, enhancement, and management;
 33 2. Review of existing uses to determine compatibility with Open Space values; and
 34 3. Consultation with members of the public and with agency and resource specialists.
- 35
 36 E. Subject to review, treatment of noxious weeds shall be permitted without completion of an SMA
 37 Open Space Plan; provided, that the following criteria are met:
 38 1. The infestation of noxious weeds is recent and eradication is possible; and
 39 2. Delaying or deferring treatment could widespread or significant adverse impacts to one or more
 40 of the following resources:
 41 a. Displacement of native and traditionally gathered plants; or
 42 b. Degradation of wildlife habitat and forage; or
 43 c. Degradation or loss of agricultural uses of land, such as cropland or livestock forage; or
 44 d. Limitation of recreational uses; or
 45 e. For federal lands, treatment effects have been thoroughly evaluated in an environmental
 46 assessment.

47
 48
 49 **40.240.620 RESIDENTIAL LAND DESIGNATIONS**

50
 51 Sections 40.240.620 through 40.240.670 shall apply to those areas designated Gorge Residential on the
 52 Scenic Area Land Use Designation Map.
 53

1 **40.240.630 USES ALLOWED OUTRIGHT - RESIDENTIAL LAND**

2
3 The uses listed in Section 40.240.120(A) are allowed without review on lands designated Residential.
4
5

6 **40.240.640 USES ALLOWED THROUGH THE EXPEDITED DEVELOPMENT REVIEW PROCESS-**
7 **RESIDENTIAL LAND**

8
9 The uses listed in Section 40.240.060 are allowed with review through the expedited development review
10 process on lands designated Residential.
11

12 **40.240.650 REVIEW USES - RESIDENTIAL LAND**

13
14 The following uses may be allowed on lands in the GMA zoned Gorge Residential, subject to compliance
15 with Sections 40.240.800 through 40.240.900:
16

- 17 A. One single-family dwelling per legally created parcel.
18 1. If the subject parcel is located adjacent to lands zoned Gorge Large-Scale or Small-Scale
19 Agriculture the use shall comply with the buffer and notification requirements of Section
20 40.240.130, and the notification requirements of Section 40.240.430(A)(16)(e); and
21 2. If the subject parcel is located adjacent to lands zoned Gorge Small Woodland, the use shall
22 comply with the buffer and notification requirements of Section 40.240.140, and the notification
23 requirements of Section 40.240.530(A), and the placement of a dwelling shall also comply with
24 Section 40.240.540.
25
26 B. Accessory structures for an existing or approved dwelling that are not otherwise allowed outright,
27 eligible for the expedited development review process, or allowed in subsection (C) below.
28
29 C. Accessory building(s) larger than two hundred (200) square feet in area or taller than ten (10) feet in
30 height for a dwelling on any legal parcel are subject to the following additional standards:
31 1. The combined footprints of all accessory buildings on a single parcel shall not exceed fifteen
32 hundred (1,500) square feet in area. This combined size limit refers to all accessory buildings
33 on a parcel, including buildings allowed without review, existing buildings and proposed
34 buildings.
35 2. The height of any individual accessory building shall not exceed twenty-four (24) feet.
36
37 D. The temporary use of a mobile home in the case of a family hardship, pursuant to Section
38 40.240.210.
39
40 E. Construction or reconstruction of roads.
41
42 F. On parcels ten (10) acres or larger in the five- (5-) acre Residential designation, or twenty (20) acres
43 or larger in the ten- (10-) acre Residential designation, a land division creating new parcels smaller
44 than the designated minimum parcel size, pursuant to Section 40.240.370(B)
45
46 G. New cultivation, subject to compliance with Sections 40.240.820 and 40.240.840 through 40.240.870.
47
48 H. Land divisions, pursuant to Section 40.240.370(B).
49
50 I. Lot line adjustments that would result in the potential to create additional parcels through subsequent
51 land divisions pursuant to Section 40.240.380.
52

- 1 J. Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or
2 natural resources. These projects may include new structures and/or activities, pursuant to Section
3 40.240.270.
- 4
- 5 K. Agricultural structures, except buildings, in conjunction with agricultural use.
- 6
- 7 L. Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed
8 agricultural use that a landowner would initiate within one year and complete within five (5) years,
9 pursuant to standards in Section 40.240.200.
- 10 M. Additions to existing buildings greater than two hundred (200) square feet in area or greater than the
11 height of the existing building.
- 12
- 13 N. Docks and boathouses, pursuant to Section 40.240.230.
- 14
- 15 O. Removal/demolition of structures that are fifty (50) or more years old, including wells, septic tanks
16 and fuel tanks.
- 17
- 18 P. Commercial events, pursuant to Section 40.240.290.
- 19
- 20

21 **40.240.660 REVIEW USES WITH ADDITIONAL APPROVAL CRITERIA – RESIDENTIAL LAND**

22 The following uses may be allowed on lands in the GMA zoned Gorge Residential subject to compliance
23 with Sections 40.240.800 through 40.240.900, and Section 40.240.670:

- 24
- 25 A. Accredited child care centers on land designated 5-acre Residential. A child care center may be
26 allowed in Residential zones within an existing church or community building.
- 27 B. Schools within an existing church or community building.
- 28
- 29 C. Expansion of existing primary or middle schools on land purchased prior to June 8, 1999. For
30 purposes of this section, existing schools means public schools that existed prior to adoption of the
31 original Management Plan on October 15, 1991.
- 32
- 33 D. Utility facilities and railroads.
- 34
- 35 E. Home occupations pursuant to Section 40.240.240.
- 36
- 37 F. Fire stations.
- 38
- 39 G. Recreation development, subject to compliance with Section 40.240.890.
- 40
- 41 H. Community parks and playgrounds, consistent with the guidelines of the National Park and
42 Recreation Society regarding the need for such facilities.
- 43
- 44 I. Bed and breakfast inns in single-family dwellings located on lands designated Residential pursuant to
45 Section 40.240.250.
- 46
- 47 J. Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes
48 grown on the subject farm or in the local region.
- 49
- 50 K. Wine sales/tasting rooms in conjunction with an on-site winery. The use shall comply with Section
51 40.240.240, with the following exceptions:
52 1. The use may employ an unlimited number of outside employees.

- 2. The wine sales/tasting room may include interior and/or exterior space, provide the combined interior and exterior spaces shall not exceed one thousand (1,000) square feet.
 - 3. 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.
 - 4. The exterior space may be a veranda, patio, or other similar type of structure.
- L. Small-scale fishing support and fish processing operation on parcels that are contiguous with and have direct access to the Columbia River, pursuant to Section 40.240.260.
 - M. Special uses in historic buildings, pursuant to Section 40.240.310.

40.240.670 APPROVAL CRITERIA FOR SPECIFIED REVIEW USES ON LANDS ZONED

RESIDENTIAL

The uses identified in Section 40.240.440 may be allowed only if they meet all of the following:

- A. 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.
- B. The proposed use will not require public services other than those existing or approved for the area.
- C. If the subject parcel is located within five hundred (500) feet of lands zoned Gorge Large-Scale or Small-Scale Agriculture, Gorge Small Woodland, new buildings associated with the proposed use shall comply with Section 40.240.130.
- D. If the subject parcel is located within five hundred (500) feet of lands designated Gorge Small Woodland, new buildings associated with the proposed use shall comply with Section 40.240.540.

40.240.680 DIMENSIONAL STANDARDS

The following dimensional standard provisions shall apply to lands zoned Gorge Residential unless otherwise noted herein. In the event of conflict between other Title 40 chapters and this chapter, the provisions of this chapter shall prevail.

- A. All new land divisions shall comply with Section 40.240.370(B) and applicable county regulations. Newly created lots shall comply with the following minimum lot size requirements:
 - 1. Gorge Residential 5 (GR-5), 5 acres,
 - 2. Gorge Residential 10 (GR-10), 10 acres.
- B. Minimum lot width of one-hundred forty (140) feet for newly created lots, unless required otherwise by the Clark County Fire Marshal.
- C. No minimum lot depth requirement.
- D. Minimum front setback of fifty (50) feet for all buildings from public road right-of-way or private road easement.
- E. Minimum side setback of twenty (20) feet for all residential and accessory buildings, fifty (50) feet for buildings used for agricultural purposes.

1
2 F. Minimum rear setback of twenty (20) feet for all buildings.

3
4 G. Setbacks shall also comply with provisions of Sections 40.240.130 and 40.240.150.

5
6 H. Maximum height restriction of thirty-five (35) feet for residential structures, unless superceded by
7 Scenic Review Criteria of Section 40.240.800 or 40.240.810.

8
9 I. Where larger setbacks are not required by Section 40.240.130, parcels which are non-conforming as
10 to minimum lot size or width and depth requirements may observe building setbacks of fifty (50) feet
11 from all property lines except side setbacks adjacent to streets, which may observe building setbacks
12 of twenty-five (25) feet.

13
14
15 **40.240.690 RECREATION**

16
17 Sections 40.240.690 through 40.240.730 shall apply to those areas zoned Gorge Public Recreation on
18 the Scenic Area Land Use Map.

19
20
21 **40.240.700 USES ALLOWED OUTRIGHT – PUBLIC RECREATION**

22
23 The uses listed in Section 40.240.700(A) are allowed without review on lands designated Public
24 Recreation.

25
26
27 **40.240.710 USES ALLOWED THROUGH THE EXPEDITED DEVELOPMENT REVIEW PROCESS**
28 **– PUBLIC RECREATION**

29
30 The uses listed in Section 40.240.060 are allowed with review through the expedited review process on
31 lands designated Public Recreation.

32
33
34 **40.240.720 REVIEW USES - PUBLIC RECREATION**

35
36 A. The following uses may be allowed on lands in the GMA zoned Gorge Public Recreation, subject to
37 compliance with Sections 40.240.890(D)(3) through (7):

- 38 1. Publicly-owned, resource-based recreation uses consistent with Section 40.240.890;
39 2. Commercial uses and non-resource based recreation uses that are part of an existing or
40 approved, resource-based public recreation use consistent with guidelines contained in this
41 section; and
42 3. New cultivation, subject to compliance with Sections 40.240.840 through 40.240.870.

43
44 B. The following uses may be allowed on lands in the GMA zoned Gorge Public Recreation, subject to
45 compliance with Section 40.240.730:

- 46 1. One (1) single-family dwelling for each parcel legally created prior to adoption of the Management
47 Plan. Exceptions may be considered only upon demonstration that more than one residence is
48 necessary for management of a public park.
49 2. Accessory structures for an existing or approved dwelling that are not otherwise allowed outright,
50 eligible for the expedited development review process, or allowed in Section 40.240.800(B)(3).

3. Accessory buildings larger than two hundred (200) square feet in area or taller than ten (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 fifteen hundred (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 twenty-four (24) feet.
 4. Agricultural structures, except buildings, in conjunction with agricultural use.
 5. Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one (1) year and complete within five (5) years.
 6. Utility transmission, transportation, communication and public works facilities.
 7. Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, pursuant to Section 40.240.270.
 8. Additions to existing buildings greater than two hundred (200) square feet in area or greater than the height of the existing building.
 9. Docks and boathouses, pursuant to Section 40.240.230.
 10. Removal/demolition of structures that are fifty (50) or more years old, including wells, septic tanks and fuel tanks.
 11. Commercial events, pursuant to Section 40.240.290.
- C. Land divisions are allowed, pursuant to compliance with Section 40.240.730(C).
- D. Special uses in historic buildings, pursuant to Section 40.240.310.

40.240.730 APPROVAL CRITERIA FOR NON-RECREATION USES IN GORGE PUBLIC

RECREATION ZONES

The uses identified in Section 40.240.720(b) may be allowed only if they meet the following:

- A. The proposed use will not interfere with existing or approved public recreation uses on the subject property or adjacent lands. Mitigation measures to comply with this criterion may include onsite buffers, seasonal or temporary closures during peak recreation use periods, etc.
- B. 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.
- C. Land divisions may be allowed consistent with Section 40.240.370(B) and upon a demonstration that the proposed land division is necessary to facilitate, enhance or otherwise improve recreational uses on the site.

RESOURCE PROTECTION GUIDELINES

40.240.800 GENERAL MANAGEMENT AREA SCENIC REVIEW CRITERIA

The following scenic review guidelines shall apply to all Review Uses in the GMA.

- A. All Review Uses.

- 1 1. New buildings and roads shall be sited and designed to retain the existing topography and
2 minimize grading activities to the maximum extent practicable.
 - 3 2. New buildings shall be compatible with the general scale (height, dimensions and overall mass)
4 of existing nearby development. Expansion of existing development shall comply with this
5 guideline to the maximum extent practicable.
 - 6 3. Project applicants shall be responsible for the proper maintenance and survival of any planted
7 vegetation required by the guidelines in Section 40.240.800.
 - 8 4. A site plan and land use application shall be submitted for all new buildings, except for buildings
9 smaller than sixty (60) square feet in area and less than or equal to ten (10) feet in height, as
10 measured at the roof peak. The site plan and application shall include all information required in
11 Section 40.240.050. Supplemental requirements for developments proposed on lands visible
12 from key viewing areas are included in the key viewing areas guidelines in this chapter.
 - 13 5. For all proposed development, the determination of compatibility with the landscape setting shall be
14 based on information submitted in the site plan.
 - 15 6. For all new production and/or development of mineral resources and expansion of existing
16 quarries, a reclamation plan is required to restore the site to a natural appearance which blends
17 with and emulates surrounding landforms to the maximum extent practicable. At a minimum, such
18 reclamation plans shall include:
 - 19 a. A map of the site, at a scale of one inch equals two hundred (200) feet (1:2,400), or a scale
20 providing greater detail, with ten- (10-) foot contour intervals or less, showing pre-mining
21 existing grades and post-mining final grades; locations of topsoil stockpiles for eventual
22 reclamation use; location of catch-basins or similar drainage and erosion control features
23 employed for the duration of the use; and the location of storage, processing and equipment
24 areas employed for the duration of the use.
 - 25 b. Cross-sectional drawings of the site showing pre-mining and post-grades. Descriptions of the
26 proposed use, in terms of estimated quantity and type of material removed, estimated duration
27 of the use, processing activities, etc.
 - 28 c. Description of the proposed use, in terms of estimated quantity and type of material
29 removed, estimated duration of the use, processing activities, etc.
 - 30 d. Description of drainage/erosion control features to be employed for the duration of the use.
 - 31 e. A landscaping plan providing for revegetation consistent with the vegetation patterns of the
32 subject landscape setting, indicating the species, number, size and location of plantings for
33 the final reclaimed grade, as well as a description of irrigation provisions or other measures
34 necessary to ensure the survival of plantings.
 - 35 7. All reclamation plans for new quarries or expansion of existing quarries shall be sent to the
36 appropriate state reclamation permitting agency for review and comment. The state agency shall
37 have thirty (30) calendar days from the date a reclamation plan is mailed to submit written
38 comments on the proposal. State agency comments shall address the following"
 - 39 a. Whether the proposed mining is subject to state reclamation permit requirements;
 - 40 b. If subject to state jurisdiction, whether an application has been received for a state
41 reclamation permit and, if so, the current status of the application; and
 - 42 c. For uses subject to state jurisdiction, any issues or concerns regarding consistency with
43 state reclamation requirements, or any suggested modifications to comply with state
44 reclamation requirements.
- 45
- 46 B. Key Viewing Areas.
- 47 1. The guidelines in this section shall apply to proposed developments on sites topographically visible
48 from key viewing areas.
 - 49 2. Each development shall be visually subordinate to its setting as seen from key viewing areas.
 - 50 3. Determination of potential visual effects and compliance with visual subordination policies shall
51 include consideration of the cumulative effects of proposed developments.
 - 52 4. The extent and type of conditions applied to a proposed development to achieve visual
53 subordination shall be proportionate to its potential visual impacts as seen from key viewing
54 areas.

- 1 a. Decisions shall include written findings addressing the factors influencing potential visual
2 impact, including but not limited to:
3 (1) The amount of area of the building site exposed to key viewing areas;
4 (2) The degree of existing vegetation providing screening;
5 (3) The distance from the building site to the key viewing areas from which it is visible;
6 (4) The number of key viewing areas from which it is visible; and
7 (5) The linear distance along the key viewing areas from which the building site is visible (for
8 linear key viewing areas, such as roads).
- 9 b. Conditions may be applied to various elements of proposed developments to ensure they are
10 visually subordinate to their setting as seen from key viewing areas, including but not limited
11 to:
12 (1) Siting (location of development on the subject property, building orientation, and other
13 elements);
14 (2) Retention of existing vegetation;
15 (3) Design (color, reflectivity, size, shape, height, architectural and design details and other
16 elements); and
17 (4) New landscaping.
- 18 5. New development shall be sited to achieve visual subordination from key viewing areas, unless the
19 siting would place such development in a buffer specified for protection of wetlands, riparian
20 corridors, sensitive plants, sensitive wildlife sites or conflict with the protection of cultural resources.
21 In such situations, development shall comply with this guideline to the maximum extent practicable.
- 22 6. New development shall be sited using existing topography and/or existing vegetation as needed to
23 achieve visual subordination from key viewing areas.
- 24 7. Existing tree cover screening proposed development from key viewing areas shall be retained as
25 specified in Section 40.240.800(C).
- 26 8. The silhouette of new buildings shall remain below the skyline of a bluff cliff or ridge as seen from
27 key viewing areas. Variances to this guideline may be granted if application of the guideline would
28 leave the owner without a reasonable economic use. The variance shall be the minimum necessary
29 to allow the use, and may be applied only after all reasonable efforts to modify the design, building
30 height, and site to comply with the guideline have been made.
- 31 9. An alteration to a building built prior to November 17, 1986, which already protrudes above the
32 skyline of a bluff, cliff or ridge as seen from a key viewing area, may itself protrude above the
33 skyline if:
34 a. The altered building, through use of color, landscaping and/or other mitigation measures,
35 contrasts less with its setting than before the alteration; and
36 b. There is no practicable alternative means of altering the building without increasing the
37 protrusion.
- 38 10. The following guidelines shall apply to new landscaping used to screen development from key
39 viewing areas:
40 a. New landscaping (including new earth berms) shall be required only when application of all
41 other available guidelines in Section 40.240.800 sufficient to make the development
42 visually subordinate from key viewing areas. Alternate sites shall be considered prior to
43 using new landscaping to achieve visual subordination. Development shall be sited to avoid
44 the need for new landscaping wherever possible.
- 45 b. If new landscaping is required to make a proposed development visually subordinate from
46 key viewing areas, existing on-site vegetative screening and other visibility factors shall be
47 analyzed to determine the extent of new landscaping, and the size of new trees needed to
48 achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to
49 provide sufficient screening to make the development visually subordinate within five (5)
50 years or less from the commencement of construction.
- 51 c. Unless as specified otherwise by provisions in Section 40.240.800, landscaping shall be
52 installed as soon as practicable, and prior to project completion. Applicants and successors
53 in interest for the subject parcel are responsible for the proper maintenance and survival of
54 planted vegetation, and replacement of such vegetation that does not survive.

- 1 d. The *Scenic Resources Implementation Handbook* shall include recommended species for
2 each landscape setting consistent with the Landscape Settings Design Guidelines in
3 Section 40.240.800(C), and minimum recommended sizes of new trees planted (based on
4 average growth rates expected for recommended species).
- 5 11. Conditions regarding new landscaping or retention of existing vegetation for new developments
6 on lands designated GMA Forest shall meet both scenic guidelines and fuel break
7 requirements in Section 40.240.540(A).
- 8 12. Unless expressly exempted by other provisions in Section 40.240.800, colors of structures on
9 sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the
10 surrounding landscape. The specific colors or list of acceptable colors shall be included as a
11 condition of approval. The *Scenic Resources Implementation Handbook* will include a
12 recommended palette of colors.
- 13 13. The exterior of buildings on lands seen from key viewing areas shall be composed of non-
14 reflective materials or materials with low reflectivity, unless the structure would be fully
15 screened from all key viewing areas by existing topographic features. The *Scenic Resources
16 Implementation Handbook* will include a list of recommended exterior materials. These
17 recommended materials and other materials may be deemed consistent with this guideline,
18 including those where the specific application meets recommended thresholds in the "Visibility
19 and Reflectivity Matrices" in the *Implementation Handbook*. Continuous surfaces of glass
20 unscreened from key viewing areas shall be limited to ensure visual subordination.
21 Recommended square footage limitations for such surfaces will be provided for guidance in the
22 *Implementation Handbook*.
- 23 14. For all buildings, roads or mining and associated activities proposed on lands visible from key
24 viewing areas, the following supplemental site plan information shall be submitted in addition to
25 the site plan requirements in Sections 40.240.050 and 40.240.800(A)(6) for mining and
26 associated activities:
- 27 a. For buildings, a description of the proposed building(s) height, shape, color, exterior building
28 materials, exterior lighting, and landscaping details (type of plants used, number, size,
29 locations of plantings, and any irrigation provisions or other measures to ensure the survival
30 of landscaping planted for screening purposes).
- 31 b. Elevation drawings shall show the appearance of proposed structures and shall include
32 natural grade, finished grade, and the geometrical exterior of at least the length and width of
33 structures as seen from a horizontal view. Elevation drawings shall be drawn to scale.
- 34 c. All applications for structural development involving more than one hundred (100) cubic
35 yards of grading with slopes between ten and thirty percent (10-30%) shall include a grading
36 plan. This plan shall be reviewed by the local government for compliance with key viewing
37 area policies. The grading plan shall include the following:
- 38 (1) A map of the site, prepared at a scale of one inch equals two hundred (200) feet
39 (1:2,400) or a scale providing greater detail, with contour intervals of at least five (5)
40 feet, including:
- 41 (a) natural and finished grades;
42 (b) location of all areas to be graded, with cut banks and fill slopes delineated; and
43 (c) estimated dimensions of graded areas.
- 44 (2) A narrative description (may be submitted on the grading plan site map and
45 accompanying drawings) of the proposed grading activity, including:
- 46 (a) its purpose;
47 (b) an estimate of the total volume of material to be moved;
48 (c) the height of all cut banks and fill slopes;
49 (d) provisions to be used for compactions, drainage, and stabilization of graded areas
50 (preparation of this information by a licensed engineer or engineering geologist is
51 recommended);
52 (e) a description of all plant materials used to revegetate exposed slopes and banks,
53 including the species, number, size, and location of plants, and a description of

- 1 irrigation provisions or other measures necessary to ensure the survival of
 2 plantings; and
 3 (f) a description of any other interim or permanent erosion control measures to be
 4 used.
- 5 15. For proposed mining and associated activities on lands visible from key viewing areas, in
 6 addition to submittal of plans and information pursuant to Section 40.240.800(A)(6) and
 7 subsection (B)(4) above, project applicants shall submit perspective drawings of the proposed
 8 mining areas as seen from applicable key viewing areas.
- 9 16. Exterior lighting shall be directed downward and sited, hooded and shielded such that it is not
 10 highly visible from key viewing areas. Shielding and hooding materials shall be composed of
 11 non-reflective, opaque materials.
- 12 17. Additions to existing buildings smaller in total square area than the existing building may be the
 13 same color as the existing building. Additions larger than the existing building shall be of colors
 14 specified in the design guidelines for the subject property's landscape setting.
- 15 18. Rehabilitation of or modifications to existing significant historic structures shall be exempted
 16 from visual subordination requirements for lands seen from key viewing areas. To be eligible
 17 for such exemption, the structure must be included in or eligible for inclusion in, the National
 18 Register of Historic Places or be in the process of applying for a determination of significance
 19 pursuant to such regulations. Rehabilitation of or modifications to structures meeting this
 20 guideline shall be consistent with National Park Service regulations for such structures.
- 21 19. New main lines on lands visible from key viewing areas for the transmission of electricity, gas,
 22 oil, other fuels, or communications, except for connections to individual users or small clusters
 23 of individual users, shall be built in existing transmission corridors unless it can be
 24 demonstrated that use of existing corridors is not practicable. Such new lines shall be
 25 underground as a first preference unless it can be demonstrated to be impracticable.
- 26 20. New communication facilities (antennae, dishes, etc.) on lands visible from key viewing areas,
 27 which require an open and unobstructed site, shall be built upon existing facilities unless it can
 28 be demonstrated that use of existing facilities is not practicable.
- 29 21. New communications facilities may protrude above a skyline visible from a key viewing area
 30 only upon demonstration that:
 31 a. The facility is necessary for public service;
 32 b. The break in the skyline is seen only in the background; and
 33 c. The break in the skyline is the minimum necessary to provide the service.
- 34 22. Overpasses, safety and directional signs and other road and highway facilities may protrude
 35 above a skyline visible from a key viewing area only upon a demonstration that:
 36 a. The facility is necessary for public service; and
 37 b. The break in the skyline is the minimum necessary to provide the service
- 38 23. Except for water-dependent development and for water-related recreation development,
 39 development shall be set back one hundred (100) feet from the ordinary high water mark of the
 40 Columbia River below Bonneville Dam, and one hundred (100) feet from the normal pool
 41 elevation of the Columbia River above Bonneville Dam, unless the setback would render a
 42 property unbuildable. In such cases, variances to the setback may be authorized.
- 43 24. New buildings shall not be permitted on lands visible from key viewing areas with slopes in
 44 excess of thirty percent (30%). A variance may be authorized if the property would be rendered
 45 unbuildable through the application of this guideline. In determining the slope, the average
 46 percent slope of the proposed building site shall be used.
- 47 25. Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill
 48 slopes from key viewing areas.
- 49 26. All proposed structural development involving more than two hundred (200) cubic yards of
 50 grading on sites visible from key viewing areas shall include submittal of a grading
 51 plan. This plan shall be reviewed by the responsible official for compliance with key viewing
 52 area policies. The grading plan shall include the following:
 53 a. A map of the site, prepared at a scale of one inch equals two hundred (200) feet (1:2,400),
 54 or a scale providing greater detail, with contour intervals of at least five (5) feet, including:

- 1 (1) existing and proposed final grades;
- 2 (2) location of all areas to be graded, with cut banks and fill slopes delineated; and
- 3 (3) estimated dimensions of graded areas.
- 4 b. A narrative description (may be submitted on the grading plan site map and accompanying
- 5 drawings) of the proposed grading activity, including:
- 6 (1) its purpose;
- 7 (2) an estimate of the total volume of material to be moved;
- 8 (3) the height of all cut banks and fill slopes;
- 9 (4) provisions to be used for compaction, drainage, and stabilization of graded areas
- 10 (preparation of this information by a licensed engineer or engineering geologist is
- 11 recommended);
- 12 (5) a description of all plant materials used to revegetated exposed slopes and banks,
- 13 including type of species, number of, size and location of plants, and a description of
- 14 irrigation provisions or other measures necessary to ensure the survival of plantings;
- 15 and
- 16 (6) a description of any other interim or permanent erosion control measures to be utilized.
- 17 27. Expansion of existing quarries and new production and/or development of mineral resources
- 18 proposed on sites within the CRGNSA area more than three (3) miles from the nearest key
- 19 viewing areas from which it is visible may be allowed upon a demonstration that:
- 20 a. The site plan requirements for such proposals pursuant to this chapter have been met.
- 21 b. The area to be mined and the area to be used for primary processing, equipment storage,
- 22 stockpiling, etc. associated with the use would be visually subordinate as seen from any key
- 23 viewing areas.
- 24 c. A reclamation plan to restore the site to a natural appearance which blends with and
- 25 emulates surrounding landforms to the maximum extent practicable has been approved
- 26 pursuant to Section 40.240.800(A)(7).
- 27 d. A written report on a determination of visual subordination has been completed, with findings
- 28 addressing the extent of visibility of proposed activities from key viewing areas, including
- 29 (1) A list of key viewing areas from which exposed mining surfaces (and associated
- 30 facilities/activities) would be visible;
- 31 (2) An estimate of the surface area of exposed mining surfaces that would be visible from
- 32 those key viewing areas;
- 33 (3) The distance from those key viewing areas and the linear distance along those key
- 34 viewing areas from which proposed mining surfaces are visible;
- 35 (4) The slope and aspect of mining surfaces relative to those portions of key viewing areas
- 36 from which they are visible;
- 37 (5) The degree to which potentially visible minimum surfaces are screened from key viewing
- 38 areas by existing vegetation, including winter screening considerations; and
- 39 (6) The degree to which potentially visible mining surfaces would be screened by new
- 40 plantings, berms, etc. and appropriate time frames to achieve such results, including
- 41 winter screening considerations.
- 42 28. Unless addressed by subsection (26) above, new production and/or development of mineral
- 43 resources may be allowed upon a demonstration that:
- 44 a. The site plan requirements for such proposals pursuant to this section have been met;
- 45 b. The area to be mined and the area used for primary processing, equipment storage,
- 46 stockpiling, etc. associated with the use would be fully screened from any key viewing
- 47 area; and
- 48 c. A reclamation plan to restore the area to a natural appearance which blends with and
- 49 emulates surrounding landforms to the maximum extent practicable has been approved. At
- 50 minimum, the reclamation plan shall comply with Section 40.240.800(A)(7).
- 51 29. An interim time period to achieve compliance with visual subordination requirements for
- 52 expansion of existing quarries and development of new quarries located more than three (3)
- 53 miles from the nearest visible key viewing area shall be established prior to approval. The
- 54 interim time period shall be based on site-specific topographic and visual conditions, but shall

- 1 not exceed three (3) years beyond the date of approval.
2 30. An interim time period to achieve compliance with full screening requirements for new
3 quarries located less than three (3) miles from the nearest visible key viewing area shall be
4 established prior to approval. The interim time period shall be based on site-specific
5 topographic and visual conditions, but shall not exceed one (1) year beyond the date of
6 approval. Quarrying activity occurring prior to achieving compliance with full
7 screening requirements shall be limited to activities necessary to provide such screening
8 (creation of berms, etc.).
9

10 C. All Review Uses within the following landscape settings, as delineated by the Columbia River
11 Gorge Management Plan Landscape Settings map, shall comply with the following applicable
12 guidelines:

13 1. Pastoral.

- 14 a. Accessory structures, outbuildings and accessways shall be clustered together as much as
15 possible, particularly towards the edges of existing meadows, pastures and farm fields.
16 b. In portions of this setting visible from key viewing areas, the following guidelines shall be
17 employed to achieve visual subordination for new development and expansion of existing
18 development:
19 (1) Except as is necessary for site development or safety purposes, the existing
20 tree cover screening the development from key viewing areas shall be retained.
21 (2) Vegetative landscaping shall, where feasible, retain the open character of existing
22 pastures and fields.
23 (3) At least one-half of any trees planted for screening purposes shall be species native
24 to the setting or commonly found in the area. Such species include fruit trees, Douglas
25 fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black
26 locust (primarily in the eastern Gorge).
27 (4) At least one-quarter of any trees planted for screening shall be coniferous for winter
28 screening.
29 c. Compatible recreation uses include resource-based recreation uses of a very low or
30 low-intensity nature as defined by Section 40.240.890 occurring infrequently in the
31 landscape.

32 2. Coniferous Woodland.

- 33 a. Structure height shall remain below the forest canopy level.
34 b. In portions of this setting visible from key viewing areas, the following guidelines shall be
35 employed to achieve visual subordination for new development and expansion of existing
36 development:
37 (1) Except as is necessary for construction of access roads, building pads, leach fields,
38 etc., the existing tree cover screening the development from key viewing areas shall
39 be retained.
40 (2) At least one-half of any trees planted for screening purposes shall be species native
41 to the setting. Such species include: Douglas fir, grand fir, western red cedar, western
42 hemlock, big leaf maple, red alder, ponderosa, pine and Oregon white oak, and
43 various native willows (for riparian areas).
44 (3) At least one-half of any trees planted for screening purposes shall be coniferous to
45 provide winter screening.
46 c. Compatible recreation uses include resource-based recreation uses of varying intensities.
47 Typically, outdoor recreation uses should be low-intensity, and include trails, small picnic
48 areas and scenic viewpoints. Some more intensive recreation uses, such as
49 campgrounds, may occur. They should be scattered, interspersed with large areas of
50 undeveloped land and low-intensity uses.

51 3. Rural Residential.

- 52 a. Existing tree cover shall be retained as much as possible, except as is necessary for site
53 development, safety purposes, or as part of forest management practices.

- 1 b. In portions of this setting visible from key viewing areas the following guidelines shall be
 2 employed to achieve visual subordination for new development and expansion of existing
 3 development:
 4 (1) Except as is necessary for site development or safety purposes, the existing tree cover
 5 screening the development from key viewing areas shall be retained.
 6 (2) Vegetative landscaping shall, where feasible, retain the open character of existing
 7 pastures and fields.
 8 (3) At least one-half of any trees planted for screening purposes shall be species native to
 9 the setting or commonly found in the area. Such species include fruit trees, Douglas fir,
 10 Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust
 11 (primarily in the eastern gorge).
 12 (4) At least one-quarter of any trees planted for screening purposes shall be coniferous to
 13 provide winter screening.
 14 c. Compatible recreation uses should be limited to very low and low-intensity resource-based
 15 recreation uses (such as scenic overlooks).
 16 4. Rural Residential/Pastoral.
 17 a. New development in this setting shall meet the design guidelines for both the Rural
 18 Residential setting and the more rural Pastoral setting with which it is combined unless it can
 19 be demonstrated that compliance with the guidelines for the more rural setting is
 20 impracticable. Expansion of existing development shall comply with this guideline to the
 21 maximum extent practicable.
 22 b. In the event of a possible conflict between the guidelines, the guidelines for the more rural
 23 Pastoral setting shall apply, unless it can be demonstrated that application of such guidelines
 24 would not be practicable.
 25 c. Compatible recreation uses should be limited to very low and low-intensity resource-based
 26 recreation uses, scattered infrequently in the landscape.
 27 5. River Bottomlands.
 28 a. In portions of this setting visible from key viewing areas, the following guidelines shall be
 29 employed to achieve visual subordination for new development and expansion of existing
 30 development:
 31 (1) Except as is necessary for site development or safety purposes, existing tree cover
 32 screening the development from key viewing areas shall be retained.
 33 (2) At least one-half of any trees planted for screening purposes shall be species native to
 34 the River Bottomland setting. Public recreation developments are encouraged to
 35 maximize the percentage of planted screening vegetation native to this setting. Such
 36 species include: black cottonwood, big leaf maple, red alder, Oregon white oak, Douglas
 37 fir, western red cedar and western hemlock (west Gorge) and various native willow
 38 species.
 39 (3) At least one-quarter of any trees planted for screening purposes shall be coniferous for
 40 winter screening.
 41 b. Compatible recreation uses depend on the degree of natural resource sensitivity of a
 42 particular site. In the most critically sensitive River Bottomlands, very low-intensity uses which
 43 do not impair wetlands or special habitat requirements may be compatible. In other River
 44 Bottomland areas, nodes of moderate-intensity and/or high-intensity recreation uses may be
 45 compatible; provided, that:
 46 (1) Their designs emphasize retention and/or enhancement of native riparian communities;
 47 (2) Structures and parking areas are visually subordinate; and
 48 (3) They are separated from other areas of concentrated recreation usage by stretches of
 49 natural-appearing shoreline and adjacent uplands.
 50
 51 D. All Review Uses within Scenic Travel Corridors shall comply with the following applicable
 52 guidelines:
 53 1. For the purposes of implementing this section, the foreground of a Scenic Travel Corridor shall
 54 include those lands within one-quarter mile of the edge of pavement of the Washington State

1 Route 14.

- 2 2. All new buildings and alterations to existing buildings, except in a Rural Center designation
3 (village landscape setting), shall be set back at least one hundred (100) feet from the edge of
4 pavement of Washington State Route 14 (SR-14). A variance to this setback requirement may
5 be granted pursuant to Section 40.240.190(G). All new parking lots and expansions of existing
6 parking lots shall be set back at least one hundred (100) feet from the edge of pavement of
7 SR-14, to the maximum extent practicable.
- 8 3. Additions to existing buildings or expansion of existing parking lots located within one hundred
9 (100) feet of the edge of pavement of a SR-14 shall comply with subsection (D)(2) above to the
10 maximum extent practicable.
- 11 4. All proposed vegetation management projects in public rights-of-way to provide or improve
12 views shall include the following:
13 a. An evaluation of potential visual impacts of the proposed project as seen from any key
14 viewing area, and
15 b. An inventory of any rare plants, sensitive wildlife habitat, wetlands or riparian areas on
16 the project site. If such resources are determined to be present, the project shall comply
17 with applicable guidelines to protect the resources.
- 18 5. When evaluating possible locations for undergrounding of signal wires or powerlines,
19 railroads and utility companies shall prioritize those areas specifically recommended as
20 extreme or high priorities for undergrounding in the *Columbia River Gorge National Scenic*
21 *Area Corridor Visual Inventory* prepared in April, 1990.
- 22 6. New production and/or development of mineral resources proposed within one-quarter mile of
23 the edge of pavement of a SR-14 may be allowed upon a demonstration that full visual
24 screening of the site from SR-14 can be achieved by use of existing topographic features or
25 existing vegetation designed to be retained through the planned duration of the proposed
26 project. An exception to this may be granted if planting of new vegetation in the vicinity of the
27 access road to the mining area would achieve full screening. If existing vegetation is partly or
28 fully employed to achieve visual screening, over seventy-five percent (75%) of the tree canopy
29 area shall be coniferous species providing adequate winter screening. Mining and associated
30 primary processing of mineral resources is prohibited within one hundred (100) feet of SR-14,
31 as measured from the edge of pavement, except for access roads. Compliance with full
32 screening requirements shall be achieved within time frames specified in Section
33 40.240.800(B)(29).
- 34 7. Expansion of existing quarries may be allowed pursuant to Section 40.240.800(B)(27).
35 Compliance with visual subordination requirements shall be achieved within time frames
36 specified in Section 40.240.800(B)(29).
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39 **40.240.810 SPECIAL MANAGEMENT AREA SCENIC REVIEW CRITERIA**

40
41 **A. SMA Design Guidelines Based on Landscape Settings.**

42 The following guidelines apply to all lands within SMA landscape settings regardless of visibility from
43 key viewing areas (includes areas seen from key viewing areas as well as areas not seen from key
44 viewing areas):

- 45 1. Pastoral: Pastoral areas shall retain the overall appearance of an agricultural landscape.
46 a. The use of plant species common to the landscape setting shall be encouraged. The use of
47 plant species in rows as commonly found in the landscape setting is encouraged.
- 48 2. Coniferous Woodlands areas shall retain the overall appearance of a woodland landscape. New
49 developments and land uses shall retain the overall visual character of the natural appearance of
50 the Coniferous Woodland landscape.
51 a. Buildings in the Coniferous Woodland landscape setting shall be encouraged to have a
52 vertical overall appearance.

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- b. Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.
- 3. River Bottomlands: River bottomland shall retain the overall visual character of a floodplain and associated islands.
 - a. Buildings shall have an overall horizontal appearance in areas with little tree cover.
 - b. Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.
- B. SMA Guidelines for development and uses visible from key viewing areas.
 - 1. The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.
 - 2. New developments and land uses shall be evaluated to ensure that the required scenic standard is met and that scenic resources are adversely affected, including cumulative effects, based on the degree of visibility from key viewing areas.
 - 3. In all landscape settings, scenic standards shall be met by blending new development with the adjacent natural landscape elements rather than with existing development.
 - 4. Proposed developments or land use 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 topography and vegetation shall be given priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms.
 - 5. The required SMA scenic standards for all development and uses are summarized below in Table 40.240.810-1.
 - 6. 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 the following:
 - (1) amount of area of the building site exposed to key viewing areas;
 - (2) degree of existing vegetation providing screening;
 - (3) distance from the building site to the key viewing areas from which it is visible;
 - (4) number of key viewing areas from which it is visible; and
 - (5) linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas such as roads).

Table 40.240.810-1. Required SMA Scenic Standards		
LANDSCAPE SETTING	LAND USE DESIGNATION	SCENIC STANDARD
<u>Coniferous Woodland.</u>	<u>Forest (National Forest Lands), Open Space</u>	<u>Not Visually Evident</u>
<u>River Bottomlands</u>	<u>Open Space</u>	<u>Not Visually Evident</u>
<u>Coniferous Woodland.</u>	<u>Forest, Agriculture, Residential, Public Recreation</u>	<u>Visually Subordinate</u>
<u>Residential</u>	<u>Residential</u>	<u>Visually Subordinate</u>
<u>Pastoral</u>	<u>Forest, Agriculture, Public Recreation, Open Space</u>	<u>Visually Subordinate</u>

River Bottomlands	Forest, Agriculture, Public Recreation	Visually Subordinate
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- 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:
 - (1) Siting (location of development on the subject property, building orientation, and other elements);
 - (2) Retention of existing vegetation;
 - (3) Design (color, reflectivity, size, shape, height, architectural and design details and other elements; and
 - (4) New landscaping.
- 7. 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.
- 8. Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from key viewing areas.
- 9. 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.
- 10. 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 onsite 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 (5) 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).
- 11. 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.
- 12. The exterior of buildings 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

- 1 shall be limited to ensure meeting the scenic standard. Recommended square footage limitations
2 for such surfaces will be provided for guidance in the *Implementation Handbook*.
3 13. Any exterior lighting shall be sited, limited in intensity, shielded or hooded in a manner that
4 prevents lights from being highly visible from key viewing areas and from noticeably
5 contrasting with the surrounding landscape setting except for road lighting necessary for safety
6 purposes.
7 14. Seasonal lighting displays shall be permitted on a temporary basis, not to exceed three (3)
8 month's duration.
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10 C. SMA Guidelines for Key Viewing Area Foregrounds and Scenic Routes.

- 11 1. All new developments and land uses immediately adjacent to scenic routes shall be in
12 conformance with state or county scenic route guidelines.
13 2. Scenic highway corridor strategies shall be developed and implemented for Washington State
14 Route 14 (SR-14). For SR-14 this involves ongoing implementation (and possible updating) of the
15 associated existing documents.
16 3. The goals of scenic corridor strategies shall include: 1) providing a framework for future highway
17 improvements and management that meet Management Plan scenic guidelines and public
18 transportation needs; and 2) creating design continuity for the highway corridor within the Scenic
19 Area. Corridor strategies shall, at minimum, include design guidelines (e.g. materials, conceptual
20 designs, etc.) for typical projects that are consistent with Management Plan scenic resources
21 provisions and an interdisciplinary, interagency project planning and development process.
22 4. The following guidelines shall apply only to development within the immediate foregrounds of key
23 viewing areas. Immediate foregrounds are defined as within the developed prism of a river, road or
24 trail key viewing area. These guidelines apply in addition to applicable guidelines of Section
25 40.240.810(B).
26 a. The proposed development shall be designed and sited to meet the applicable scenic
27 standard from the foreground of the subject key viewing area. If the development cannot
28 meet the standard, findings must be made documenting why the project cannot meet the
29 requirements in Section 40.240.810(B) and why it cannot be redesigned or wholly or partly
30 relocated to meet the scenic standard.
31 b. Findings must evaluate the following:
32 (1) The limiting factors to meeting the required scenic standard and/or applicable guidelines
33 from the Section 40.240.810(B);
34 (2) Reduction in project size;
35 (3) Options for alternative sites for all or part of the project, considering parcel configuration
36 and on-site topographic or vegetative screening; and
37 (4) Options for design changes including changing the design shape, configuration, color,
38 height, or texture in order to meet the scenic standard.
39 c. Form, line, color, texture, and design of a proposed development shall be evaluated to
40 ensure that the development blends with its setting as seen from the foreground of key
41 viewing areas:
42 (1) Form and Line-design of the development shall minimize changes to the form of the
43 natural landscape. Development shall borrow form and line from the landscape setting
44 and blend with the form and line of the landscape setting. Design of the development
45 shall avoid contrasting form and line that unnecessarily call attention to the development.
46 (2) Color shall be found in the project's surrounding landscape setting. Colors shall be
47 chosen and repeated as needed to provide unity to the whole design.
48 (3) Texture borrowed from the landscape setting shall be emphasized in the design of
49 structures. Landscape textures are generally rough, irregular, and complex rather than
50 smooth, regular, and uniform.
51 (4) Design solutions shall be compatible with the natural scenic quality of the Gorge.
52 Building materials shall be natural or natural appearing. Building materials such as
53 concrete, steel, aluminum, or plastic shall use form, line color and texture to harmonize

- 1 with the natural environment. Design shall balance all design elements into a
2 harmonious whole, using repetition of elements and blending of elements as necessary.
- 3 5. Right-of-way vegetation shall be managed to minimize visual impact of clearing and other
4 vegetation removal as seen from key viewing areas. Roadside vegetation management (vista
5 clearing, planting, etc.) should enhance views from the highway.
- 6 6. Screening from key viewing areas shall be encouraged for existing and required for new road
7 maintenance, warehouse, and stockpile areas.

8
9 D. SMA Guidelines for Areas Not Seen from Key Viewing Areas.

- 10 1. Unless expressly exempted by other provisions in this chapter, colors of structures on sites not
11 visible from key viewing areas shall be earth-tones found at the specific site. The specific colors
12 or list of acceptable colors shall be approved as a condition of approval, drawing from other
13 recommended palette of colors included in the *Scenic Resources Implementation Handbook*.

14
15
16 **40.240.820 GENERAL MANAGEMENT AREA CULTURAL RESOURCE REVIEW CRITERIA**

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

- 18 1. All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed
19 by professionals whose expertise reflects the type of cultural resources that are involved.
20 Principal investigators shall meet the professional standards published in 36 CFR Part 61 and
21 *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no
22 date).
- 23 2. Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be
24 conducted in consultation with Indian tribal governments and any party who submits written
25 comments on a the proposed use related to such surveys, assessments, plans and evaluations.
26 Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or
27 otherwise associated with Native Americans. If the cultural resources are associated with
28 non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal
29 governments do not have to be consulted.
- 30 3. Reconnaissance and Historic Surveys and Survey Reports.
- 31 a. Reconnaissance survey requirements and exceptions.
- 32 (1) A reconnaissance survey shall be required for all proposed uses within five hundred
33 (500) feet of a known cultural resource, including those uses listed as exceptions in
34 Section 40.240.820(A)(3)(a)(2).
- 35 (2) A reconnaissance survey shall be required for all proposed uses, except:
- 36 (a) The modification, expansion, replacement, or reconstruction of existing buildings and
37 structures.
- 38 (b) Proposed uses that would not disturb the ground, including land divisions and lot-line
39 adjustments; storage sheds that do not require a foundation; low-intensity recreation
40 uses, such as fishing, bunting, and hiking; installation of surface chemical toilets;
41 hand treatment of brush within established rights-of-way; and new uses of existing
42 structures.
- 43 (c) Proposed uses that involve minor ground disturbance, as defined by depth and
44 extent, including repair and maintenance of lawfully constructed and serviceable
45 structures; home gardens; livestock grazing; cultivation that employs minimum tillage
46 techniques, such as replanting pastures using a grassland drill; construction of
47 fences; new utility poles that are installed using an auger, post-hole digger, or similar
48 implement; and placement of mobile homes where septic systems and underground
49 utilities are not involved. The Gorge Commission shall review all land use
50 applications and determine if proposed uses would have a minor ground disturbance.
- 51

- 1 (d) Proposed uses that occur on sites that have been disturbed by human activities;
2 provided, that the proposed uses do not exceed the depth and extent of existing
3 ground disturbance. To qualify for this exception, a project applicant must
4 demonstrate that land disturbing activities occurred in the project area. Land-
5 disturbing activities include grading and cultivation.
- 6 (e) Proposed uses that would occur on sites that have been adequately surveyed in the
7 past. The project applicant must demonstrate that the project area has been
8 adequately surveyed to qualify for this exception. Past surveys must have been
9 conducted by a qualified professional and must include a surface survey and
10 subsurface testing. The nature and extent of any cultural resources in the project
11 area must be adequately documented.
- 12 (f) Proposed uses occurring in areas that have a low probability of containing cultural
13 resources, except:
- 14 (i) Residential development that involves two or more new dwellings for the same
15 project applicant.
- 16 (ii) Recreation facilities that contain parking areas for more than ten (10) cars,
17 overnight camping facilities, boat ramps, and visitor information and
18 environmental education facilities.
- 19 (iii) Public transportation facilities that are outside improved rights-of-way.
- 20 (iv) Electric facilities, lines, equipment, and appurtenances that are thirty-three (33)
21 kilovolts or greater.
- 22 (v) Communications, water and sewer, and natural gas transmission (as opposed to
23 distribution) lines, pipes, equipment, and appurtenances.
- 24 (vi) Areas that have a low probability of containing cultural resources shall be
25 identified by the Columbia River Gorge Commission using the results of
26 reconnaissance surveys conducted by the Gorge Commission, the Forest
27 Service, public agencies, and private archaeologists.
- 28 b. A historic survey shall be required for all proposed uses that would alter the exterior
29 architectural appearance of buildings and structures that are fifty (50) years old or older, or
30 would compromise features of the surrounding area that are important in defining the historic
31 or architectural character of buildings or structures that are fifty (50) years old or older.
- 32 c. The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for
33 small-scale uses in the GMA. When archaeological resources or traditional cultural properties
34 are discovered, the Gorge Commission also shall identify the approximate boundaries of the
35 resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and
36 buffer zone delineations for large-scale uses shall be the responsibility of the project
37 applicant. For this section, large-scale uses include residential development involving two
38 (2) or more new dwellings; all recreation facilities; commercial and industrial development;
39 public transportation facilities; electric facilities, lines, equipment, and appurtenances that are
40 thirty-three (33) kilovolts or greater; and communications, water and sewer, and natural gas
41 transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.
- 42 d. Reconnaissance Surveys for Small-Scale Uses. Reconnaissance surveys for small-scale
43 uses shall generally include a surface survey and subsurface testing. They shall meet the
44 following guidelines:
- 45 (1) A surface survey of the project area shall be conducted, except for inundated areas and
46 impenetrable thickets.
- 47 (2) Subsurface testing shall be conducted if the surface survey reveals that cultural
48 resources may be present. Subsurface probes shall be placed at intervals sufficient to
49 determine the absence or presence of cultural resources.
- 50 e. Reconnaissance Survey Reports for Small-Scale Uses. The results of a reconnaissance
51 survey for small-scale uses shall be documented in a confidential report that includes:
- 52 (1) A description of the fieldwork methodology used to identify cultural resources, including a
53 description of the type and extent of the reconnaissance survey.

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

- 1 4. The responsibility and cost of preparing an evaluation of significance, assessment of effect, or
2 mitigation plan shall be borne by the project applicant, except for resources discovered during
3 construction. The Gorge Commission shall conduct and pay for evaluations of significance and
4 mitigation plans for resources that are discovered during construction of small-scale and
5 large-scale uses.
- 6 5. Cultural resources are significant if one of the following criteria is satisfied:
 - 7 a. The cultural resources are included in, or eligible for inclusion in, the National Register of
8 Historic Places. The criteria for evaluating the eligibility of cultural resources for the National
9 Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR
10 60.4).
 - 11 b. The cultural resources are determined to be culturally significant by an Indian tribal
12 government, based on criteria developed by that Indian tribal government and filed with the
13 Gorge Commission.
- 14 6. The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall
15 comprise cultural resource professionals, interested individuals, and at least one representative
16 from each of the four Indian tribes. If a project applicant's and Indian tribal government's
17 evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the
18 applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will
19 submit a recommendation to the responsible official as to whether affected cultural resources are
20 significant.

21
22 B. Cultural Resource Reconnaissance and Historic Surveys.

- 23 1. Consultation and Ethnographic Research.
 - 24 a. When written comments are submitted to the responsible official within the comment period
25 provided for in Section 40.240.050(E), the project applicant shall offer to meet with the
26 commenting parties within ten (10) calendar days. The ten- (10-) day consultation period may
27 be extended upon agreement between the project applicant and the commenting parties.
28 Consultation meetings should provide an opportunity for commenting parties to explain how
29 the proposed use may affect cultural resources. Recommendations to avoid potential
30 conflicts should be discussed. All written comments and consultation meeting minutes shall
31 be incorporated into the reconnaissance or historic survey report. In instances where a
32 survey is not required, all such information shall be recorded and addressed in a report that
33 typifies a survey report; inapplicable elements may be omitted.
 - 34 b. A project applicant who is proposing a large-scale use shall conduct interviews and other
35 forms of ethnographic research if parties commenting on the application submit a written
36 request for such research. All requests must include a description of the cultural resources
37 that may be affected by the proposed use and the identity of knowledgeable informants.
38 Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps,
39 photographs, and minutes shall be used when appropriate. All written comments,
40 consultation meeting minutes, and ethnographic research shall be incorporated into the
41 reconnaissance or historic survey report. In instances where a survey is not required, all such
42 information shall be recorded and addressed in a report that typifies a survey report.
- 43 2. Notice of Survey Results.
 - 44 a. The responsible official shall submit a copy of all cultural resource survey reports to the
45 SHPO and the Indian tribal governments. Survey reports may include measures to avoid
46 affected cultural resources, such as a map that shows a reasonable buffer zone.
 - 47 b. The SHPO and the tribes shall have thirty (30) calendar days from the date a survey report is
48 mailed to submit written comments to the responsible official. The responsible official shall
49 record and address all written comments in the development review order.
- 50 3. Conclusion of the Cultural Resource Protection Process.
 - 51 a. The responsible official shall make a final decision on whether the proposed use would be
52 consistent with this section. If the final decision contradicts the comments submitted by the
53 SHPO, the responsible official shall justify how it reached an opposing conclusion.

1 b. The cultural resource protection process may conclude when one of the following conditions
2 exists:

3 (1) The proposed use does not require a reconnaissance or historic survey, no cultural
4 resources are known to exist in the project area, and no substantiated concerns were
5 voiced by parties commenting on the application within twenty-one (21) calendar days of
6 the date that a notice was mailed.

7 (2) A reconnaissance survey demonstrates that cultural resources do not exist in the project
8 area and no substantiated concerns were voiced by commenting parties within twenty-
9 one (21) calendar days of the date that a notice was mailed.

10 (3) The proposed use would avoid archaeological resources and traditional cultural
11 resources that exist in the project area. To meet this guideline, a reasonable buffer zone
12 must be established around the affected resources or properties; all ground-disturbing
13 activities shall be prohibited within the buffer zone. Buffer zones must preserve the
14 integrity and context of cultural resources. They will vary in width depending on the
15 eventual use of the project area, the type of cultural resources that are present, and the
16 characteristics for which the cultural resources may be significant. A deed covenant
17 easement or other appropriate mechanism shall be developed to ensure that the buffer
18 zone and the cultural resources are protected. An evaluation of significance shall be
19 conducted if a project applicant decides not to avoid the affected cultural resource. In
20 these instances, the reconnaissance survey and survey report shall be incorporated into
21 the evaluation of significance.

22 c. A historic survey demonstrates that the proposed use would not have an effect on historic
23 buildings or structures because:

24 (1) The SHPO concludes that the historic buildings or structures are clearly not significant,
25 as determined by using the criteria in the "National Register Criteria for Evaluation" (36
26 CFR 60.4), or

27 (2) The proposed use would not compromise the historic or architectural character of the
28 affected buildings or structures, or compromise features of the site that are important in
29 defining the overall historic character of the affected buildings or structures, as
30 determined by the guidelines and standards in *The Secretary of the Interior's Standards*
31 *for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings* and *The*
32 *Secretary of the Interior's Standards for Treatment of Historic Properties*. The historic
33 survey conducted by the Gorge Commission may provide sufficient information to satisfy
34 these guidelines. If it does not, architectural and building plans, photographs, and
35 archival research may be required. The project applicant shall be responsible for
36 providing information beyond that included in the survey conducted by the Gorge
37 Commission. The historic survey and report must demonstrate that these guidelines have
38 been clearly and absolutely satisfied. If the SHPO or the responsible official question
39 whether these guidelines have been satisfied, the project applicant shall conduct an
40 evaluation of significance.

41 C. Evaluation of Significance.

42 1. Evaluation Criteria and Information Needs. If cultural resources would be affected by a new use,
43 an evaluation of their significance shall be conducted. Evaluations of significance shall meet the
44 following guidelines:

45 a. Evaluations of significance shall follow the procedures in *How to Apply the National Register*
46 *Criteria for Evaluation* (U.S. Department of the Interior, no date) and *Guidelines for*
47 *Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date). They
48 shall be presented within local and regional contexts and shall be guided by previous
49 research and current research designs that are relevant to specific research questions for the
50 Columbia River Gorge.

51 b. To evaluate the significance of cultural resources, the information gathered during the
52 reconnaissance or historic survey may have to be supplemented. Detailed field mapping,
53

- 1 subsurface testing, photographic documentation, laboratory analyses, and archival research
 2 may be required.
- 3 c. The project applicant shall contact Indian tribal governments and commenting parties as
 4 appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the
 5 significance of the cultural resources.
- 6 d. The evaluation of significance shall follow the principles, guidelines, and report format
 7 recommended by Washington Office of Archaeology and Historic Preservation (Washington
 8 SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and
 9 shall illustrate why each cultural resource is or is not significant. Findings shall be presented
 10 within the context of relevant local and regional research.
- 11 e. All documentation used to support the evaluation of significance shall be cited. Evidence of
 12 consultation with Indian tribal governments and other commenting parties shall be presented.
 13 *All comments, recommendations, and correspondence from Indian tribal governments and*
 14 *commenting parties shall be appended to the evaluation of significance.*
- 15 2. *Notice of Evaluation Results.*
- 16 a. If the evaluation of significance demonstrates that the cultural resources are not significant,
 17 *the responsible official shall submit a copy of the evaluation of significance to the SHPO and*
 18 *the Indian tribal governments.*
- 19 b. The SHPO, Indian tribal governments, and commenting parties shall have thirty (30) calendar
 20 days from the date the evaluation of significance is mailed to submit written comments to the
 21 responsible official. The responsible official shall record and address all written comments in
 22 the development review order.
- 23 3. *Cultural Resources are Culturally Significant.*
- 24 a. If an Indian tribal government believes that the affected cultural resources are culturally
 25 significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory
 26 Committee (CAC) shall make an independent review of the applications evaluation and the
 27 Indian tribal government's substantiated concerns. The CAC shall formulate a
 28 recommendation regarding the significance of the cultural resources.
- 29 b. The Indian tribal government shall substantiate its concerns in a written report. The report
 30 shall be submitted to the responsible official, CAC, and the project applicant within fifteen (15)
 31 calendar days from the date the evaluation of significance is mailed. The CAC must submit its
 32 recommendation to the responsible official within thirty (30) calendar days from the date the
 33 evaluation of significance is mailed.
- 34 4. *Conclusion of the Cultural Resource Protection Process.*
- 35 a. The responsible official shall make a final decision on whether the affected resources are
 36 significant. If the final decision contradicts the comments or recommendations submitted by
 37 the SHPO or CAC, the responsible official shall justify how an opposing conclusion was
 38 reached.
- 39 b. The cultural resource protection process may conclude if the affected cultural resources are
 40 not significant.
- 41 c. If the project applicant or the responsible official determines that the cultural resources are
 42 significant, the effects of the proposed use shall be assessed.
- 43
- 44 D. *Assessment of Effect.*
- 45 1. *Assessment Criteria and Information Needs.* If a use could potentially affect significant cultural
 46 resources, an assessment shall be made to determine if it would have no effect, no adverse
 47 effect, or an adverse effect.
- 48 a. The assessment of effect shall be based on the criteria published in "Protection of Historic
 49 Properties" (36 CFR 800.9) and shall incorporate the results of the reconnaissance or historic
 50 survey and the evaluation of significance. All documentation shall follow the requirements
 51 listed in 36 CFR 800.8.
- 52 (1) Proposed uses are considered to have an effect on cultural resources when they alter or
 53 destroy characteristics of the resources that make them significant (36 CFR 800.9(a)).

- 1 (2) Proposed uses are considered to have an adverse effect when they may diminish the
2 integrity of the cultural resource's location, design, setting, materials, workmanship,
3 feeling, or association (36 CFR 800.9(b)). Adverse effects on cultural resources include,
4 but are not limited to:
5 (a) Physical destruction, damage, or alteration of all or part of the cultural resource.
6 (b) Isolation of the cultural resource from its setting or alteration of the character of the
7 resource's setting when that character contributes to the resource's qualification as
8 being significant.
9 (c) Introduction of visual, audible, or atmospheric elements that are out of character with
10 the cultural resource or its setting.
11 (d) Neglect of a significant cultural resource resulting in its deterioration or destruction.
12 b. The assessment of effect shall be prepared in consultation with Indian tribal governments and
13 interested persons, as appropriate. The concerns and recommendations voiced by Indian
14 tribal governments and interested persons shall be recorded and addressed in the
15 assessment.
16 c. The effects of a proposed use that would otherwise be determined to be adverse may be
17 considered to be not adverse if any of the following instances apply:
18 (1) The cultural resources are of value only for their potential contribution to archeological,
19 historical, or architectural research, and when such value can be substantially preserved
20 through the conduct of appropriate research before development begins, and such
21 research is conducted in accordance with applicable professional standards and
22 guidelines.
23 (2) The undertaking is limited to the rehabilitation of buildings and structures, and is
24 conducted in a manner that preserves the historical and architectural character of
25 affected cultural resources through conformance with *The Secretary of the Interior's*
26 *Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic*
27 *Buildings* and *The Secretary of the Interior's Standards for Treatment of Historic*
28 *Properties*.
29 2. Notice of Assessment Results.
30 a. If the assessment of effect concludes that the proposed use would have no effect or no
31 adverse effect on significant cultural resources, the responsible official shall submit a copy of
32 the assessment to the SHPO and the Indian tribal governments.
33 b. The SHPO, Indian tribal governments, and interested persons shall have thirty (30) calendar
34 days from the date the assessment of effect is mailed to submit written comments to the
35 responsible official. The responsible official shall record and address all written comments in
36 the development review order.
37 3. Conclusion of the Cultural Resource Protection Process.
38 a. The responsible official shall make a final decision on whether the proposed use would have
39 no effect, no adverse effect, or an adverse effect. If the final decision contradicts the
40 comments submitted by the SHPO, the responsible official shall justify how an opposing
41 conclusion was reached.
42 b. The cultural resource protection process may conclude if the proposed use would have no
43 effect or no adverse effect on significant cultural resources.
44 c. A mitigation plan shall be prepared if a project applicant or the responsible official determines
45 that the proposed use would have an adverse effect on significant cultural resources.
46
47 E. Mitigation Plans.
48 1. Mitigation Plan Criteria and Information Needs. Mitigation plans shall be prepared when proposed
49 uses would have an adverse effect on significant cultural resources. The plans shall reduce an
50 adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following
51 guidelines:
52 a. Mitigation plans shall be prepared in consultation with persons who have concerns about or
53 knowledge of the affected cultural resources, including Indian tribal governments, Native

- 1 Americans, local governments whose jurisdiction encompasses the project area, and the
 2 SHPO.
- 3 b. Avoidance of cultural resources through project design and modification is preferred.
 4 Avoidance may be affected by reducing the size, scope, configuration, and density of the
 5 proposed use.
- 6 c. Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative
 7 measures include, but are not limited to, burial under fill, stabilization, removal of the cultural
 8 resource to a safer place, and partial to full excavation and recordation. If the mitigation plan
 9 includes buffer zones to protect cultural resources, a deed covenant, easement, or other
 10 appropriate mechanism shall be developed and recorded in county deeds and records.
 11 Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the
 12 evaluation of significance, and the assessment of effect, and shall provide the documentation
 13 required in 36 CFR 800.8(d), including, but not limited to:
- 14 (1) A description and evaluation of any alternatives or mitigation measures that the project
 15 applicant proposes for reducing the effects of the proposed use.
- 16 (2) A description of any alternatives or mitigation measures that were considered but not
 17 chosen and the reasons for their rejection.
- 18 (3) Documentation of consultation with the SHPO regarding any alternatives or mitigation
 19 measures.
- 20 (4) A description of the project applicant's efforts to obtain and consider the views of Indian
 21 tribal governments, commenting parties, and the responsible official.
- 22 (5) Copies of any written recommendations submitted to the responsible official or project
 23 applicant regarding the effects of the proposed use on cultural resources and alternatives
 24 to avoid or reduce those effects.
- 25 2. Notice of Mitigation Plan Results.
- 26 a. If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no
 27 adverse effect, the responsible official shall submit a copy of the mitigation plan to the SHPO
 28 and the Indian tribal governments.
- 29 b. The SHPO, Indian tribal governments, and commenting parties shall have thirty (30) calendar
 30 days from the date the mitigation plan is mailed to submit written comments to the
 31 responsible official. The responsible official shall record and address all written comments in
 32 the development review order.
- 33 3. Conclusion of the Cultural Resource Protection Process.
- 34 a. The responsible official shall make a final decision on whether the mitigation plan would
 35 reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the
 36 comments submitted by the SHPO, the responsible official shall justify how an opposing
 37 conclusion was reached.
- 38 b. The cultural resource protection process may conclude if a mitigation plan would reduce an
 39 adverse effect to no effect or no adverse effect.
- 40 c. The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an
 41 adverse effect to no effect or no adverse effect.
- 42
- 43 F. Cultural Resources Discovered After Construction Begins.
- 44 The following procedures shall be put into effect when cultural resources are discovered during
 45 construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the
 46 responsible official and the SHPO. Indian tribal governments also shall receive a copy of all reports
 47 and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.
- 48 1. Halt of Construction. All construction activities within one hundred (100) feet of the discovered
 49 cultural resource shall cease. The cultural resources shall remain as found; further disturbance is
 50 prohibited.
- 51 2. Notification. The project applicant shall notify the responsible official and the Gorge Commission
 52 within twenty-four (24) hours of the discovery. If the cultural resources are prehistoric or otherwise

1 associated with Native Americans, the project applicant shall also notify the Indian tribal
2 governments within twenty-four (24) hours.

- 3 3. Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining
4 written permission from the landowner and appropriate permits from the SHPO. (See Revised
5 Code of Washington [RCW] 27.53). It shall gather enough information to evaluate the significance
6 of the cultural resources. The survey and evaluation shall be documented in a report that
7 generally follows the guidelines in Sections 40.240.820(A)(3)(g) and Section 40.240.820(C)(1).
8 Based on the survey, evaluation report and any written comments, the responsible official shall
9 make a final decision on whether the resources are significant. Construction activities may
10 recommence if the cultural resources are not significant. A mitigation plan shall be prepared if the
11 affected cultural resources are significant.
- 12 4. Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and
13 report guidelines contained in Section 40.240.820(E)(1). Construction activities may
14 recommence when the conditions in the mitigation plan have been executed.

15
16 G. Discovery of Human Remains.

17 The following procedures shall be put into effect when human remains are discovered during a
18 cultural resource survey or during construction. Human remains means articulated or disarticulated
19 human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

- 20 1. Halt of Activities. All survey, excavation, and construction activities shall cease. The human
21 remains shall not be disturbed any further.
- 22 2. Notification. Local law enforcement officials, the responsible official, the Gorge Commission, and
23 the Indian tribal governments shall be contacted immediately.
- 24 3. Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site
25 and determine if they are prehistoric/historic; or modern. Representatives from the Indian tribal
26 governments shall have an opportunity to monitor the inspection.
- 27 4. Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume
28 jurisdiction and the cultural resource protection process may conclude.
- 29 5. Treatment. Prehistoric/historic remains of Native Americans shall generally be treated in
30 accordance with the procedures set forth RCW 27.44 and 68.05 if the remains are
31 prehistoric/historic. If the human remains will be re-interred or preserved in their original position,
32 a mitigation plan shall be prepared in accordance with the consultation and report requirements
33 specified in Section 40.240.820(E)(1). The mitigation plan shall accommodate the cultural and
34 religious concerns of Native Americans. The cultural resource protection process may conclude
35 when the conditions set forth in Section 40.240.820(E)(3) are met and the mitigation plan is
36 executed.

37
38
39 **40.240.830 SPECIAL MANAGEMENT AREA CULTURAL RESOURCE REVIEW CRITERIA**

40
41 A. General Guidelines for Implementing the Cultural Resources Protection Process.

- 42 1. All cultural resource information shall remain confidential, according to Section 6(a)(1)(A) of the
43 Scenic Area Act. Federal agency cultural resource information is also exempt by statute from the
44 Freedom of Information Act under 16 USC 470 hh and 36 CFR 296.18.
- 45 2. All cultural resources surveys, evaluations, assessments, and mitigation plans shall be performed
46 by professionals whose expertise reflects the type of cultural resources that are involved.
47 Principal investigators shall meet the professional standards published in 36 CFR 61.
- 48 3. The Forest Service will be responsible for performing the literature review and consultation,
49 inventory, evaluations of significance, assessments of effect, and mitigation requirements in
50 Section 40.240.830(D) for forest practices and National Forest System lands.
- 51 4. New developments or land uses shall not adversely affect significant cultural resources.
- 52

- 1 B. The procedures and guidelines in Section 40.240.820 shall be used to review all proposed
2 developments and land uses other than those on all federal lands, federally assisted projects and
3 forest practices.
4
- 5 C. The procedures and guidelines in 36 CFR 800 and Section 40.240.830(D) shall be used by federal
6 agencies to evaluate new developments or land uses on federal lands, federally assisted projects,
7 and forest practices.
8
- 9 D. The following procedures as well as the provisions in 36 CFR 800 shall be used to assess potential
10 effects to cultural resources.
11 1. Literature Review and Consultation.
12 a. An assessment shall be made to determine if any cultural resources listed on the National
13 Register of Historic Places at the national, state or county level exist on or within the area of
14 potential direct and indirect impacts.
15 b. A search shall be made of state and county government, National Scenic Area/Forest Service
16 and any other pertinent inventories, such as archives and photographs, to identify cultural
17 resources, including consultation with the State Historic Preservation Office and tribal
18 governments. State and tribal government response to the consultation request shall be
19 allowed for thirty (30) days.
20 c. Consultation with cultural resource professionals knowledgeable about the area.
21 d. A field inventory by a cultural resource professional shall be required if the Forest Service or
22 the responsible official determines that a recorded or known cultural resource exists on or
23 within the immediate vicinity of a new development or land use, including those reported in
24 consultation with the Tribal governments.
25 2. Field Inventory.
26 a. Tribal representatives shall be invited to participate in the field inventory.
27 b. The field inventory shall consist of one or the other of the following guidelines, as determined
28 by the cultural resource professional:
29 (1) Complete survey: the systematic examination of the ground surface through a controlled
30 procedure, such as walking an area in evenly-spaced transects. A complete survey may
31 also require techniques such as clearing of vegetation, augering or shovel probing of
32 subsurface soils for the presence of buried cultural resources.
33 (2) Sample survey: the sampling of an area to assess the potential of cultural resources
34 within the area of proposed development or use. This technique is generally used for
35 large or difficult to survey parcels, and is generally accomplished by a stratified random
36 or non-stratified random sampling strategy. A parcel is either stratified by variables such
37 as vegetation, topography or elevation, or by non-environmental factors such as a survey
38 grid.
39 Under this method, statistically valid samples are selected and surveyed to indicate the
40 probability of presence, numbers and types of cultural resources throughout the sampling
41 strata. Depending on the results of the sample, a complete survey may or may not
42 subsequently be recommended.
43 c. A field inventory report shall be prepared, and shall include the following:
44 (1) A narrative integrating the literature review of subsection (D)(1) above with the field
45 inventory of subsection (D)(2)(b) above.
46 (2) A description of the field inventory methodology used, including the type and extent of
47 field inventory, supplemented by maps which graphically illustrate the areas surveyed,
48 not surveyed, and the rationale for each.
49 (3) A statement of the presence or absence of cultural resources within the area of the new
50 development or land use.
51 (4) When cultural resources are not located, a statement of the likelihood of buried or
52 otherwise concealed cultural resources shall be included. Recommendations and
53 standards for monitoring, if appropriate, shall be included.

- 1 d. The report shall follow the format specified by the Washington Office of Archaeology and
2 Historic Preservation for inventories conducted in the State of Washington.
3 e. The field inventory report shall be presented to the Forest Service or the responsible official
4 for review.

5 3. Evaluations of Significance.

- 6 a. When cultural resources are found within the area of the new development or land use, an
7 evaluation of significance shall be completed for each cultural resource in accordance with to
8 the criteria of the National Register of Historic Places (36 CFR 60.4).
9 b. Evaluations of cultural resource significance shall be guided by previous and current research
10 designs relevant to specific research questions for the area.
11 c. Evaluations of the significance of traditional cultural properties shall follow National Register
12 Bulletin 38, Guidelines for the Evaluation and Documentation of Traditional Cultural
13 Properties, within local and regional contexts.
14 d. Recommendations for eligibility to the National Register shall be completed for each identified
15 resource, in accordance with National Register criteria A through D (36 CFR 60.4). The
16 Forest Service or the responsible official shall review evaluations for adequacy.
17 e. Evidence of consultation with tribal governments and individuals with knowledge of the
18 cultural resources in the project area, and documentation of their concerns, shall be included
19 as part of the evaluation of significance.
20 f. An assessment of effect shall be required if the Forest Service or the responsible official
21 determines that the inventoried cultural resources are significant.

22 4. Assessment of Effect.

- 23 a. For each significant (i.e., National Register eligible) cultural resource inventoried within the
24 area of the proposed development or change in use, assessments of effect shall be
25 completed, using the criteria outlined in 36 CFR 800.9 ("Assessing Effects"). Evidence of
26 consultation with tribal governments and individuals with knowledge of the cultural resources
27 of the project area shall be included for subsections (D)(4)(b) through (D)(4)(d) below. The
28 Forest Service or the responsible official shall review each determination for adequacy.
29 b. If the proposed development or change in use will have "No Adverse Effect," as defined by
30 36 CFR 800.8, to a significant cultural resource, documentation for that finding shall be
31 completed, following the "Documentation Requirements" of 36 CFR 800.8(a).
32 c. If the proposed development or change in use will have an "Adverse Effect" as defined by 36
33 CFR 800.9(b) to a significant cultural resource, the type and extent of "adverse effect" upon
34 the qualities of the property that make it eligible for the National Register shall be
35 documented. This documentation shall follow the process outlined under 36 CFR 800.5(e).
36 d. If the "effect" appears to be beneficial (i.e., an enhancement to cultural resources),
37 documentation shall be completed for the recommendation of that effect upon the qualities of
38 the cultural resource that make it eligible to the National Register. This documentation shall
39 follow the process outlined under 36 CFR 800.8 ("Documentation Requirements").

40 5. Mitigation.

- 41 a. If there will be an effect on cultural resources, measures shall be provided for mitigation of
42 effects. These measures shall address factors such as avoidance of the property through
43 project design or modification and subsequent protection, burial under fill, data recovery
44 excavations, or other measures which are proposed to mitigate effects.
45 b. Evidence of consultation with tribal governments and individuals with knowledge of the
46 resources to be affected, and documentation of their concerns, shall be included for all
47 mitigation proposals.
48 c. The Forest Service or the responsible official shall review all mitigation proposals for
49 adequacy.
50

1 E. Discovery During Construction.

2 All authorizations for new developments or land uses shall be conditioned to require the immediate
3 notification of the Forest Service or the responsible official if cultural resources are discovered during
4 construction or development.

- 5 1. If cultural resources are discovered, particularly human bone or burials, work in the immediate
6 area of discovery shall be suspended until a cultural resource professional can evaluate the
7 potential significance of the discovery and recommend measures to protect and/or recover the
8 resources.
- 9 2. If the discovered material is suspected to be human bone or a burial, the following procedure
10 shall be used:
- 11 a. The applicant shall stop all work in the vicinity of the discovery.
 - 12 b. The applicant shall immediately notify the responsible official, the Forest Service, the
13 applicant's cultural resource professional, the State Medical Examiner, and appropriate law
14 enforcement agencies.
 - 15 c. The Forest Service or the responsible official shall notify the tribal governments if the
16 discovery is determined to be an Indian burial or a cultural resource.
 - 17 d. A cultural resource professional shall evaluate the potential significance of the resource
18 pursuant to Section 40.240.830(D)(3) and report the results to the Forest Service or the
19 responsible official.
- 20 3. The cultural resource review process shall be complete and work may continue if the Forest
21 Service or the responsible official determines that the cultural resource is not significant.
- 22 4. The cultural resource professional shall recommend measures to protect and/or recover the
23 resource pursuant to Section 40.240.830(D)(5) if the Forest Service or the responsible official
24 determines that the cultural resource is significant.
- 25
26

27 **40.240.840 GENERAL MANAGEMENT AREA WETLAND REVIEW CRITERIA**

28
29 A. Wetlands Boundaries and Site Plans for Review Uses in Wetlands.

- 30 1. If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible
31 for determining the exact location of the wetland boundary.
- 32 a. The approximate location and extent of wetlands in the Scenic Area are indicated on the list
33 of hydric soils and the soil survey maps and the National Wetlands Inventory (U.S.
34 Department of the Interior 1987). Wetlands boundaries shall be delineated using the
35 procedures specified in the *Corp of Engineers Wetlands Delineation Manual* (Wetlands
36 Research Program Technical Report Y-87-1, on-line edition, updated through March 21,
37 1997).
 - 38 b. All wetlands delineations shall be conducted by a professional who has been trained to use
39 the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.
 - 40 c. The responsible official may verify the accuracy of, and may render adjustments to, a
41 wetlands boundary delineation. In the event the adjusted boundary delineation is contested
42 by the applicant, the responsible official shall, at the applicant's expense, obtain professional
43 services to render a final delineation.
 - 44 d. Proposed uses within wetlands or wetlands buffer areas shall comply with SEPA, this section,
45 and Chapter 40.450, as applicable. Chapter 40.240 shall prevail in cases of conflict with such
46 regulations.
- 47 2. In addition to the information required in all site plans, site plans for proposed uses in wetlands or
48 wetlands buffer zones shall include:
- 49 a. a site plan map prepared at a scale of one inch equals one hundred (100) feet (1:1,200), or a
50 scale providing greater detail;
 - 51 b. the exact boundary of the wetland and the wetlands buffer zone; and
 - 52 c. a description of actions that would alter or destroy the wetland.
- 53

1 B. Uses allowed outright in wetlands and wetlands buffer zones.

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

10
11 C. The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant
12 to the provisions in Section 40.240.840(E), and reviewed under the applicable provisions of Sections
13 40.240.800 through 40.240.900:

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

30
31 D. Uses not listed in Sections 40.240.840(B) and (C) may be allowed in wetlands and wetlands buffer
32 zones, when approved pursuant to Section 40.240.840(F) and reviewed under the applicable
33 provisions of Sections 40.240.800 through 40.240.900.

34
35 E. Applications for modifications to serviceable structures and minor water-dependent and water-related
36 structures in wetlands shall demonstrate that:

- 37 1. Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone
38 and/or minimum the impacts of the structure do not exist;
39 2. All reasonable measures have been applied to ensure that the structure will result in the minimum
40 feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and
41 wildlife resources, and hydrology;
42 3. The structure will be constructed using best management practices;
43 4. Areas disturbed during construction of the structure will be rehabilitated to the maximum extent
44 practicable; and
45 5. The structure complies with all applicable federal, state, and county laws.

46
47 F. Applications for all other Review Uses in wetlands shall demonstrate that:

- 48 1. The proposed use is water-dependent, or is not water-dependent but has no practicable
49 alternative considering a of the following:
50 a. The basic purpose of the use cannot be reasonably accomplished using one (1) or more
51 other sites in the vicinity that would avoid or result in less adverse effects on wetlands;
52 b. The basic purpose of the use cannot be reasonably accomplished by reducing its size,
53 scope, configuration, or density as proposed, or by changing the design of the use in a way
54 that would avoid or result in less adverse effects on wetlands; and

- 1 c. Reasonable attempts have been made to remove or accommodate constraints that caused a
2 project applicant to reject alternatives to the use as proposed. Such constraints include
3 inadequate infrastructure, parcel size, and zone designations. If a land designation or
4 recreation intensity class is a constraint, an applicant must request a Management Plan
5 amendment to demonstrate that practicable alternatives *do not* exist. An alternative site for a
6 proposed use shall be considered practicable if it is available and the proposed use can be
7 undertaken on that site after taking into consideration cost, technology, logistics, and overall
8 project purposes.
- 9 2. The proposed use is in the public interest. The following factors shall be considered when
10 determining if a proposed use is in the public interest:
- 11 a. The extent of public need for the proposed use;
- 12 b. The extent and permanence of beneficial or detrimental effects that the proposed use may
13 have on the public and private uses for which the property is suited;
- 14 c. The functions and size of the wetland that may be affected;
- 15 d. The economic value of the proposed use to the general area; and
- 16 e. The ecological value of the wetland and probable effect on public health and safety, fish,
17 plants, and wildlife.
- 18 3. Measures will be applied to ensure that the proposed use results in the minimum feasible
19 alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife
20 resources, and hydrology.
- 21 4. Groundwater and surface-water quality will not be degraded by the proposed use.
- 22 5. Those portions of a proposed use that are not water-dependent or have a practicable alternative
23 will not be located in wetlands or wetlands buffer zones.
- 24 6. The proposed use complies with all applicable federal, state, and county laws.
- 25 7. Areas that are disturbed during construction will be rehabilitated to the maximum extent
26 practicable.
- 27 8. Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of
28 wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines
29 listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts. The
30 following wetlands restoration, creation, and enhancement guidelines shall apply:
- 31 a. Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing
32 degraded wetlands. Wetlands restoration shall be the preferred alternative.
- 33 b. Wetlands restoration, creation, and enhancement projects shall be conducted in accordance
34 with Section 40.240.840(H) and Chapter 40.450, although Chapter 40.240 shall prevail in
35 cases of conflict.
- 36 c. Wetlands restoration, creation, and enhancement projects shall use native vegetation.
- 37 d. The size of replacement wetlands shall equal or exceed the following ratios (the first number
38 specifies the required acreage of replacement wetlands and the second number specifies the
39 acreage of wetlands altered or destroyed):
- 40 (1) Restoration: 2:1
- 41 (2) Creation: 3:1
- 42 (3) Enhancement: 4:1
- 43 e. Replacement wetlands shall replicate the functions of the wetland that will be altered or
44 destroyed such that no net loss of wetlands functions occurs.
- 45 f. Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If
46 this guideline is not feasible or practical due to technical constraints, a wetland type of equal
47 or greater benefit may be substituted; provided, that no net loss of wetlands functions occurs.
- 48 g. Wetlands restoration, creation, or enhancement should occur within one thousand (1,000)
49 feet of the affected wetland. If this is not practicable due to physical or technical constraints,
50 replacement shall occur within the same watershed and as close to the altered or destroyed
51 wetland as practicable.
- 52 h. Wetlands restoration, creation, and enhancement efforts should be completed before a
53 wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and

1 enhancement efforts before the wetland is altered or destroyed, these efforts shall be
2 completed before the new use is occupied or used.

- 3 i. Five years after a wetland is restored, created, or enhanced at least seventy-five percent
4 (75%) of the replacement vegetation must survive. For a period of at least five (5) years the
5 owner shall monitor the hydrology and vegetation of the replacement wetland and shall take
6 corrective measures to ensure that it conforms with the approved wetlands compensation
7 plan and this guideline.
8

9 G. Wetlands Buffer Zones.

- 10 1. The width of wetlands buffer zones shall be based on the dominant vegetation community that
11 exists in a buffer zone.
12 2. The dominant vegetation community in a buffer zone is the vegetation community that covers the
13 most surface area of that portion of the buffer zone that lies between the proposed activity and
14 the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.
15 a. A forest vegetation community is characterized by trees with an average height equal to or
16 greater than twenty (20) feet, accompanied by a shrub layer; trees must form a canopy cover
17 of at least forty percent (40%) and shrubs must form a canopy cover of at least forty percent
18 (40%). A forest community without a shrub component that forms a canopy cover of at least
19 forty percent (40%) shall be considered a shrub vegetation community.
20 b. A shrub vegetation community is characterized by shrubs and trees that are greater than
21 three (3) feet tall and form a canopy cover of at least forty percent (40%).
22 c. An herbaceous vegetation community is characterized by the presence of herbs, including
23 grass and grass-like plants, forbs, ferns, and non-woody vines.
24 3. Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is
25 perpendicular to the wetlands boundary. The following buffer zone widths shall be required:
26 a. Forest communities: 75 feet
27 b. Shrub communities: 100 feet
28 c. Herbaceous communities: 150 feet
29 4. Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition.
30 When a buffer zone is disturbed by a new use, it shall be replanted with native plant species as
31 identified in the Clark County Plant List (see the Standard Details Manual).
32

33 H. Wetlands Compensation Plans.

34 Wetlands compensation plans shall be prepared when a project applicant is required to restore,
35 create or enhance wetlands. They shall satisfy the following guidelines:

- 36 1. Wetlands compensation plans shall be prepared by a qualified professional hired by a project
37 applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of
38 replacement wetlands.
39 2. Wetlands compensation plans shall include an ecological assessment of the wetland that will be
40 altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment
41 shall include information on flora, fauna, hydrology, and wetlands functions.
42 3. Compensation plans shall also assess the suitability of the proposed site for establishing a
43 replacement wetland, including a description of the water source and drainage patterns,
44 topography, wildlife habitat opportunities, and value of the existing area to be converted.
45 4. Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at
46 contour intervals no greater than one (1) foot, slope percentages, and final grade elevations; and
47 other technical information shall be provided in sufficient detail to explain and illustrate:
48 a. Soil and substrata conditions, grading, and erosion and sediment control needed for wetland
49 construction and long-term survival.
50 b. Planting plans that specify native plant species, quantities, size, spacing, or density; source
51 of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and
52 where appropriate, measures to protect plants from predation.
53 c. Water-quality parameters, water source, water depths, water-control structures, and
54 water-level maintenance practices needed to achieve the necessary hydrologic conditions.

5. A five- (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.
6. A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

l. Wetlands enhancement projects shall be consistent with Section 40.240.840(H).

40.240.850 GENERAL MANAGEMENT AREA STREAM, POND, LAKE AND RIPARIAN

AREA REVIEW CRITERIA

A. Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas.

1. 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.
2. 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 one inch equals one hundred (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.

B. Uses.

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

C. The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant Section 40.240.850(E), and reviewed under the applicable provisions of Sections 40.240.800 through 40.240.900:

1. 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 one hundred percent (100%);
 - 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.
2. 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, that their surface is not constructed of impervious materials; observation decks, and interpretative aids, such as kiosks and signs.
3. 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.

D. Uses not listed in Sections 40.240.850(B) and (C) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to Section 40.240.850(F) and reviewed under the applicable provisions of Sections 40.240.800 through 40.240.900.

- 1
2 E. 1. Applications for modifications to serviceable structures and minor water-dependent and
3 water-related structures in aquatic and riparian areas shall demonstrate that:
4 a. Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer
5 zone and/or minimizing the impacts of the structure do not exist;
6 b. All reasonable measures have been applied to ensure that the structure will result in the
7 minimum feasible alteration or destruction of water quality, natural drainage, and fish and
8 wildlife habitat of streams, ponds, lakes, and riparian areas;
9 c. The structure will be constructed using best management practices;
10 d. Areas disturbed during construction of the structure will be rehabilitated to the maximum extent
11 practicable; and
12 e. The structure complies with all applicable federal, state, and local laws.
13 2. Applications for all other Review Uses in wetlands streams, ponds, and lakes shall demonstrate
14 that:
15 a. The proposed use is water-dependent, or is not water-dependent but has no practicable
16 alternative as determined by Section 40.240.840(F)(1), substituting the term stream, pond,
17 lake, or riparian area as appropriate.
18 b. The proposed use is in the public interest as determined by Section 40.240.840(F)(2),
19 substituting the term stream, pond, lake, or riparian area as appropriate.
20 c. Measures have been applied to ensure that the proposed use results in minimum feasible
21 impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream,
22 pond, lake, and/or buffer zone. At a minimum, the following mitigation measures shall be
23 considered when new uses are proposed in streams, ponds, lakes, and buffer zones:
24 (1) Construction shall occur during periods when fish and wildlife are least sensitive to
25 disturbance. The Washington Department of Fish and Wildlife shall evaluate specific
26 proposals and specify periods for in-water work.
27 (2) All natural vegetation shall be retained to the greatest extent practicable, including
28 aquatic and riparian vegetation.
29 (3) Nonstructural controls and natural processes shall be used to the greatest extent
30 practicable.
31 (4) Bridges, roads, pipeline and utility corridors, and other water crossings shall be
32 minimized and should serve multiple purposes and properties.
33 (5) Stream channels should not be placed in culverts unless absolutely necessary for
34 property access. Bridges are preferred for water crossings to reduce disruption to
35 streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts
36 with open bottoms that maintain the channel's width and grade should be used.
37 (6) Temporary and permanent control measures should be applied to minimize erosion and
38 sedimentation when riparian areas are disturbed, including slope netting, berms and
39 ditches, tree protection, sediment barriers, infiltration systems, and culverts.
40 d. Groundwater and surface-water quality will not be degraded by the proposed use.
41 e. Those portions of a proposed use that are not water-dependent or have a practicable
42 alternative will be located outside of stream, pond, and lake buffer zones.
43 f. The proposed use complies with all applicable federal, state, and county laws.
44 g. Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and
45 enhancement. Rehabilitation and enhancement shall achieve no net loss of water quality,
46 natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer
47 zone. When a project area has been disturbed in the past, it shall be rehabilitated to its
48 natural condition to the maximum extent practicable. When a project area cannot be
49 completely rehabilitated, such as when a boat launch permanently displaces aquatic and
50 riparian areas, enhancement shall also be required. The following rehabilitation and
51 enhancement guidelines shall apply:
52 (1) Rehabilitation and enhancement projects shall be conducted in accordance with a
53 rehabilitation and enhancement plan.
54 (2) Natural hydrologic conditions shall be replicated, including current patterns, circulation,
55 velocity, volume, and normal water fluctuation.

- 1 (3) Natural stream channel and shoreline dimensions shall be replicated, including depth,
- 2 width, length, cross-sectional profile, and gradient.
- 3 (4) The bed of the affected aquatic area shall be rehabilitated with identical or similar
- 4 materials.
- 5 (5) Riparian areas shall be rehabilitated to their original configuration, including slope and
- 6 contour.
- 7 (6) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata,
- 8 and structures. Structures include large woody debris and boulders.
- 9 (7) Stream channels and banks, shorelines, and riparian areas shall be replanted with native
- 10 plant species that replicate the original vegetation community.
- 11 (8) Rehabilitation and enhancement efforts shall be completed no later ninety (90) days after
- 12 the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is
- 13 practicable.
- 14 (9) Three (3) years after an aquatic area or buffer zone is rehabilitated or enhanced, at least
- 15 seventy-five percent (75%) of the replacement vegetation must survive. The owner shall
- 16 monitor the replacement vegetation and take corrective measures to satisfy this
- 17 guideline.
- 18

19 **F. Stream, Pond, and Lake Buffer Zones.**

- 20 1. Buffer zones shall generally be measured landward from the ordinary high water-mark on a
- 21 horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the
- 22 Columbia River above Bonneville Dam, buffer zones shall be measured landward from the
- 23 normal pool elevation of the Columbia River. The following buffer zone widths shall be required:
- 24 a. Streams verified by state or federal resource management agencies as habitat for species
- 25 recognized to be threatened or endangered by the U.S. Fish and Wildlife Service,
- 26 Washington Department of Fish and Wildlife, or Washington Department of Natural
- 27 Resources: one-hundred fifty (150) feet.
- 28 b. Streams used by anadromous or resident fish (tributary fish habitat), special streams,
- 29 intermittent streams that include year-round pools, and perennial streams: one hundred (100)
- 30 feet.
- 31 c. Intermittent streams; provided, that they are not used by anadromous or resident fish: fifty
- 32 (50) feet.
- 33 d. Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as
- 34 determined by Section 40.240.840(G)(2), substituting the term pond or lake as appropriate.
- 35 2. Except as otherwise allowed, buffer zones shall be retained in their natural condition.
- 36 3. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.
- 37 4. Determining the exact location of the ordinary high watermark or normal pool elevation shall be
- 38 the responsibility of the project applicant. The responsible official may verify the accuracy of and
- 39 may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event
- 40 the adjusted boundary delineation is contested by the applicant, the responsible official shall, at
- 41 the project applicant's expense, obtain professional services to render a final delineation.
- 42

43 **G. Rehabilitation and Enhancement Plans.**

44 Rehabilitation and enhancement plans shall be prepared when a project applicant is required to

45 rehabilitate or enhance a stream, pond, lake and/or buffer area. They shall satisfy the following

46 guidelines:

- 47 1. Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be
- 48 prepared by qualified professionals, such as fish or wildlife biologists.
- 49 2. All plans shall include an assessment of the physical characteristics and natural functions of the
- 50 affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora,
- 51 and fauna.
- 52 3. Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at
- 53 contour intervals of at least two (2) feet, slope percentages, and final grade elevations; and other
- 54 technical information shall be provided in sufficient detail to explain and illustrate:

- 1 a. Soil and substrata conditions, grading and excavation, and erosion and sediment control
2 needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.
- 3 b. Planting plans that specify native plant species, quantities, size, spacing, or density; source
4 of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and
5 where appropriate, measures to protect plants from predating.
- 6 c. Water-quality parameters, construction techniques, management measures, and design
7 specifications needed to maintain hydrologic conditions and water quality.
- 8 4. A three- (3-) year monitoring, maintenance, and replacement program shall be included in all
9 rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual
10 report that documents milestones, successes, problems, and contingency actions. Photographic
11 monitoring shall be used to monitor all rehabilitation and enhancement efforts.
- 12 5. A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to
13 successfully execute and monitor a rehabilitation and enhancement plan.
- 14
- 15 H. Wetlands enhancement projects shall be consistent with Section 40.240.840(H).
- 16
- 17

18 **40.240.860 GENERAL MANAGEMENT AREA SENSITIVE WILDLIFE REVIEW CRITERIA**

- 19
- 20 A. Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife.
- 21 1. Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:
- 22 a. "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas
23 that appear in the wildlife inventory map prepared and maintained by the Gorge Commission:
- 24 (1) Bald eagle habitat;
- 25 (2) Deer and elk winter range;
- 26 (3) Elk habitat;
- 27 (4) Mountain goat habitat;
- 28 (5) Peregrine falcon habitat;
- 29 (6) Pika colony area;
- 30 (7) Piloted woodpecker habitat;
- 31 (8) Pine marten habitat;
- 32 (9) Shallow water fish habitat (Columbia R.);
- 33 (10) Special streams;
- 34 (11) Special habitat area;
- 35 (12) Spotted owl habitat;
- 36 (13) Sturgeon spawning area; and
- 37 (14) Tributary fish habitat.
- 38 b. Turkey habitat; means sites that are used by animal species that are
- 39 (1) listed as endangered or threatened pursuant to federal or state endangered species acts;
- 40 and
- 41 (2) listed as endangered, threatened, sensitive, or candidate by the Washington Fish and
42 Wildlife Commission, considered to be of special interest to the public (limited to great
43 blue heron, osprey, golden eagle, and prairie falcon).
- 44 2. In addition to the information required in all site plans, site plans for uses within one thousand
45 (1,000) feet of a sensitive wildlife area or site shall include a map prepared at a scale of one inch
46 equals one hundred (100) feet (1:1,200), or a scale providing greater detail.
- 47
- 48 B. Uses.
- 49 Uses allowed outright in sensitive wildlife areas are listed in Section 40.240.120.
- 50
- 51 C. Field Survey.
- 52 A field survey to identify sensitive wildlife areas or sites shall be required for:

- 1 1. Land divisions that create four (4) or more parcels;
- 2 2. Recreation facilities that contain parking areas for more than ten (10) cars, overnight camping
- 3 facilities, boat ramps, and visitor information and environmental education facilities;
- 4 3. Public transportation facilities that are outside improved rights-of-way;
- 5 4. Electric facilities, lines, equipment, and appurtenances that are thirty-three (33) kilovolts or
- 6 greater; and
- 7 5. Communications, water and sewer, and natural gas transmission (as opposed to distribution)
- 8 fines, pipes, equipment, and appurtenances and other project related activities except when all of
- 9 their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing
- 10 developed utility sites, that are maintained annually. Field surveys shall cover all areas affected
- 11 by the proposed use or recreation facility. They shall be conducted by a professional wildlife
- 12 biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project
- 13 area shall be described and shown on the site plan map.
- 14
- 15 D. Uses not listed in Section 40.240.860(B) may be allowed within one thousand (1,000) feet of a
- 16 sensitive wildlife area or site, when approved pursuant to Section 40.240.860(E) and reviewed under
- 17 the applicable provisions of Sections 40.240.800 through 40.240.900.
- 18
- 19 E. Uses that are proposed within one thousand (1,000) feet of a sensitive wildlife area or site shall be
- 20 reviewed as follows:
- 21 1. Site plans shall be submitted to the Washington Department of Fish and Wildlife by the
- 22 responsible official. State wildlife biologists will review the site plan and their field survey records
- 23 and:
- 24 a. Identify/verify the precise location of the wildlife area or site;
- 25 b. Ascertain whether the wildlife area or site is active or abandoned; and
- 26 c. Determine if the proposed use may compromise the integrity of the wildlife area or site or
- 27 occur during the time of the year when wildlife species are sensitive to disturbance, such as
- 28 nesting or rearing seasons. In some instances, state wildlife biologists may conduct field
- 29 surveys to verify the wildlife inventory and assess the potential effects of a proposed use.
- 30 2. The following factors may be considered when site plans are reviewed:
- 31 a. Biology of the affected wildlife species;
- 32 b. Published guidelines regarding the protection and management of the affected wildlife
- 33 species. The Washington Department of Fish and Wildlife has prepared guidelines for a
- 34 variety of species, including the western pond turtle, the peregrine falcon, and the Larch
- 35 Mountain salamander (Rodrick and Milner, 1991);
- 36 c. Physical characteristics of the subject parcel and vicinity, including topography and
- 37 vegetation;
- 38 d. Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site; and
- 39 e. Existing condition of the wildlife area or site and the surrounding habitat and the useful life of
- 40 the area or site.
- 41 3. The wildlife protection process may terminate if the responsible official, in consultation with the
- 42 Washington Department of Fish and Wildlife, determines:
- 43 a. The sensitive wildlife area or site is not active, or
- 44 b. The proposed use would not compromise the integrity of the wildlife area or site or occur
- 45 during the time of the year when wildlife species are sensitive to disturbance.
- 46 4. If the responsible official, in consultation with the Washington Department of Fish and Wildlife,
- 47 determines that the proposed use would have only minor effects on the wildlife area or site that
- 48 could be eliminated through mitigation measures recommended by the state wildlife biologist or
- 49 by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the
- 50 applicant that describes the effects and measures needed to eliminate them. If the project
- 51 applicant accepts these recommendations, the responsible official will incorporate them into the
- 52 development review order and the wildlife protection process may conclude.

- 1 5. *The project applicant shall prepare a wildlife management plan if the responsible official, in*
2 *consultation with the Washington Department of Fish and Wildlife, determines that the proposed*
3 *use would adversely affect a sensitive wildlife area or site and the effects of the proposed use*
4 *cannot be eliminated through site plan modifications or project timing.*
- 5 6. *The responsible official shall submit a copy of all field surveys and wildlife management plans to*
6 *Washington Department of Fish and Wildlife. The Washington Department of Fish and Wildlife*
7 *will have twenty (20) days from the date that a field survey or management plan is mailed to*
8 *submit written comments to the responsible official. The responsible official shall record and*
9 *address any written comments submitted by the Washington Department of Fish and Wildlife in*
10 *the land use review order. Based on the comments from the Washington Department of Fish and*
11 *Wildlife, the responsible official will make a final decision on whether the proposed use would be*
12 *consistent with the wildlife policies and guidelines. If the final decision contradicts the comments*
13 *submitted by the Washington Department of Fish and Wildlife, the responsible official shall justify*
14 *how the opposing conclusion was reached. The responsible official shall require the applicant to*
15 *revise the wildlife management plan as necessary to ensure that the proposed use would not*
16 *adversely affect a sensitive wildlife area or site.*

17
18 F. *Wildlife Management Plans.*

19 *Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a*
20 *sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a*
21 *project site and the habitat requirements of affected wildlife species. This information provides a basis*
22 *for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife*
23 *areas and sites, maximizes his/her development options, and mitigates temporary impacts to the*
24 *wildlife area or site and/or buffer zone. Wildlife management plans shall meet the following guidelines:*

- 25 1. *Wildlife management plans shall be prepared by a professional wildlife biologist hired by the*
26 *project applicant.*
- 27 2. *All relevant background information shall be documented and considered, including biology of the*
28 *affected species, published protection and management guidelines, physical characteristics of the*
29 *subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or*
30 *site.*
- 31 3. *The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the*
32 *sensitive wildlife area or site and the attributes, or key components that are essential to maintain*
33 *the long-term use and integrity of the wildlife area or site.*
- 34 4. *A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is*
35 *not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall*
36 *be delineated on the site plan map and shall reflect the physical characteristics of the project site*
37 *and the biology of the affected species.*
- 38 5. *The size, scope, configuration, or density of new uses within the core habitat and the wildlife*
39 *buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all*
40 *uses shall also be regulated to ensure that they do not occur during the time of the year when*
41 *wildlife species are sensitive to disturbance. The following shall apply:*
 - 42 a. *New uses shall generally be prohibited within the core habitat. Exceptions may include uses*
43 *that have temporary and negligible effects, such as the installation of minor underground*
44 *utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be*
45 *conditionally authorized in the core habitat.*
 - 46 b. *Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be*
47 *conditionally authorized when a wildlife area or site is inhabited seasonally; provided, that*
48 *they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or*
49 *enhancement will be completed before a particular species returns.*
- 50 6. *Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife*
51 *buffer zones. When a buffer zone has been altered or degraded in the past, it shall be*
52 *rehabilitated to its natural condition to the maximum extent practicable. When complete*
53 *rehabilitation is not possible, such as when new structures permanently displace wildlife habitat,*

1 enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of
2 the wildlife area or site. Rehabilitation and enhancement actions shall be documented in the
3 wildlife management plan and shall include a map and text.

- 4 7. The applicant shall prepare and implement a three- (3-) year monitoring plan when the affected
5 wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant
6 to federal or state wildlife lists. It shall include an annual report and shall track the status of the
7 wildlife area or site and the success of rehabilitation and/or enhancement actions. At the end of
8 three (3) years, rehabilitation and enhancement efforts may conclude if they are successful. In
9 instances where rehabilitation and enhancement efforts have failed, the monitoring process shall
10 be extended until the applicant satisfies the rehabilitation and enhancement guidelines.

11
12 G. New fences in deer and elk winter range.

- 13 1. New fences in deer and elk winter range shall be allowed only when necessary to control
14 livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The
15 areas fenced shall be the minimum necessary to meet the immediate needs of the project
16 applicant.
- 17 2. New and replacement fences that are allowed in winter range shall comply with the guidelines in
18 Specifications for Structural Range Improvements (Sanderson et. al., 1990), as summarized
19 below, unless the applicant demonstrates the need for an alternative design:
- 20 a. To make it easier for deer to jump over the fence, the top wire shall not be more than forty-
21 two (42) inches high.
- 22 b. The distance between the top two wires is critical for adult deer because their hind legs often
23 become entangled between these wires. A gap of at least ten (10) inches shall be maintained
24 between the top two wires to make it easier for deer to free themselves if they become
25 entangled.
- 26 c. The bottom wire shall be at least sixteen (16) inches above the ground to allow fawns to
27 crawl under the fence. It should consist of smooth wire because barbs often injure animals as
28 they crawl under fences.
- 29 d. Stays, or braces placed between strands of wire, shall be positioned between fences posts
30 where deer are most likely to cross. Stays create a more rigid fence, which allows deer a
31 better chance to wiggle free if their hind legs become caught between the top two wires.
- 32 3. Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is
33 required to meet specific and immediate needs, such as controlling hogs and sheep.
- 34 4. Any fencing permanently erected within deer and elk winter range, as a result of an
35 emergency/disaster response, shall comply with Section 40.240.860(G)(2).
36

37 **40.240.870 GENERAL MANAGEMENT AREA RARE PLANT REVIEW CRITERIA**

38
39 A. Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants.

- 40 1. Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species
41 that are
42 a. Endemic to the Columbia River Gorge and vicinity; or
43 b. Listed as endangered or threatened pursuant to federal or state endangered species acts; or
44 c. Listed as endangered, threatened, or sensitive by the Oregon – Washington Natural Heritage
45 program.
- 46 2. In addition to the information required in a site plans, site plans for uses within one thousand
47 (1,000) feet of a sensitive plant shall include a map prepared at a scale of one inch equals one
48 hundred (100) feet (1:1,200), or a scale providing greater detail.

49
50 B. Uses.

51 Uses allowed outright in rare plant areas are listed in Section 40.240.120.

52
53 C. Field Survey. A field survey to identify sensitive plants shall be required for:

- 1 1. Land divisions that create four or more parcels;
- 2 2. Recreation facilities that contain parking areas for more than ten (10) cars, overnight camping
- 3 facilities, boat ramps, and visitor information and environmental education facilities;
- 4 3. Public transportation facilities that are outside improved rights-of-way;
- 5 4. Electric facilities, lines, equipment, and appurtenances that are thirty-three (33) kilovolts or
- 6 greater, and
- 7 5. Communications, water and sewer, and natural gas transmission (as opposed to distribution)
- 8 lines, pipes, equipment, and appurtenances and other project related activities, except when all of
- 9 their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing
- 10 developed utility sites, that are maintained annually.
- 11 6. Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall
- 12 be conducted by a person with recognized expertise in botany or plant ecology hired by the
- 13 project applicant. Field surveys shall identify the precise location of the sensitive plants and
- 14 delineate a two hundred- (200-) foot buffer zone. The results of a field survey shall be shown on
- 15 the site plan map.
- 16
- 17 D. Uses not listed in Section 40.240.870(B) may be allowed within one thousand (1,000) feet of a
- 18 sensitive plant, when approved pursuant to Section 40.240.860(E), and reviewed under the
- 19 applicable provisions of Sections 40.240.800 through 40.240.900.
- 20
- 21 E. Uses that are proposed within one thousand (1,000) feet of a sensitive plant shall be reviewed as
- 22 follows:
- 23 1. Site plans shall be submitted to the Washington Natural Heritage Program by the responsible
- 24 official. The Natural Heritage Program staff will review the site plan and their field survey records.
- 25 They will identify the precise location of the affected plants and delineate a two hundred- (200-)
- 26 foot buffer zone on the project applicant's site plan. If the field survey records of the state heritage
- 27 program are inadequate, the project applicant shall hire a person with recognized expertise in
- 28 botany or plant ecology to ascertain the precise location of the affected plants.
- 29 2. The rare plant protection process may conclude if the responsible official, in consultation with the
- 30 Natural Heritage Program staff, determines that the proposed use would be located outside of a
- 31 sensitive plant buffer zone.
- 32 3. New uses shall be prohibited within sensitive plant species buffer zones, except those listed in
- 33 Section 40.240.870(B).
- 34 4. If a proposed use must be allowed within a sensitive plant buffer area in accordance with Section
- 35 40.240.150, the project applicant shall prepare a protection and rehabilitation plan pursuant to
- 36 Section 40.240.870(F).
- 37 5. The responsible official shall submit a copy of all field surveys and protection and rehabilitation
- 38 plans to the Washington Natural Heritage Program. The Natural Heritage Program staff will have
- 39 twenty (20) days from the date that a field survey is mailed to submit written comments to the
- 40 responsible official. The responsible official shall record and address any written comments
- 41 submitted by the Natural Heritage Program staff in the land use review order. Based on the
- 42 comments from the Natural Heritage Program staff, the responsible official will make a final
- 43 decision on whether the proposed use would be consistent with the rare plant policies and
- 44 guidelines. If the final decision contradicts the comments submitted by the Natural Heritage
- 45 Program staff, the responsible official shall justify how the opposing conclusion was reached.
- 46
- 47 F. Protection and Rehabilitation Plans.
- 48 Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a
- 49 new use that occurs within a sensitive plant buffer zone as the result of a variance. Protection and
- 50 rehabilitation plans shall meet the following guidelines:
- 51 1. Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist
- 52 hired by the project applicant.

- 1 2. Construction, protection, and rehabilitation activities shall occur during the time of the year when
2 ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will
3 be maximized.
- 4 3. Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent
5 practicable. Replacement is used here to mean the establishment of a particular plant species in
6 areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds,
7 cuttings, or other appropriate methods. Replacement shall occur as close to the original plant site
8 as practicable. The project applicant shall ensure that at least seventy-five percent (75%) of the
9 replacement plants survive three (3) years after the date they are planted.
- 10 4. Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be
11 protected and maintained. Appropriate protection and maintenance techniques shall be applied,
12 such as fencing, conservation easements, livestock management, and noxious weed control.
- 13 5. Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a
14 natural condition.
- 15 6. Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts
16 shall be implemented immediately after the plants and their surrounding habitat are disturbed.
- 17 7. Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:
18 a. Describe the biology of sensitive plant species that will be affected by a proposed use.
19 b. Explain the techniques that will be used to protect sensitive plants and their surrounding
20 habitat that will not be altered or destroyed.
21 c. Describe the rehabilitation and enhancement actions that will minimize and offset the impacts
22 that will result from a proposed use.
23 d. Include a three- (3-) year monitoring, maintenance, and replacement program. The project
24 applicant shall prepare and submit to the responsible official an annual report that documents
25 milestones, successes, problems, and contingency actions.

26
27 G. Sensitive Plant Buffer Zones.

- 28 1. A two-hundred- (200-) foot buffer zone shall be maintained around sensitive plants. Buffer areas
29 shall remain in an undisturbed, natural condition.
- 30 2. Buffer zones may be reduced if a project applicant demonstrates that intervening topography,
31 vegetation, man-made features, or natural plant habitat boundaries negate the need for a two
32 hundred- (200-) foot radius. Under no circumstances shall the buffer zone be less than twenty-
33 five (25) feet.
- 34 3. Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist
35 hired by the project applicant:
 - 36 a. Identifies the precise location of the sensitive plants;
 - 37 b. Describes the biology of the sensitive plants; and
 - 38 c. Demonstrates that the proposed use will not have any negative effects, either direct or
39 indirect, on the affected plants and the surrounding habitat that is vital to their long-term
40 survival.
- 41 4. All requests shall be prepared as a written report. Published literature regarding the biology of the
42 affected plants and recommendations regarding their protection and management shall be cited.
43 The report shall include detailed maps and photographs.
- 44 5. The responsible official shall submit all requests to reduce sensitive plant species buffer areas to
45 the Washington Natural Heritage Program. The Natural Heritage Program staff will have twenty
46 (20) days from the date that such a request is mailed to submit written comments to the
47 responsible official. The responsible official shall record and address any written comments
48 submitted by the Washington Natural Heritage Program in the development review order. Based
49 on the comments from the Washington Natural Heritage Program, the responsible official will
50 make a final decision on whether the reduced buffer area is justified. If the final decision
51 contradicts the comments submitted by the Natural Heritage Program staff, the responsible
52 official shall justify how the opposing conclusion was reached.

1 **40.240.880 SPECIAL MANAGEMENT AREA NATURAL RESOURCE REVIEW CRITERIA**

- 2
3 A. All new developments and uses, as described in a site plan prepared by the applicant, shall be
4 evaluated using the following guidelines to ensure that natural resources are protected from adverse
5 effects. Comments from state and federal agencies shall be carefully considered.
6
7 B. Water Resources (Wetlands, Streams, Ponds, Lakes, and Riparian Areas).
8 1. All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as
9 specified in subsections (1)(b)(1) and (2) below. These buffer zones are measured horizontally
10 from a wetland, stream, lake, or pond boundary as defined below.
11 a. All buffer zones shall be retained undisturbed and in their natural condition, except as
12 permitted with a mitigation plan.
13 b. Buffer zones shall be measured outward from the bank full flow boundary for streams, the high
14 water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the
15 wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the
16 wetlands, stream, pond or lake boundary. The following buffer zone widths shall be required:
17 (1) A minimum two hundred- (200-) foot buffer on each wetland, pond, lake, and each bank of
18 a perennial or fish bearing stream, some of which can be intermittent.
19 (2) A fifty- (50-) foot buffer zone along each bank of intermittent (including
20 ephemeral), non-fish bearing streams.
21 (3) Maintenance, repair, reconstruction and realignment of roads and railroads within their
22 rights-of-way shall be exempted from the wetlands and riparian guidelines upon
23 demonstration of all of the following:
24 (a) The wetland within the right-of-way is a drainage ditch not part of a larger
25 wetland outside of the right-of-way;
26 (b) The wetland is not critical habitat; and
27 (c) Proposed activities within the right-of-way would not adversely affect a wetland
28 adjacent to the right-of-way.
29 c. The buffer width shall be increased for the following:
30 (1) When the channel migration zone exceeds the recommended buffer width, the buffer
31 width shall extend to the outer edge of the channel migration zone.
32 (2) When the frequently flooded area exceeds the recommended riparian buffer zone width,
33 the buffer width shall be extended to the outer edge of the frequently flooded area.
34 (3) When an erosion or landslide hazard area exceeds the recommended width of the
35 buffer, the buffer width shall be extended to include the hazard area.
36 d. Buffer zones can be reconfigured if a project applicant demonstrates all of the following:
37 (1) integrity and function of the buffer zones is maintained;
38 (2) total buffer area on the development proposal is not decreased;
39 (3) width reduction shall not occur within another buffer; and
40 (4) buffer zone width is not reduced more than fifty percent (50%) at any particular
41 location.
42 Such features as intervening topography, vegetation, man made features, natural plant or
43 wildlife habitat boundaries, and flood plain characteristics should be considered.
44 e. Requests to reconfigure buffer zones shall be considered if an appropriate professional
45 (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant:
46 (1) identifies the precise location of the sensitive wildlife/plant or water resource;
47 (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water
48 resource; and
49 (3) demonstrates that the proposed use will not have any negative effects, either direct or
50 indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their
51 long-term survival or water resource and its long term function.
52 f. The responsible official shall submit all requests to re-configure sensitive wildlife/plant or
53 water resource buffers to the Forest Service and the appropriate state agencies for review.

1 All written comments shall be included in the project file. Based on the comments from the
2 state and federal agencies, the responsible official will make a final decision on whether
3 the reconfigured buffer zones are justified. If the final decision contradicts the comments
4 submitted by the federal and state agencies, the responsible official shall justify how the
5 opposing conclusion was reached.

6 (1) When a buffer zone is disturbed by a new use, it shall be replanted with only native plant
7 species of the Columbia River Gorge.

8 (2) The applicant shall be responsible for identifying all water resources and their
9 appropriate buffers.

10 (3) Wetlands Boundaries shall be delineated using the following:

11 (a) The approximate location and extent of wetlands in the Scenic Area as shown on the
12 National Wetlands Inventory (U. S. Department of the Interior, 1987). In addition, the
13 list of hydric soils and the soil survey maps shall be used as an indicator of wetlands.

14 (b) Some wetlands may not be shown on the wetlands inventory or soil survey maps.
15 Wetlands that are discovered by the local planning staff during an inspection of a
16 potential project site shall be delineated and protected.

17 (c) The project applicant shall be responsible for determining the exact location of a
18 wetlands boundary. Wetlands boundaries shall be delineated using the procedures
19 specified in the '1987 Corps of Engineers Wetland Delineation Manual (on-line
20 edition)'.

21 (d) All wetlands delineations shall be conducted by a professional who has been trained
22 to use the federal delineation procedures, such as a soil scientist, botanist, or
23 wetlands ecologist.

24 2. Stream, pond, and lake boundaries shall be delineated using the bank full flow boundary for
25 streams and the high water mark for ponds and lakes. The project applicant shall be responsible
26 for determining the exact location of the appropriate boundary for the water resource.

27 3. The responsible official may verify the accuracy of, and render adjustments to, a bank full flow,
28 high water mark, normal pool elevation (for the Columbia River), or wetland boundary delineation.
29 If the adjusted boundary is contested by the project applicant, the responsible official shall obtain
30 professional services, at the project applicant's expense, or ask for technical assistance from the
31 Forest Service to render a final delineation.

32 4. Buffer zones shall be undisturbed unless the following criteria have been satisfied:

33 a. The proposed use must have no practicable alternative as determined by the practicable
34 alternative test. Those portions of a proposed use that have a practicable alternative will not
35 be located in wetlands, stream, pond, lake, and riparian areas and/or their buffer zone.

36 b. Filling and draining of wetlands shall be prohibited with exceptions related to public
37 safety or restoration/enhancement activities as permitted when all of the following criteria
38 have been met:

39 (1) A documented public safety hazard exists or a restoration/enhancement project
40 exists that would benefit the public and is corrected or achieved only by impacting the
41 wetland in question;

42 (2) Impacts to the wetland must be the last possible documented alternative in fixing the
43 public safety concern or completing the restoration/enhancement project; and

44 (3) The proposed project minimizes the impacts to the wetland.

45 c. Unavoidable impacts to wetlands and aquatic and riparian areas and their
46 buffer zones shall be offset by deliberate restoration and enhancement or creation
47 (wetlands only) measures as required by the completion of a mitigation plan.

48
49 C. Wildlife and Plants.

50 1. Protection of sensitive wildlife/plant areas and sites shall begin when proposed new
51 developments or uses are within one thousand (1000) feet of a sensitive wildlife/plant site and/or
52 area. Sensitive Wildlife Areas and endemic plants are those areas depicted in the wildlife
53 inventory and listed in the "Types of Wildlife Areas and Sites Inventoried in the Columbia Gorge"

- 1 and "Columbia Gorge and Vicinity Endemic Plant Species" tables in the Management Plan
2 including all Priority Habitats listed in this chapter. The approximate locations of sensitive wildlife
3 and/or plant areas and sites are shown in the wildlife and rare plant inventory.
- 4 2. The responsible official shall submit site plans (of uses that are proposed within one thousand
5 (1,000) feet of a sensitive wildlife and/or plant area or site) for review to the Forest Service, the
6 Washington Department of Fish and Wildlife for wildlife issues and the Washington Natural
7 Heritage Program for plant issues.
- 8 3. The Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state
9 biologists, shall review the site plan and their field survey records. They shall:
- 10 a. Identify/verify the precise location of the wildlife and/or plant area or site;
11 b. Determine if a field survey will be required;
12 c. Determine, based on the biology and habitat requirements of the affected wildlife/plant
13 species, if the proposed use would compromise the integrity and function of or result in
14 adverse affects (including cumulative effects) to the wildlife or plant area or site. This would
15 include considering the time of year when wildlife or plant species are sensitive to
16 disturbance, such as nesting, rearing seasons, or flowering season; and
17 d. Delineate the undisturbed two hundred- (200-) foot buffer on the site plan for sensitive plants
18 and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting
19 and perching sites.
- 20 (1) Buffer zones can be reconfigured if a project applicant demonstrates all of the following:
21 (a) integrity and function of the buffer zones is maintained;
22 (b) total buffer area on the development proposal is not decreased;
23 (c) width reduction shall not occur within another buffer; and
24 (d) buffer zone width is not reduced more than fifty percent (50%) at any particular
25 location. Such features as intervening topography, vegetation, man made
26 features, natural plant or wildlife habitat boundaries, and flood plain characteristics
27 could be considered.
- 28 (2) Requests to reduce buffer zones shall be considered if an appropriate professional
29 botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant:
30 (a) identifies the precise location of the sensitive wildlife/plant or water resource;
31 (b) describes the biology of the sensitive wildlife/plant or hydrologic condition of the
32 water resource; and
33 (c) demonstrates that the proposed use will not have any negative effects, either direct
34 or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to
35 their long-term survival or water resource and its long term function.
- 36 (3) The responsible official shall submit all requests to re-configure sensitive
37 wildlife/plant or water resource buffers to the Forest Service and the appropriate state
38 agencies for review. All written comments shall be included in the record of application
39 and based on the comments from the state and federal agencies, the responsible official
40 will make a final decision on whether the reduced buffer zones is justified. If the final
41 decision contradicts the comments submitted by the federal and state agencies, the
42 responsible official shall justify how the opposing conclusion was reached.
- 43 4. The responsible official, in consultation with the State and federal wildlife biologists and/or
44 botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that
45 the proposed developments or uses do not compromise the integrity and function of or result in
46 adverse affects to the wildlife or plant area or site:
- 47 a. Published guidelines regarding the protection and management of the affected
48 wildlife/plant species. Examples include: the Washington Department of Fish and Wildlife
49 technical papers that include management guidelines for a variety of species, including the
50 western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and
51 Milner, 1991).
- 52 b. Physical characteristics of the subject parcel and vicinity, including topography and
53 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 Washington state 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 fledging 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 in Table 40.240.880-1. 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.
5. The wildlife/plant protection process may terminate if the responsible official, in consultation with the Forest Service and Washington Department of Fish and Wildlife, or Heritage program, determines:
 - (a) the sensitive wildlife area or site is not active; or
 - (b) the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site; and
 - (c) 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 responsible official shall incorporate them into the final decision and the wildlife/plant protection process may conclude.
 6. If the measures in this section fail to eliminate the adverse affects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test in subsection (E) below by preparing a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.
 7. The responsible official 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 responsible official 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 responsible official shall justify how the opposing conclusion was reached.
 8. The responsible official 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.
- D. Soil Productivity.
1. Soil productivity shall be protected using the following guidelines:
 - a. A description or illustration showing the mitigation measures used 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 fifteen percent (15%) of the project area.

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- d. Within one year of project completion, eighty percent (80%) 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 eighty percent (80%) vegetative cover.

Table 40.240.880-1. Priority Habitats	
Priority Habitats	Criteria
Aspen stands	High fish and wildlife species diversity, limited availability, high vulnerability to habitat alteration.
Caves	Significant wildlife breeding habitat, limited availability, dependent species.
Old-growth forest	High fish and wildlife density, species diversity, breeding habitat, seasonal ranges, and limited and declining availability, high vulnerability.
Oregon white oak woodlands	Comparatively high fish and wildlife density, species diversity, declining availability, high vulnerability
Prairies and steppe	Comparatively high fish and wildlife density, species diversity, important breeding habitat, declining and limited availability, high vulnerability.
Riparian	High fish and wildlife density, species diversity, breeding habitat, movement corridor, high vulnerability, dependent species.
Wetlands	High species density, high species diversity, important breeding habitat and seasonal ranges, limited availability, high vulnerability.
Snags and logs	High fish and wildlife density, species diversity, limited availability, high vulnerability, dependent species.
Talus	Limited availability, unique and dependent species, high vulnerability.
Cliffs	Significant breeding habitat, limited availability, dependent species.
Dunes	Unique species habitat, limited availability, high vulnerability, dependent species.

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E. Practicable Alternative Test.

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:

1. The basic purpose of the use cannot be reasonably accomplished using one (1) 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.
2. 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.

- 1 3. Reasonable attempts were made to remove or accommodate constraints that caused a project
2 applicant to reject alternatives to the proposed use. Such constraints include inadequate
3 infrastructure, parcel size, and land use designations. If a land use designation or recreation
4 intensity class is a constraint, an applicant must request a Management Plan amendment to
5 demonstrate that practicable alternatives do not exist.
6

7 F. Mitigation Plan.

- 8 1. A mitigation plan shall be prepared when:
9 a. The proposed development or use is within a buffer zone (wetland, pond, lakes, riparian
10 areas, wildlife or plant areas and/or sites); and
11 b. There is no practicable alternative (subsection (E) above).
12 2. In all cases, Mitigation Plans are the responsibility of the applicant and shall be prepared by an
13 appropriate professional (botanist/ecologist for plant sites, a wildlife/fish biologist for wildlife/fish
14 sites, and a qualified professional for water resource sites).
15 3. The primary purpose of this information is to provide a basis for the project applicant to redesign
16 the proposed use in a manner that protects sensitive water resources, and wildlife/plant areas
17 and sites, that maximizes his/her development options, and that mitigates, through restoration,
18 enhancement, and replacement measures, impacts to the water resources and/or wildlife/plant
19 area or site and/or buffer zones.
20 4. The applicant shall submit the mitigation plan to the responsible official. The responsible official
21 shall submit a copy of the mitigation plan to the Forest Service, and appropriate state agencies. If
22 the final decision contradicts the comments submitted by the state and federal wildlife
23 agency/heritage program, the responsible official shall justify how it reached an opposing
24 conclusion.
25 5. A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to
26 successfully execute a mitigation plan involving wetland creation.
27 6. Mitigation plans shall include maps, photographs, and text. The text shall:
28 a. Describe the biology and/or function of the sensitive resources (e.g. wildlife/plant species, or
29 wetland) that will be affected by a proposed use. An ecological assessment of the sensitive
30 resource to be altered or destroyed and the condition of the resource that will result after
31 restoration will be required. Reference published protection and management guidelines.
32 b. Describe the physical characteristics of the subject parcel, past, present, and future uses, and
33 the past, present, and future potential impacts to the sensitive resources. Include the size,
34 scope, configuration, or density of new uses being proposed within the buffer zone.
35 c. Explain the techniques that will be used to protect the sensitive resources and their
36 surrounding habitat that will not be altered or destroyed (for examples, delineation of core
37 habitat of the sensitive wildlife/plant species and key components that are essential to
38 maintain the long-term use and integrity of the wildlife/plant area or site).
39 d. Show how restoration, enhancement, and replacement (creation) measures will be applied to
40 ensure that the proposed use results in minimum feasible impacts to sensitive resources, their
41 buffer zones, and associated habitats.
42 e. Show how the proposed restoration, enhancement, or replacement (creation) mitigation
43 measures are not alternatives to avoidance. A proposed development/use must first avoid a
44 sensitive resource, and only if this is not possible should restoration, enhancement, or creation
45 be considered as mitigation. In reviewing mitigation plans, the local government, appropriate
46 state agencies, and Forest Service shall critically examine all proposals to ensure that they are
47 indeed last resort options.
48 7. At a minimum, a project applicant shall provide to the responsible official a progress report every
49 three (3) years that documents milestones, successes, problems, and contingency actions.
50 Photographic monitoring stations shall be established and photographs shall be used to monitor
51 all mitigation progress.
52 8. A final monitoring report shall be submitted to the responsible official for review upon completion
53 of the restoration, enhancement, or replacement activity. This monitoring report shall document

- 1 successes, problems encountered, resource recovery, status of any sensitive wildlife/plant
2 species and shall demonstrate the success of restoration and/or enhancement actions. The
3 responsible official shall submit copies of the monitoring report to the Forest Service; who shall
4 offer technical assistance to the responsible official in helping to evaluate the completion of the
5 mitigation plan. In instances where restoration and enhancement efforts have failed, the
6 monitoring process shall be extended until the applicant satisfies the restoration and
7 enhancement guidelines.
- 8 9. Mitigation measures to offset impacts to resources and/or buffers shall result in no net loss of
9 water quality, natural drainage, fish/wildlife/plant habitat, and water resources by addressing the
10 following:
- 11 a. Restoration and enhancement efforts shall be completed no later than one (1) year after the
12 sensitive resource or buffer zone has been altered or destroyed, or as soon thereafter as is
13 practicable.
- 14 b. All natural vegetation within the buffer zone shall be retained to the greatest extent practicable.
15 Appropriate protection and maintenance techniques shall be applied, such as fencing,
16 conservation buffers, livestock management, and noxious weed control. Within five (5) years,
17 at least seventy-five percent (75%) of the replacement vegetation must survive. All plantings
18 must be with native plant species that replicate the original vegetation community.
- 19 c. Habitat that will be affected by either temporary or permanent uses shall be rehabilitated to a
20 natural condition. Habitat shall be replicated in composition, structure, and function, including
21 tree, shrub and herbaceous species, snags, pool-riffle ratios, substrata, and structures, such
22 as large woody debris and boulders.
- 23 d. If this standard is not feasible or practical because of technical constraints, a sensitive
24 resource of equal or greater benefit may be substituted; provided, that no net loss of sensitive
25 resource functions occurs, and further provided that the responsible official, in consultation
26 with the appropriate State and Federal agency, determines that such substitution is justified.
- 27 e. Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum
28 extent practicable. Replacement is used here to mean the establishment of a particular plant
29 species in areas of suitable habitat not affected by new uses. Replacement may be
30 accomplished by seeds, cuttings, or other appropriate methods. Replacement shall occur as
31 close to the original plant site as practicable. The project applicant shall ensure that at least
32 seventy-five percent (75%) percent of the replacement plants survive three (3) years after the
33 date they are planted.
- 34 f. Non-structural controls and natural processes shall be used to the greatest extent practicable:
- 35 (1) Bridges, roads, pipeline and utility corridors, and other water crossings shall be
36 minimized and should serve multiple purposes and properties.
- 37 (2) Stream channels shall not be placed in culverts unless absolutely necessary for property
38 access. Bridges are preferred for water crossings to reduce disruption to hydrologic and
39 biologic functions. Culverts shall only be permitted if there are no practicable alternatives
40 as demonstrated by the 'Practical Alternative Test'.
- 41 (3) Fish passage shall be protected from obstruction.
- 42 (4) Restoration of fish passage should occur wherever possible.
- 43 (5) Show location and nature of temporary and permanent control measures that shall be
44 applied to minimize erosion and sedimentation when riparian areas are disturbed,
45 including slope netting, berms and ditches, tree protection, sediment barriers, infiltration
46 systems, and culverts.
- 47 (6) Groundwater and surface water quality will not be degraded by the proposed use.
48 Natural hydrologic conditions shall be maintained, restored, or enhanced in such a
49 manner that replicates natural conditions, including current patterns (circulation, velocity,
50 volume, and normal water fluctuation), natural stream channel and shoreline dimensions
51 and materials, including slope, depth, width, length, cross-sectional profile, and gradient.
- 52 (7) Those portions of a proposed use that are not water-dependent or that have a practicable
53 alternative will be located outside of stream, pond, and lake buffer zones.

- 1 (8) Stream bank and shoreline stability shall be maintained or restored with natural
 2 vegetation.
- 3 (9) The size of restored, enhanced, and replacement (creation) wetlands shall equal or
 4 exceed the following ratios. The first number specifies the required acreage of
 5 replacement wetlands, and the second number specifies the acreage of wetlands
 6 altered or destroyed:
 7 Restoration: 2:1
 8 Creation: 3:1
 9 Enhancement: 4:1
- 10 g. Wetland creation mitigation shall be deemed complete when the wetland is self- functioning for
 11 five (5) consecutive years. Self-functioning is defined by the expected function of the wetland
 12 as written in the mitigation plan. The monitoring report shall be submitted to the local
 13 government to ensure compliance. The Forest Service, in consultation with appropriate state
 14 agencies, shall extend technical assistance to the local government to help evaluate such
 15 reports and any subsequent activities associated with compliance.
- 16 h. Wetland restoration/enhancement can be mitigated successfully by donating appropriate
 17 funds to a non-profit wetland conservancy or land trust with explicit instructions that those
 18 funds are to be used specifically to purchase protection easements or fee title protection of
 19 appropriate wetlands acreage in or adjacent to the Columbia River Gorge meeting the ratios
 20 given above in subsection (9)(f)(9). These transactions shall be explained in detail in the
 21 Mitigation Plan and shall be fully monitored and documented in the monitoring report.
- 22
 23

24 **40.240.890 GENERAL MANAGEMENT AREA RECREATION RESOURCE REVIEW CRITERIA**

25
 26 The following uses may be allowed within designated Recreation Intensity Classifications, as delineated
 27 on the Columbia River Gorge National Scenic Area Management Plan Recreation Intensity Classifications
 28 map, subject to compliance with Sections 40.240.890(D) and (E).

- 29
 30 A. Recreation Intensity Class 1 - Very Low Intensity:
- 31 1. Parking areas for a maximum of ten (10) cars for any allowed uses in Recreation Intensity Class
 - 32 1;
 - 33 2. Trails for hiking, equestrian and mountain biking use;
 - 34 3. Pathways for pedestrian and bicycling use;
 - 35 4. Trailheads (with provisions for hitching rails and equestrian trailers at trailheads accommodating
 - 36 equestrian use);
 - 37 5. Scenic viewpoints and overlooks;
 - 38 6. Wildlife/botanical viewing and nature study areas;
 - 39 7. River access areas;
 - 40 8. Simple interpretive signs and/or displays, not to exceed a total of fifty (50) square feet;
 - 41 9. Entry name signs not to exceed ten (10) square feet per sign;
 - 42 10. Boat docks, piers or wharves;
 - 43 11. Picnic areas; and
 - 44 12. Rest-rooms/comfort facilities.
- 45
 46 B. Recreation Intensity Class 2 - Low Intensity:
- 47 1. All uses permitted in Recreation Intensity Class 1;
 - 48 2. Parking areas for a maximum of twenty-five (25) cars, including spaces for campground units, to
 - 49 serve any allowed uses in Recreation Intensity Class 2;
 - 50 3. Simple interpretive signs and displays, not to exceed a total of one hundred (100) square feet;
 - 51 4. Entry name signs not to exceed twenty (20) square feet per sign;
 - 52 5. Boat ramps, not to exceed two lanes; and

1 6. Campgrounds for twenty (20) units or less, tent sites only.
2

3 C. Recreation Intensity Class 3 - Moderate Intensity:

- 4 1. All uses permitted in Recreation Intensity Classes 1 and 2;
5 2. Parking areas for a maximum of seventy-five (75) cars), including spaces for campground units, for
6 any allowed uses in Recreation Intensity Class 3;
7 3. Interpretive signs, displays and/or facilities;
8 4. Visitor information and environmental education signs, displays or facilities;
9 5. Entry name signs not to exceed thirty-two (32) square feet per sign;
10 6. Boat ramps, not to exceed three (3) lanes;
11 7. Concessions stands, pursuant to applicable policies in Chapter 4, Part I of the Management Plan;
12 and
13 8. Campgrounds for fifty (50) individual units or less for tents and/or recreational vehicles, with a total
14 density of no more than ten (10) units per acre (density to be measured based on total size of the
15 recreation facility and may include required buffer and setback areas). Class 3 campgrounds may
16 also include one group campsite area, in addition to the individual campground units or parking
17 area maximums allowed as described herein.
18

19 D. Approval Criteria for Recreation Uses.

20 All proposed recreation projects outside of Public Recreation zones shall comply with Sections
21 40.240.800 through 40.240.900, and shall satisfy the following:

- 22 1. Cumulative effects of proposed recreation projects on landscape settings shall be based on the
23 "compatible recreation use" guideline for the landscape setting in which the use is located.
24 2. For proposed recreation projects in or adjacent to lands zoned Gorge Large-Scale or Small-Scale
25 Agriculture, or Gorge Small Woodland:
26 a. The use would not seriously interfere with accepted forest or agricultural practices on
27 surrounding lands devoted to forest or farm uses. Provision of on-site buffers may be used to
28 partially or fully comply with this criterion, depending upon project design and/or site
29 conditions.
30 b. A declaration has been signed by the project applicant or owner and recorded with county
31 deeds and records specifying that the applicant or owner is aware that operators are entitled
32 to carry on accepted forest or farm practices on lands zoned Gorge Large-Scale or
33 Small-Scale Agriculture or Gorge Small Woodland.
34 3. For proposed projects including facilities for outdoor fires for cooking or other purposes or
35 proposed campgrounds: The project applicant shall demonstrate that a sufficient quantity of water
36 necessary for fire suppression (as determined pursuant to applicable fire codes or the county fire
37 marshal) is readily available to the proposed facility, either through connection to a community
38 water system or on-site wells, storage tanks, sumps, ponds or similar storage devices. If
39 connection to a community water system is proposed, the project applicant shall demonstrate that
40 the water system has adequate capacity to meet the facility's emergency fire suppression needs
41 without adversely affecting the remainder of the water system with respect to fire suppression
42 capabilities. In addition, in order to provide access for fire-fighting equipment, access drives shall
43 be constructed to a minimum of twelve (12) feet in width and a maximum grade of twelve percent
44 (12%). Access drives shall be maintained to a level that is passable to fire-fighting equipment.
45 4. Trail or trailhead projects shall comply with applicable trails policies in the Management Plan.
46 5. For proposed projects providing boating or windsurfing access to the Columbia River or its
47 tributaries: compliance with applicable "River Access and Protection of Treaty Rights" objectives
48 in the Management Plan.
49 6. For proposed projects on public lands or proposed projects providing access to the Columbia
50 River or its tributaries: compliance with guidelines for protection of tribal treaty rights in Part IV,
51 Chapter 3, Indian Tribal Treaty Rights and Consultation in the Management Plan.

- 1 7. For proposed projects which include interpretation of natural or cultural resources: A
2 demonstration that the interpretive facilities will not adversely affect natural or cultural resources
3 and that appropriate and necessary resource protection measures shall be employed.
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5 E. Facility Design Guidelines for All Recreation Projects.

- 6 1. Recreation facilities which are not resource-based in nature may be included at sites providing
7 resource-based recreation uses consistent with the guidelines contained herein, as long as such
8 facilities comprise no more than one-third of the total land area dedicated to recreation uses
9 and/or facilities. Required landscaped buffers may be included in calculations of total land area
10 dedicated to recreation uses and/or facilities.
11 2. The facility design guidelines contained herein are intended to apply to individual recreation
12 facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or
13 grouping of recreational developments or improvements located in relatively close proximity to
14 one another. To be considered a separate facility from other developments or improvements
15 within the same Recreation Intensity Class, recreation developments or improvements must be
16 separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access
17 roads).
18 3. Parking areas, access roads, and campsites shall be sited and designed to fit into the existing
19 natural contours as much as possible, both to minimize ground-disturbing grading activities and
20 utilize topography to screen parking areas and associated structures. Parking areas, access
21 roads, and campsites shall, be sited and set back sufficiently from bluffs so as to be visually
22 subordinate as seen from key viewing areas.
23 4. Existing vegetation, particularly mature trees, shall be maintained to the maximum extent
24 practicable, and utilized to screen parking areas and campsites from key viewing areas and
25 satisfy requirements for perimeter and interior landscaped buffers.
26 5. Parking areas providing over fifty (50) spaces shall be divided into discrete "islands" separated by
27 unpaved, landscaped buffer areas.
28 6. Lineal frontage of parking areas and campsite loops to Scenic Travel Corridors shall be
29 minimized to the greatest extent practicable.
30 7. Ingress/egress points shall be consolidated to the maximum extent practicable, providing for
31 adequate emergency access pursuant to applicable fire and safety codes.
32 8. Signage shall be limited to that necessary to provide relevant recreation or facility information,
33 interpretive information, vehicular and pedestrian direction, and for safety purposes.
34 9. Exterior lighting shall be shielded, designed and sited in a manner which prevents such lighting
35 from projecting off-site or being highly visible from key viewing areas.
36 10. Innovative designs and materials which reduce visual impacts (such as "turf blocks" instead of
37 conventional asphalt paving) shall be encouraged through incentives such as additional allowable
38 parking spaces and reduce required minimum interior or perimeter landscaped buffers. Upon
39 determination that potential visual impacts have been substantially reduced by use of such
40 designs and materials, the responsible official may allow either reductions in required minimum
41 interior or perimeter landscape buffers up to fifty percent (50%) of what would otherwise be
42 required, or additional parking spaces not to exceed ten percent (10%) of what would otherwise
43 be permitted.
44 11. A majority of trees, shrubs and other plants in landscaped areas shall be species native or
45 naturalized to the landscape setting in which they occur (landscape setting design guidelines
46 specify lists of appropriate species).
47 12. All structures shall be designed such that height, exterior colors, reflectivity, mass and siting
48 result in the structures blending with and not noticeably contrasting with their setting.
49 13. Landscape buffers around the perimeter of parking areas accommodating more than ten (10)
50 vehicles shall be provided. Minimum required widths are five (5) feet for twenty (20) vehicles or
51 less, twenty (20) feet for fifty (50) vehicles or less, thirty (30) feet for one hundred (100) vehicles
52 or less, and forty (40) feet for two-hundred fifty (250) vehicles or less.

- 1 14. Interior landscaped buffers breaking up continuous areas of parking shall be provided for any
- 2 parking areas over fifty (50) spaces in size. The minimum width of interior landscaped buffers
- 3 between each parking lot of fifty (50) spaces or less shall be twenty (20) feet.
- 4 15. Within required perimeter and interior landscaped buffer areas, a minimum of one (1) tree of at
- 5 least six (6) feet in height shall be planted for every ten (10) lineal feet as averaged for the entire
- 6 perimeter width. A minimum of twenty-five percent (25%) of planted species in perimeter buffers
- 7 shall be coniferous to provide screening during the winter. Project applicants are encouraged to
- 8 place such trees in random groupings approximating natural conditions. In addition to the
- 9 required trees, landscaping shall include appropriate shrubs, groundcover and other plant
- 10 materials.
- 11 16. Minimum required perimeter landscape buffer widths for parking areas or campgrounds may be
- 12 reduced by as much as fifty percent (50%), at the discretion of the responsible official, if existing
- 13 vegetation stands and/or existing topography are utilized such that the development is not visible
- 14 from any key viewing area.
- 15 17. Grading or soil compaction within the drip fine of existing mature trees shall be avoided to the
- 16 maximum extent practicable, to reduce risk of root damage and associated tree mortality.
- 17 18. All parking areas and campsites shall be set back from Scenic Travel Corridors, and the Columbia
- 18 River and its major tributaries at least one hundred (100) feet. Required perimeter landscaped
- 19 buffers may be included when calculating such setbacks. Setbacks from rivers shall be measured
- 20 from the ordinary high water mark. Setbacks from Scenic Travel Corridors shall be measured
- 21 from the edge of road pavements.
- 22 19. Project applicants shall utilize measures and equipment necessary for the proper maintenance
- 23 and survival of all vegetation utilized to meet the landscape guidelines contained herein, and shall
- 24 be responsible for such maintenance and survival.
- 25 20. All parking areas shall be set back from property boundaries by at least fifty (50) feet. All
- 26 campsites and associated facilities shall be set back from property boundaries by at least one
- 27 hundred (100) feet.
- 28
- 29

30 **40.240.900 SPECIAL MANAGEMENT AREA RECREATION RESOURCE REVIEW CRITERIA**

- 31
- 32 A. The following shall apply to all new recreation developments and land uses in the Special
- 33 Management Area:
 - 34 1. New developments and land uses shall not displace existing recreational use;
 - 35 2. Only natural resource-based recreation shall be allowed;
 - 36 3. Recreation resources shall be protected from adverse effects by evaluating new
 - 37 developments and land uses as proposed in the site plan. An analysis of both on and off site
 - 38 cumulative effects shall be required;
 - 39 4. New pedestrian or equestrian trails shall not have motorized uses, except for emergency
 - 40 services;
 - 41 5. Mitigation measures shall be provided to preclude adverse effects on the recreation resource;
 - 42 6. The facility guidelines contained in this section are intended to apply to individual recreation
 - 43 facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or
 - 44 grouping of recreational developments or improvements located in relatively close proximity to
 - 45 one another. Recreation developments or improvements to be considered a separate facility from
 - 46 other developments or improvements within the same Recreation Intensity Class must be
 - 47 separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access
 - 48 roads); and
 - 49 7. New development and reconstruction of scenic routes (see Part III, Chapter I of the Management
 - 50 Plan) shall include provisions for bicycle lanes.
 - 51
 - 52

- 1 B. SMA Recreation Intensity Class Guidelines.
- 2 1. Recreation Intensity Class 1 - Very Low Intensity Emphasis is to provide opportunities for
- 3 semi-primitive recreation opportunities:
- 4 a. Permitted uses are those in which people participate in outdoor activities to realize
- 5 experiences such as solitude, tension reduction, and nature appreciation.
- 6 b. The maximum site design capacity shall not exceed thirty-five (35) people at one time on the
- 7 site. The maximum design capacity for parking areas shall be ten (10) vehicles.
- 8 c. The following uses may be permitted:
- 9 (1) Trails and trailheads;
- 10 (2) Parking areas;
- 11 (3) Dispersed campsites accessible only by a trail;
- 12 (4) Viewpoints and overlooks;
- 13 (5) Picnic areas;
- 14 (6) Signs;
- 15 (7) Interpretive exhibits and displays; and
- 16 (8) Rest-rooms.
- 17 2. Recreation Intensity Class 2 - Low Intensity:
- 18 a. Emphasis is to provide semi-primitive recreation opportunities.
- 19 b. Permitted uses are those that provide settings where people can participate in activities such
- 20 as physical fitness, outdoor learning, relaxation, and escape from noise and crowds.
- 21 c. The maximum site design capacity shall not exceed seventy (70) people at one time on the
- 22 site. The maximum design capacity shall be twenty-five (25) vehicles.
- 23 d. All uses permitted in Recreation Intensity Class 1 are permitted in Recreation Intensity Class
- 24 2. The following uses may also be permitted:
- 25 (1) Campground with vehicle access;
- 26 (2) Boat anchorages designed for no more than ten (10) boats at one time; and
- 27 (3) Swimming areas.



**DEPARTMENT OF
COMMUNITY DEVELOPMENT
LONG RANGE PLANNING**

MEMORANDUM

TO: Board of County Commissioners

FROM : Patrick Lee, Long Range Planning Manager *Patrick Lee*

DATE: September 17, 2003

SUBJECT: Code Restructure Project; Adoption of a new CCC Title 40

CASE NUMBER: CCC 2001-003

Clark County began a process in October 2001 to restructure the Clark County development code, working with Cathy Corliss of the consulting firm of Angelo Eaton and Associates. The project came about because there has not been an overall review and update of the Clark County Code (CCC) since 1980. The goal of the project, called the Code Restructure Project, is a single title of the CCC, proposed to be Title 40 Unified Development Code, which has in it all regulations related to land development.

TITLE 40 DEVELOPMENT

One of the first things that was done was to identify a representative list of regular code users (developers, consultants, attorneys, etc.) and to interview them about ways to improve the organization of the development code. These interviews took place in December 2001 and January 2002. It was during this time that a table of contents was developed for the new title. A draft table of contents was presented to the Planning Commission at a January 17, 2002 work session. The Board of County Commissioners (BOCC) approved a draft table of contents at a January 30, 2002 work session.

The next step was the preparation of the Title 40 'rough cut', in which current code sections were re-arranged to fit the new table of contents. At this point work began to address the organizational and formatting challenges caused by the restructuring. Two staff advisory groups (the development technical advisory group, or DTAC, and the environmental technical advisory group, or ETAC) were formed to assist in this effort. The DTAC identified minor inconsistencies, gaps or errors in the current code and helped in suggesting language to 'fix' these. The ETAC looked at possible changes to the critical areas ordinances. The county also contracted with Larry Epstein, a county hearings examiner, to help in the identification and resolution of issues.

Work sessions were held with the BOCC in August and September 2002 to discuss the list of identified issues developed by DTAC and ETAC, in anticipation of the first public open house on the restructure project. The open house was held in October 2002. Information on

the project was presented, and staff asked for feedback about identified issues that were proposed to be 'fixed' in the new Title 40. A check-in work session with the Planning Commission was held in October as well.

The next draft of Title 40 was the preliminary draft, completed in February 2003. The preliminary draft represented the first real version of how the new title would look. Efforts continued to standardize terminology and format as well as to resolve identified inconsistencies.

A copy of the public review draft was given to, and a one-on-one briefing held with each commissioner in late June. A work session on the public review draft was held with the BOCC on July 9th, at which the approval was given to go public with draft Title 40. The document was put on the county webpage, and hard copies were sent to county libraries. Title 40 was put on CD and sent for review to the original list of interviewees. Staff in Public Works and the ESA Office were also given copies to review. An open house on the public review draft was held July 29th.

TITLE 40 UNIFIED DEVELOPMENT CODE

The public review draft is set up in a two-column format. The wide column has the text and any proposed changes in highlight and ~~striketrough~~. The narrow column has the current code citation and notes about why any changes were made to the section.

The process to develop draft CCC Title 40 Unified Development Code has resulted in the following:

Organization

- The proposed Title 40 contains the road and concurrency standards from Title 12, the critical areas ordinances from Title 13, and all of Titles 17 (Land Division Ordinance), 18 (Zoning) and 20 (Clark County Environmental Policy Ordinance).
- Title 40 has a table of contents organized by subtitles: Subtitle 40.1 Administration; Subtitle 40.2 Zoning Districts; Subtitle 40.3 Design Standards; Subtitle 40.4 Critical Areas and Overlay Districts; Subtitle 40.5 Procedures; and Subtitle 40.6 Impact Fees. All development-related regulations were re-organized based on the new table of contents.

Format

- Title 40 is proposed to be a single column, which will make finding subsections much easier. Section footers will also make it easier to navigate within the document.
- Lists of uses in zoning districts (Subtitle 40.2) have been replaced by use tables, with a format that is consistent throughout.
- Terminology and capitalization have been standardized (examples: the board, the county, the responsible official, the County Engineer)

Content

- The prime directive of the reorganization is that no substantive changes would be made to the code, i.e., a land-use application would be processed exactly the same way

under Title 40 as it would under the current code. What has been added in a few places is language that codifies current practice, and it is identified as such.

- Typographical errors and mis-references were corrected.
- 'Responsible official' replaces 'Director', 'planning director', 'planning manager' and other similar references.
- Application processing procedures (Types I-IV) have been separated and each given its own section. In the interest of streamlining, a universal list of application submittal requirements was created.
- An attempt was made to consolidate definitions where it seemed appropriate to do so. For example, the current code has seven definitions of the term 'development'. Duplicate definitions were deleted, as were definitions of terms not actually used in the code.
- There were also a few places where gaps or inconsistencies existed because of the creation of the use tables (Subtitle 40.2). Staff used code requirements and professional judgment to fill in the gaps and resolve the inconsistencies.

STAFF RECOMMENDATION

Staff recommends the adoption of the new CCC Title 40 Unified Development Code. Staff believes that the code is better organized and in a better, more consistent format, meaning that it should be easier for most people to use.

COMMENTS RECEIVED

One comment letter was received on the public review draft. Carra Sahler from Preston Gates Ellis sent a letter (attached) on behalf of Clark County school districts. A comment from the Friends of the Gorge (attached) was received on the SEPA checklist, stating that the project must be consistent with the Columbia Gorge National Scenic Area management plan. (Note: unless otherwise directed, we are planning to formally send Chapter 40.240 to the Gorge Commission and the USDA Scenic Area Office for their review).

PLANNING COMMISSION RECOMMENDATION

A public hearing before the Planning Commission on Title 40 was held on August 21st, 2003. Carra Sahler, representing Clark County school districts was the only person who testified. Of four requested changes, staff indicated that three were doable (see discussion below). The fourth item, removing schools from CUP requirements, is a policy issue and beyond the scope of the Code Restructure Project.

The Planning Commission voted 6-0 to recommend to the Board that Title 40 be adopted with the three changes proposed by the school districts.

One of the school districts' requests was to include a definition of 'public school', and the following language was suggested:

"Public School' means any primary and secondary public school and similar accessory facilities operated by a school district, including but not limited to associated meeting rooms, auditoriums, athletic facilities and support facilities that are related to school district operations, including but not limited to administrative offices, centralized

kitchens, counseling centers, head start, childcare, adult education and family support centers, but excluding transportation storage and maintenance facilities."

Staff has reviewed the definition in the context of the current code, and found that it will create more problems than it solves. The problem is not so much the definition, but its applicability in the code. In a number of the proposed use tables in Subtitle 40.2, public and private schools are referred to together. By this definition, Clark College and WSU-Vancouver would not be public schools. Educational institutions are mentioned in commercial districts. Business and trade schools are listed in other zoning districts. There is also a definition of 'schools' contained in proposed Chapter 40.610.030 that relates specifically to impact fees. So, upon further consideration, staff recommends that a definition not be added as part of the Title 40 adoption process.

Since the public review draft was released, staff, the AEA consultant team and Larry Epstein have given the entire document a thorough review. This review resulted in a list of additions (clarifications and corrections) that need to be made to the public review draft. The list is attached.

Attachments:

Letter from Carra Sahler
Letter from Friends of the Gorge
List of Additions/Changes to the Public Review Draft

August 6, 2003

Gordy Euler
Clark County Community Development
1300 Franklin Street, 3rd Floor
Vancouver, WA 98660

Re: Clark County Code Restructure

Dear Gordy:

The Consortium of Clark County School Districts (Vancouver, Evergreen, Camas, Ridgefield, Battle Ground, Washougal, La Center, and Hockinson School Districts) ("the Consortium") appreciates the opportunity to participate in the Clark County Code Restructure Project ("the Restructure").

The Consortium has the following comments on the suggested revisions:

1. As we mentioned in our letter of October 31, 2002, in order to standardize terms, CCC 40.380.030(A)(4) (previously 13.29.210(A)(4)) should refer to "school modulars or portables" as opposed to "temporary portable school buildings." The use of the terminology "school modulars or portables" is in keeping with CCC 40.52.030(G) (previously 18.404.105) and CCC 40.52.040(A)(4) (previously 18.402A.010), and the defined term located at CCC 40.100.070 (previously 18.104.650).
2. As we requested in our letter of October 31, 2002, add a definition for "public schools" and use the term consistently throughout the Code in referring to public schools. Table 40.230.010-1, unlike the majority of the other tables in the Code, does not refer to public and private schools but instead refers to "educational institutions." Similarly, Table 40.230.040-1(7)(a) simply refers to "schools" rather than "public and private schools." Adopting a definition and using the defined term, or terms, consistently throughout the code will eliminate unintended ambiguities.

We suggest the following definition: "'Public School' means any primary and secondary public school and similar accessory facilities operated by a school district, including but not limited to associated meeting rooms, auditoriums, athletic facilities and support facilities that are related to school district operations, including but not limited to administrative offices, centralized kitchens, counseling centers, head start, childcare, adult education and family support centers, but excluding transportation storage and maintenance facilities." Adding a definition for public schools to the Code will eliminate the need to revise Table 40.220.010-1 (5)(b). In addition, the existing definition for "schools" contained in CCC 40.610.030 can be removed.

3. Delete the word "habitable" from the definition of "school modular or portable" in CCC 40.100.070. The Consortium worked closely with County staff members, in particular Kate Bowie, in January of this year to accommodate the shared interests of both the County and the Consortium with regard to the definition for "school modular or portable." At that time, the County considered including a limitation in the definition that modulars and portables be used

for "human occupancy." The Consortium's main concern then, as it is now, is tracking the use of portables as they change over time. Because the definition is used to describe the kinds of buildings that are exempt from site plan review in CCC 40.520.040(4)(g), the Districts did not then, and do not now, want a definition of portables or modulars that could make a future temporary use subject to site plan review. While the Districts do not anticipate adding portables at existing sites for a use other than by students, they do anticipate that changes in use may result during temporary periods of declining student enrollment. The Consortium does not believe it is an efficient use of County or District resources to require site plan review for portables if the use of the portable changes temporarily.

4. Allow public elementary and middle schools as a permitted use in residential zoning districts, subject to reasonable limits. Encouraging school districts to build elementary and middle schools in residential areas, by allowing them as permitted uses, is good public policy and strongly supported by families with children who wish to attend neighborhood schools.

We understand that the Restructure is intended to be limited to Code amendments that clarify or simplify existing provisions and that the County does not want to include an amendment that involves significant substantive changes or policy issues. To the extent that the County believes an amendment that allows elementary and middle schools in residential districts is beyond the scope of the Restructure, we respectfully request that the County include this amendment in the biannual code review or in code amendments that implement the 20-year Comprehensive Plan Review decisions.

As a final note, the Consortium appreciates the County's correction of the tax credit calculation in the school impact fee provision.

The Consortium appreciates the opportunity to provide input regarding Code amendments that will further the efficiencies in building schools without compromising important land use policies and practices.

We are available to discuss with you our comments and proposed Code amendments and look forward to working with you on the Restructure. Please call if you have questions. Thank you.

Very truly yours,

PRESTON GATES & ELLIS LLP



By
Carra Sahler
Marnie Allen

CLS:cls

cc: Consortium Members
Richard S. Lowry
Grace T. Yuan
Denise Stiffarm
Jose Alvarez

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FRIENDS OF THE COLUMBIA GORGE

Community Dev/Records

September 8, 2003

Patrick Lee, Planning Manager
Clark County Department of Community Development
PO Box 9810
Vancouver, Washington 98666-9810

Re: SEPA DNS for Clark County's Code Restructure Project, File Number: CCC 2001-003

Friends of the Columbia Gorge has reviewed and would like to comment on the above-referenced DNS. Friends is a non-profit organization with members in more than 3,000 households dedicated to protecting and enhancing the resources of the Columbia River Gorge through the effective implementation of the Columbia River Gorge National Scenic Area Act. Our membership includes hundreds of citizens who reside in the six counties within the Columbia River Gorge National Scenic Area.

The proposed code restructuring project must be consistent with the Management Plan for the Columbia River Gorge National Scenic Area. The county should ensure that any new code provisions do not conflict with the county's current scenic area provisions. Any ordinance amendments regulating land uses within the National Scenic Area must be reviewed by the Columbia River Gorge Commission for consistency with the Management Plan before the amendments are effective.

Thank you for this opportunity to comment, which preserves our standing.

Sincerely,



Glenn Fullilove
Land Use Legal Assistant

TITLE 40 ADDITIONAL CHANGES, 9/17/03

Page	Amendment/Correction	Reason
2	40.100.050(B)(2). Move to 40.500.010(A)(2), p. 06	Clarification
3	40.100.060, last sentence, The responsible official shall be responsible for carrying out the enforcement provisions of Title 32 of the Clark County Code, at such time a violation has been under the provisions of Title 32.	Clarification
4	"Administrative manual", when referring to transportation concurrency, means the written documentation adopted by the Public Works director pursuant to this Section 40.350.020.	Correction
5	Area of special flood hazard or flood hazard area	Clarification
6	"Block perimeter". Delete hyphen before 'driveways.'	Correction
6	"Boarding house" means a building other than a hotel with furnished rooms with and no cooking facilities....	Clarification
8	"Contiguous lots" means an area of land comprised of more than two (2) or more lots or parcels.	Clarification
11	"Development" means any man-made changes. . . . <ul style="list-style-type: none"> • Site altering activities including mining, dredging, filling, grading, construction of earthen berms, vegetative clearing, paving, excavation, drilling operations or improvements for use such as parking, or • Commencement of a new use, or the change in existing use of real estate of a structure thereon; or 	Correction
12	"Drive-in restaurants" shall means those restaurants. . . . (define in the singular)	Clarification
12	"Early notice" means . . . likely for the applicant's proposal (mitigated determination of non-significance (DNS) procedures).	Correction
13	"Fully complete" means that a development review application meets the <u>submittal submission</u> requirements of Subtitle 40.5 of the UDC.	Clarification
17	"Home owners association. (B) Each lot is automatically subject to a charge for a proportionate share or the expenses for the organization's activities, such as maintaining common property	Correction
17	"Hotel" means a place of lodging that <u>provides sleeping accommodations</u>	Corrections
20	"Lot line, front". Bullet 2: . . .excluding the <u>unbuildable portion of the pole.</u>	Corrections

	Bullet 3: ...they shall be considered rear lot lines.	
22	"Market". (delete (from end of definition)	Correction
24	"Open space, usable": (move from "Usable open space", p.39) "Usable open space' means an open area that is not covered in impervious surface exceeding larger than four hundred (400) square feet, with all dimensions a minimum of twenty (20) feet, and which is not covered in impervious surface.	Clarification
26	"Plat, short". (delete definition) Add definition of "subdivision, short" from p. 36.	Clarification
31	"Rural or rural area" means land not located within an urban area as designated in the Clark County comprehensive growth management plan.	Clarification
31	"School modular or portable" means a factory-built habitable structure that is used for educational purposes or to support educational activities.	Requested by school districts and approved by the Planning Commission (PC)
35	"SEPA".and Chapter Section 40.570 of the UDC.	Correction
36	(see note above at p. 26)	
37	"Transportation impact study" means a study done by a licensed engineer in accordance with Section 40.350.020. 12-40	Correction
39	(See note above at p. 24)	
39	"Conditional use" means a use an activity specified by this title as a principal or accessory use which is permitted when authorized by the review authority and subject to certain conditions.	Clarification
40	'Wetlands may also include lands within the jurisdiction of the Shoreline Management Act.	Codifies current practice
44	40.200.040(B)(1)(a) and (b). (leave in 'floor area ratio')	Correction
50	B. Uses. "P" Uses allowed subject to approval of applicable permits. Permitted uses	Clarification
55	40.210.010(C)(3)(c). should not be 'c' but rather a stand-alone sentence	Correction
58	B. Uses. ...are examples of uses allowable in various rural resource zone districts.	Correction
58	B. Uses. "P" Uses allowed subject to approval of applicable permits. Permitted uses	Clarification
68	C. Uses. "P" Uses allowed subject to approval of applicable permits. Permitted uses	Clarification
73	B. Uses. "P" Uses allowed subject to approval of applicable permits. Permitted uses	Clarification
78	B. Uses. "P" Uses allowed subject to approval of applicable permits. Permitted uses	Clarification
79	Table 40.220.010-1. 1. Residential. 1(d) and 1(o), under R1-7.5 should have a footnote 8.	Corrections

		Clarification
80	1(l). Residential P.U.D. over 6 acres (residential P.U.D. under 6 acres requires public hearing) 1(n) and 1(o), under R1-20 and R1-10, should be X instead of R/A 5.b Public and private schools, including pre-schools (K-12) Table 40.220.010-1. Add footnote 8 that reads, "Not allowed in R1-7.5 unless in conjunction with infill development." (see note at p. 79 above)	Clarification Correction
81	Table 40.220.010-2. (delete the footnote 1 reference in the 'Residential Density' column) Under 'Zoning District' for R1-20, R1-10 and R1-7.5, add a footnote 1. Under 'Zoning District' for R1-6 and R1-5, add a footnote 2. Make footnote 1 a 'NOTE.' New footnote 1 should read, "Based on gross site area." New footnote 2 should read, "Based on net site area (gross site area minus right-of-way)"	Clarifications
82	5. Density Transfer. In the R1-5, R1-6, R1-7.5 and R-20 Zoning Districts.	Clarification
83	Table 40.220.010-4. Maximum Lot Density , in second column. (delete footnote reference 1 in 'Maximum Density' column) (delete footnote 1) (renumber footnotes 2 and 3, as 1 and 2, and change in the appropriate columns)	Corrections
84	B. Uses. "P" Uses allowed subject to approval of applicable permits. Permitted uses	Clarification
85	1. Residential. 1(n). Residential P.U.D. over 6 acres (residential P.U.D. under 6 acres requires public hearing) 1(p) and 1(q). (delete footnote 3 reference in OR columns)	Corrections
87	11. Other. (11(e) change footnote reference to 3, from 4) (delete footnote 3; renumber 4 as 3)	Corrections
88	Table 40.220.020-2. (delete references to footnote 2. Complete all columns with appropriate numbers). (delete footnote 2)	Clarification
91	C. Uses. "P" Uses allowed subject to approval of applicable permits. Permitted uses	Clarification
92	1(e) Footnote 1 applies to R/A under CR-1 and CR-2 1(f) Footnote 1 applies to C under CR-1 and CF 2 2(e) (should all be P)	Corrections

93	5(c) Footnote 1 applies to C under CR-1	Correction
95	13(i) Footnote 1 applies to R/A under CR-1 and CR-2 14(a) should be C, in CR-1 and CR-2) 14(c) should all be P) 14(d) should be C, under CR-2)	Corrections
95	14(i) <u>Public and private schools, and other public educational institutions.</u> Add use table information from 17(b), p. 96	Requested by school districts and approved by the PC
96	17(b) (delete--moved to new 14(i), p. 95. Re-letter 17c-g as 17b-f)	(see note above)
96	19(b) Footnote 1 applies to R/A under CR-2 19(c)(1) Open air display of plants and produce is permitted in conjunction with a permitted use. ²	Correction Clarification
97	20(c) Footnote 1 applies to C under CR-1 and CR-2	Correction
98	Table 40.230.010-3: CR should read CR-1 and CR-2	Clarification
99	'F' should be 'E'	Correction
104	3(a)(2) (delete; renumber 3-9 as 2-8)	Clarification
105	11. Frontage. To discourage parking between the front of the building and the street and to encourage parking to on the side....	Clarification
110	B. Uses. The uses set out in Table 40.230.030-1 are examples of uses allowable in <u>this</u> the various zone districts. "P" <u>Uses allowed subject to approval of applicable permits.</u> Permitted-uses	Correction
116	B. Uses. The uses set out in Table 40.230.040-1 are examples of uses allowable in <u>this</u> the various zone districts. "P" <u>Uses allowed subject to approval of applicable permits.</u> Permitted-uses	Correction
117	7(a) <u>Public and private schools, including business and trade schools.</u> (delete reference to 40.260.160 in Special Standards column). 7(b) (add reference to 40.260.160 in Special Standards column)	Clarification Clarification Correction Correction
121	B. Uses. "P" <u>Uses allowed subject to approval of applicable permits.</u> Permitted-uses	Clarification
126	B. Uses. "P" <u>Uses allowed subject to approval of applicable permits.</u> Permitted-uses	Clarification
130	B. Uses. The uses set out in Table 40.230.070-1 are examples of uses allowable in the various	Correction

	resource zone districts. "p" Uses allowed subject to approval of applicable permit.. Permitted-uses B. Uses. "p" Uses allowed subject to approval of applicable permits. Permitted-uses	Clarification
134	40.240.280. Sections 40.240.190(C) and 40.240.280 through 40.240.340 shall apply to those areas zoned Gorge Small Woodland and SMA-Forest	Clarification Correction; requested by the Gorge Commission
216	40.240.580(D). Approval Criteria for Recreation Uses. All proposed recreation projects outside of Public Recreation zones shall comply with the applicable appropriate-scenic, cultural, natural and recreation resources guidelines....	Correction; requested by the Gorge Commission
267	(new) "Clark County Historic Register" means the list of properties, structures, and objects that have been designated to be representative of Clark County's rich history.	Clarification
293-4	40.260.050(E). ... For a Type II review, the applicant shall submit a fast-track site plan review application including with a site plan review. ...	Clarification
314	40.260.140(B)(1). ... Buffering and screening shall be required when such parks are adjacent abutting to commercial and manufacturing industrial zones. (C)(4) Spacing. A mobile home shall be separated from an adjacent adjoining-abutting mobile home by a minimum of ten (10) feet.	Clarification Clarification
315	E. Mobile Home Park Approval Criteria. Responsible-official-Approval:	Correction
334	Table 40.260.250-1. Under 'WCF's in Urban Areas', Other Commercial is correct	Correction
339	(line needed between definitions of 'portable sign' and 'premises')	
342-3	Table 40.310.010-1. Under 'Maximum Height': All should say "None, unless specifically provided for in a particular zone," except for 'Entrance/Exit/Parking' and On Premises Directional' which should say '8 feet'.	Correction
353	I(5). (period after 'in area'; delete the last sentence).	Repeated in I(6)
361	I. (unstrike and correct): Verification of the Installation of Required Landscape. Prior to the issuance of an approval of occupancy for a site plan, the applicant shall provide verification in accordance with Section 40.320.030(B).	Correction
363	40.320.020(D). ... the responsible official may will allow postponement of the landscaping. ... E. (unstrike and correct): Verification of the Installation of Required Landscape. Prior to the issuance of an approval of occupancy for a site plan, the applicant shall provide verification in accordance with Section 40.320.030(B). (re-letter E-G to F-H).	Correction Corrections

390	Table 40.350.030-2. Parkway Arterial Dwg 1-1a	Clarification
395	Table 40.350.030-6. Under 'Secondary Industrial' shoulder parking (ft.) should say '0'	Correction
397	40.350.030(B)(5). (reletter (b) and (c) as (a) and (L))	Correction
406	40.350.030.12(b) should be 12(a)(3)	Correction
407	40.350.030.12(b)(2) should be (a)(4) 40.350.030.12(c) should be (b) 40.350.030.13(c)(2). Traffic Calming Devices. Traffic calming devices, such as speed bump/hump, and the devices shown in the Standard Details Manual, or as approved by the review authority shall be installed	Corrections Clarification
410	40.350.030(C)(1)(a)(2). The current Standard Plans for Road and Bridge Construction.... 40.350.030(C)(1)(a)(3). The current standard plans and design criteria.... 40.350.030(C)(1)(c). Conflict of Standards. In the event of conflict with any of the specifications, the County Engineer shall specify which <u>supplemental standard specifications</u> .	Clarifications
413	40.350.030(C)(4)(a)(5) should not be labeled (5); The <u>responsible official Public-works-director</u> shall be notified... 40.350.030(C)(4)(b). Subgrade. The subgrade must be approved by the <u>responsible official County-Engineer</u> prior to ... 40.350.030(C)(4)(c). ...Approval shall be by the <u>responsible official County-Engineer</u> . 40.350.030(C)(4)(e)(1). Trench Backfill for Construction. All trench backfill within the <u>county right-of-way</u> and road improvement area. . . . The trench backfill shall be placed in conformance with the Standard Specification section 7-08.3(3). <u>Plans, Section 40.350.030(C)(2):</u> 40.350.030(e)(3) should be (f); (e)(4) should be (f)(1); (e)(5) should be (f)(2)	Corrections
414	(e)(6) should be (f)(3); (e)(7) should be (f)(4); (e)(8) should be (f)(5); (f) should be (g); (g) should be (h)	Corrections
415	(g)(6) should be (i); (g)(7) should be (j); (g)(8) should be a paragraph under (j); (g)(9) should be (k); (g)(10) should be (l); (g)(11) should be (m)	Corrections
419	40.370.010(C)(3)(b)(4) should be C(3)(c)	Correction
425	A.4 <u>School modulars or portables</u> <u>Temporary portable school buildings</u> are exempt from. . . .	Requested by school districts and approved by the PC

438	40.380.040(J)(1). ...and the maintenance bonding requirements of Section 40.380.040 13.29.340 are met, ...	Correction
500	40.460.030(A). All uses permitted outright or otherwise in the zone district with which this district is overlaid combined are allowed, subject to shoreline permit requirements. Standards.	Correction Clarification
501	40.460.040(B). (delete last line)	Covered in Procedures
501	40.460.050(B). Shoreline Substantial Development Permits shall be processed as Type III applications, with the exception that the SMRC conference shall replace the public hearing. The SMRC shall have its written decision prepared, signed and mailed to the Department of Ecology within the timelines set forth for Type III applications.	Reflects current practice
501	40.460.050(C). Shoreline Conditional Use Permits shall be processed locally as Type III applications, with the exception that the SMRC conference shall replace the public hearing. but The local decision is only a recommendation to the Department of Ecology. The SMRC shall have its written recommendation prepared, signed and mailed to the Department of Ecology within the timelines set forth for Type III applications.	Reflects current practice
501	40.460.060(A)(1). Construction shall be commenced, or en where no construction is involved, the use or activity shall be commenced. . . .	Correction
506	40.500.010(A)(1). This chapter describes how the county will process applications for development subject to review under the following chapters of this code: the UDC and Title 14, and is intended to identify the procedure for determining whether proposals are, or can be mitigated or conditioned to be, consistent with applicable policies and standards. Consistency is determined by consideration of: <u>substantial evidence in the record that is relevant to these policies and standards.</u> a. The type of land use; b. The level of development, such as units per acre or other measures of density or intensity; c. Infrastructure, including public facilities and services needed to serve the development; d. The character of the development, such as development standards;	Clarification

	Clarification	
506	40.500.010(A)(2). Add 40.100.050 (B)(2) (from p. 2): If an application for an interpretation is associated with another application(s) subject to this title, then the application for the interpretation shall be combined with the associated application(s) and is subject to the same procedure type as the applications with which it is combined.	Clarification
506	40.500.010(B)(1)(c). For all other approvals – A building permit for the approved development has been issued and remains in effect, or a final occupancy permit issued.	Clarification
509	Table 40.500.010-1. Add, under Interpretations: Counter Complete; X, under Type I; 40.510.010(A), 020(B) and 030(B) under Code Reference Fully Complete; X, under Type I; 40.510.010(B), 020(C) and 030(C) under Code Reference Submittal Requirement Waiver; X, under Type I; 40.510.010(B)(3)(d)(1), 020(C)(3)(f)(1) and 030(C)(4) (a) under Code Reference	Correction
509	Table 40.500.010-1. Under Special Area-Related Reviews: Change Shoreline from a Type II to a type III (see note at p. 501 above)	Correction
512	(C)(1) Procedure. The responsible official shall approve, approve with conditions, or deny the application within twenty-one (21) calendar days after the date the application was accepted as fully complete. Provided : An applicant may request in writing to extend the time in which the responsible official shall issue a decision, <u>provided the county receives the request within the 21-day period. If the responsible official grants such a request, the responsible official may consider new evidence the applicant introduces with or subsequent to the after such a written request.</u>	Clarification
513	New (D)(3). For concurrency approval requirements, see Section 40.350.020.	Clarification
513	(E)(2)(c). The specific aspect(s) of the decision and/or SEPA issue being appealed,	Correction (no SEPA for Type I's)
514	40.510.020(A)(2)(a)(7). 40.560.020(1) 18-503.19 Release of Concomitant Rezone Agreements 40.510.020(A)(2)(a). Add (11) 40.200.030 Interpretations, or	Correction
515	40.510.020(A)(2)(b). The applicant applies for and is granted a preapplication waiver. . . . The decision regarding a pre-application waiver to waive a preapplication can be appealed. . . .	Correction
518	(C)(6)(b). Send a written notice of receipt of a complete application to the applicant	Clarifications

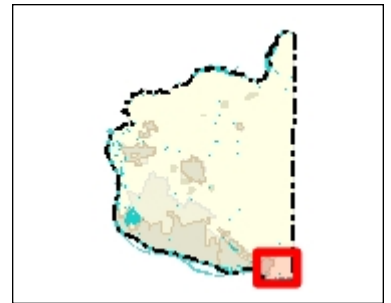
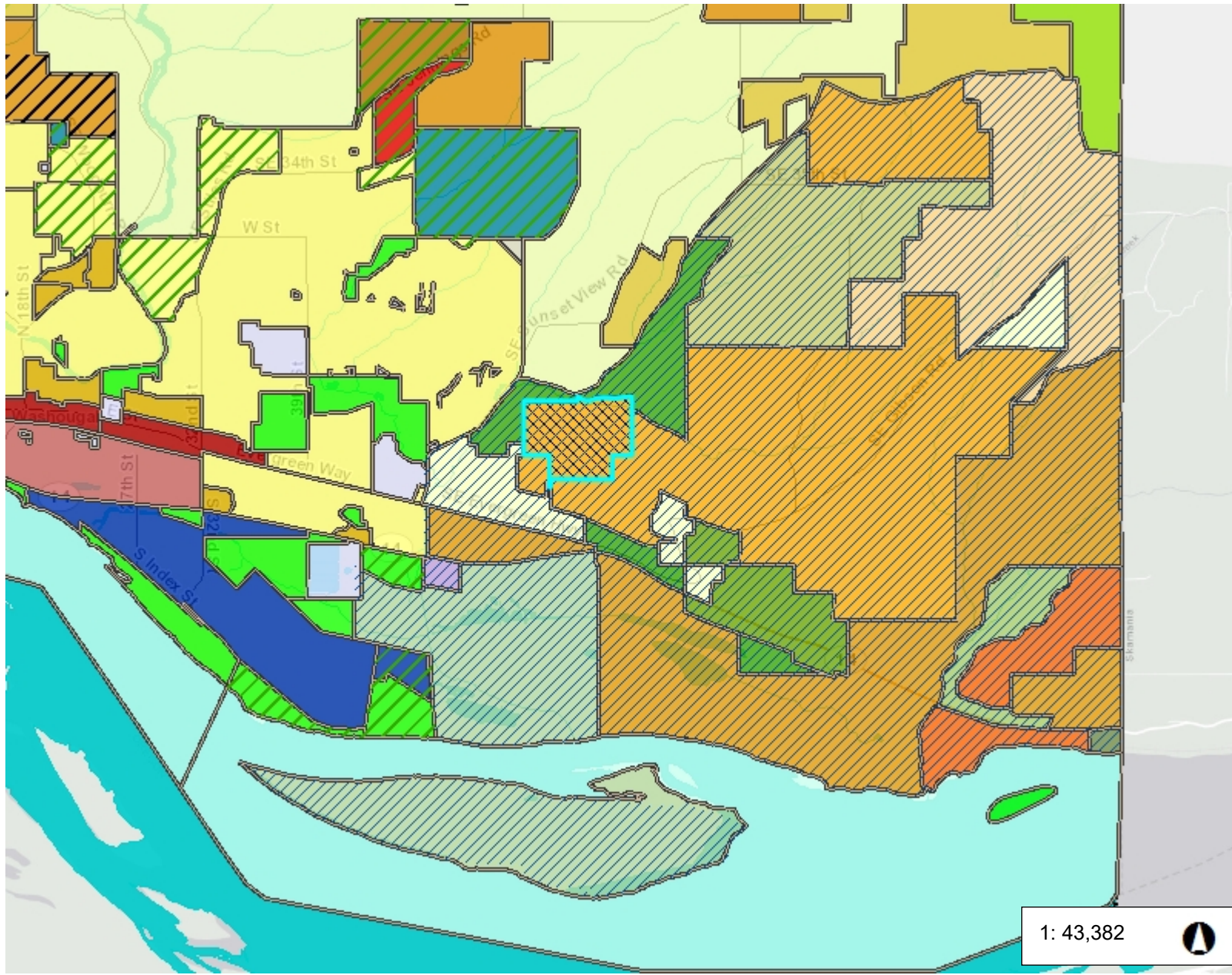
	acknowledging acceptance, listing the name and telephone number of a contact person for at the responsible official. . . .	Clarification
519	(D)(4)(a), third sentence. The statement shall include how a party may <u>must</u> appeal the. . . .	Clarification
521	(F)(2). An applicant may request in writing to extend the time in which the responsible official shall issue a decision. <u>If the responsible official grants such a request, the responsible official may consider new evidence the applicant introduces with or subsequent to the after <u>such a written request.</u></u> (F)(3)(c). Any period of time during which an environmental impact statement is being prepared, provided, that the maximum time allowed to prepare an environmental impact statement shall not be one (1) year from the issuance or the determination unless the <u>responsible official county and applicant. . . .</u>	Clarification Clarification Clarification
521	(G)(2). Contingent vesting. An application which is subject to preapplication shall <u>either</u> contingently vest on the date a full y complete preapplication is submitted. <u>This contingent vesting shall become final. . . .</u>	Clarification
524	<u>New (G)(4). For concurrency approval requirements, see Section 40.350.020.</u> 40.510.030(A)(2)(a) . . . The application is for a <u>post decision review as described in 50.520.060; or</u> b. The applicant applies for. . . .	Clarification Correction. The only Type III application is the PDR.
526	40.510.030(C)(3)(b). (delete 2 and 4; renumber 3 to 2)	Clarification
527	40.510.030(C)(3)(f). A <u>proposed preliminary site plan or plat that shows</u>	Clarification
529	(D)(4)(a), third sentence. The statement shall <u>include</u> how a party may <u>must</u> appeal the. . . .	Clarification
531	(F)(2). An applicant may request in writing to <u>extend</u> the time in which the hearings examiner shall issue a decision. <u>If the hearings examiner grants such a request, the hearings examiner may consider new evidence the applicant introduces with or subsequent to the after <u>such a written request.</u> New evidence may not be considered. . . .</u>	Clarification
532	(F)(3)(c). Any period of time during which an environmental impact statement is being prepared, <u>which provided, that the maximum time allowed to prepare an environmental impact statement shall not be one (1) year from the issuance or the determination unless the responsible official county and applicant. . . .</u>	Clarification

		Clarification
532	New (G)(4). For concurrency approval requirements, see Section 40.350.020.	Clarification
533	(H)(4)(b)(2), second sentence. The board may adopt the decisions of the lower-hearings examiner as its decision ...	Correction
536	40.510.050(A) Applicability. Table 40.510.050-1 identifies information to be included with the preapplications and applications for all Type I, Type II and Type III applications, as follows: 1. Type I applications: Submittal items 1 and 2, and any additional materials required by the responsible official. 2. All Type II and Type III applications not listed in (3) below: Submittal items 1 through 6. 3. For applications for a conditional use, master plan, planned unit development, preliminary plat for a short plat, preliminary plat for a subdivision and site plan: All submittal items, as applicable. Table 40.510.050-1. (renumber Item 1 as Item 3; renumber Items 2 and 3 as Items 1 and 2)	Clarification
537	Table 40.510.050-1 (6). (delete b and d; reletter c to b) (see note at p. 526)	Clarification
538	Item 9(b)(2)(c), (d) and (f). location and full width	Clarification
539	Item 9(c)(2)(d), (e) and (f). location and full width	Clarification
542	40.520.010(C)(2). A Type I process per Chapter 40.510 shall be used <u>utilized</u>	Clarification
545	40.520.020(A). Upon review of the responsible official, uses designated as permitted subject to Review and Approval (R/A) may be allowed in the various districts; provided, that the responsible official is of the opinion that such uses would be compatible <u>not be incompatible</u> with neighboring land uses. <u>the existing character of the area.</u>	Clarification
551	E. Actions by the hearing examiner. (1) These conditions may include, <u>but are not limited to</u> , requirements:	Codifies current practice
553	B(2)(b). provisions making any development conform with <u>be in conformity with</u> the site plan.	Clarification
558	E(1)(a). If the responsible official finds that a site plan does or can comply with the applicable approval and development standards, <u>the responsible official he or she shall approve...</u> E(1)(b). ...such compliance cannot be achieved by imposing a condition of conditions of approval, <u>the responsible official he or she shall deny the site plan application.</u>	Clarifications
562	D(2). An application <u>appeant</u> for approval of a master plan ... <u>An application applicant for</u>	Clarification

	pre-application review of a master plan.... D(3) (delete)	
563	(renumber D(4-9) as D(3-8))	
579	40.540.010(B). Boundary line adjustments may be approved through application to the County Assessor's office or through the Department of Community Development. BLAs recorded approved through the County Assessor's office do not ensure such adjustments meet current zoning requirements. BLA applications approved through the Department of Community Development ensure compliance with current zoning requirements, and are reviewed and approved through a Type I process pursuant to Section 40.510.010.	Clarification
587	D(2). Add Subtitle 40.1 Introduction and Administration and Subtitle 40.5 Procedures.	Correction
591	D(3). ...An application shall not be deemed fully complete until all legal requirements and conditions of approval that are required to be fulfilled before final plat have been met.	Clarifications
597	D(5)(e). The final plat complies is in compliance with the requirements of this chapter. . . . 40.550.010 (A)(1)(d). (delete d)(1) as these are findings; move d)(2) to a new 40.550.010(D)(2)(e), as this is more of a requirement).	Clarification
598	40.550.010(D)(2)(e). (new, from 40.550.010(A)(1)(d)(2), p. 597)	Clarification
602	40.560.010(D)(2)(c)(1). (delete d-g and i-k). New (d): <u>GIS packet</u> . (reletter accordingly) 40.560.010(D)(2)(c)(3). (delete c and e; reletter accordingly). New (e): Provide Any additional information: the applicant believes necessary to justify the amendment	Clarifications
608	40.560.020(A). Procedure, general. The UDC may be amended in any of the following ways: as follows	Clarification



CRGNSA and SMO Overlay



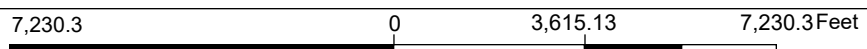
Legend

- Comprehensive Plan Overlay**
- Urban Reserve
 - Urban Holding
 - Railroad Industrial Urban Reserve
 - Freight Rail Dependent Use
 - Surface Mining
 - Columbia River Gorge Scenic Area
 - Rural Center Mixed Use

- Comprehensive Plan - Outline
- Comprehensive Plan**
- Urban Low Density Residential (UL)
 - Urban Medium Density Residential
 - Urban High Density Residential (UH)
 - Mixed Use (MU)
 - Junction Plan (JP)
 - Commercial (C, COM)
 - Industrial (I, IND)
 - Heavy Industrial (IH, MH)
 - Public Facility (PF)
 - Bonneville Power Administration (B)
 - Mixed use - Residential (MU-R)
 - Mixed use - Employment (MU-E)
 - Downtown (D)
 - Neighborhood Commercial (NC)

Notes:

1: 43,382



WGS_1984_Web_Mercator_Auxiliary_Sphere
 Clark County, WA. GIS - <http://gis.clark.wa.gov>


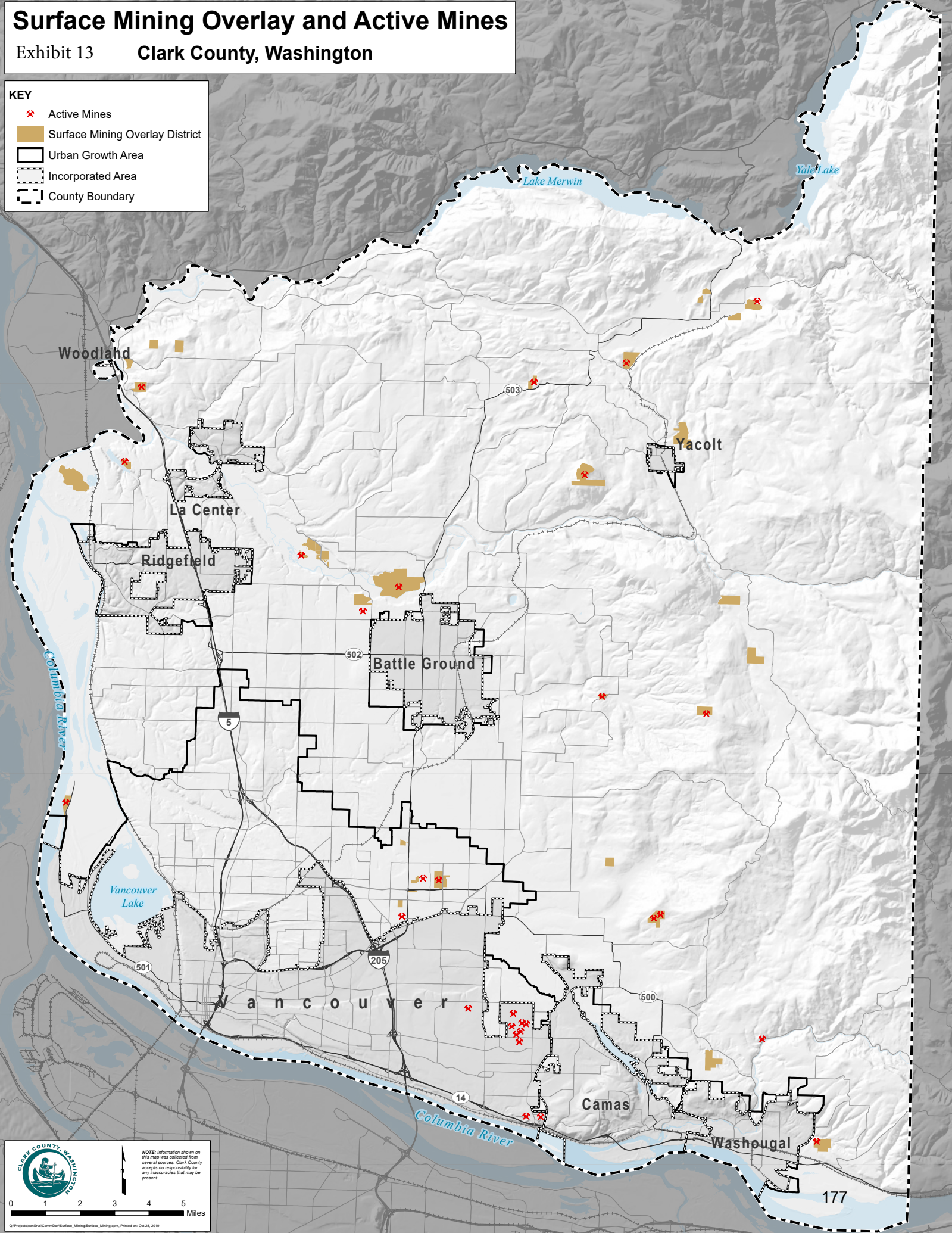
This map was generated by Clark County's "MapsOnline" website. Clark County does not warrant the accuracy, reliability or timeliness of any information on this map, and shall not be held liable for losses caused by using this information.

Surface Mining Overlay and Active Mines

Exhibit 13 Clark County, Washington

KEY

- ★ Active Mines
- Surface Mining Overlay District
- Urban Growth Area
- ⋯ Incorporated Area
- - - County Boundary



NOTE: Information shown on this map was collected from several sources. Clark County accepts no responsibility for any inaccuracies that may be present.

0 1 2 3 4 5 Miles

Q:\Projects\arcgis\arcgis\arcgis\Surface_Mining.aprx. Printed on Oct 28, 2019

MEMORANDUM

To: Clark County Planning Commission

cc: Jamie Howsley

From: Stephen W. Horenstein

Subject: Interim Ordinance 20119-09-13/CPC 2019-00033

Date: November 21, 2019

Let me first thank you for continuing this hearing to this date in order to allow us to receive information pursuant to a public records request filed with Clark County to assist us in determining whether the "scriveners error" narrative put forth by the County for your consideration is supported by the historical record addressing the code provision at issue.

We would also advise that tonight's proceeding on the "scriveners' error" narrative is at best pro forma. The Board of County Councilors has now twice adopted the interim ordinance before you. The most recent vote was 4-1 in favor. There is no reason to expect that the Board will not adopt this ordinance on a permanent basis.

The continuance of this hearing did allow us to review most of those records we have received to date. These records do not provide any information that would provide the County with a basis to determine that the change being proposed was a "scriveners error".

Given the lack of written legislative history on the issue, we spoke with former County Commissioner Betty Sue Morris who was in office at that time and who we recalled played a lead role in the surface mining issues of the day. Betty Sue recalled clearly that the Board of County Commissioners decided as a matter of policy to carve out a role for the Board of County Commissioners in permitting surface mining given the need for further and enhanced public involvement in this permitting process and the interest of the public on the impacts thereof. That was to be done in 2003 as a Type IV process.

Admittedly, a Type IV process was different in 2003 than it is today. However, the salient point is that in our experience with the Washougal Pit issues, there needs to be a balance between the need for the material provided from that pit to build roads and other projects and the regulation and permitting of the activity necessary to access that material.

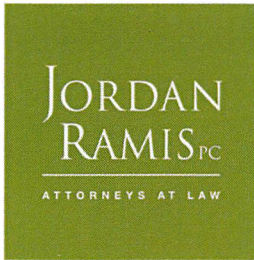
Since June of 2018, we have tried repeatedly to get the County to take a broader look at the permitting issues involved and to update the code for current mining practices in a way that is consistent with the

Columbia Gorge Commission rules and regulations as promulgated by Chapter 40.240 and 40.250 of the Clark County Code. Only when the owner of the Washougal Pit advised County staff that he intended out of desperation and to limit litigation costs to submit a permit for mining activity under protest did the County rush to adopt an emergency ordinance without even providing notice and opportunity for the Washougal Pit owner and operator to be heard. Why, after being in the code for 16 years, was this change to the code changing a Type IV process to a Type III process so urgent? We can only conclude that this was done to give the Community Development Department control over the permitting process for the Washougal Pit without involvement by the Board of County Councilors on the policy issues involved. In contrast, County staff appears only interested in the regulation side of things without regard for needed code changes to reflect industry practices as they exist today and did not exist in 2003. If the County had an interest in bringing the surface mining regulations current, that process would have started almost 2 years ago when we asked for this to occur and put suggestions and ideas for doing so before the County. The response we received to those suggestions was to issue a Notice an Order for code enforcement that has resulted to date in four different administrative hearings, appeals and civil litigation with at least two more legal proceedings in the offing. More of this will follow as there continues to be far more interest on the County's part in halting mining activity than balance the need for material against proper regulation so that material to build roads and other projects is available. There are many options for updating the code to accommodate new and less intrusive mining practices.

It has been our hope that the Board of County Counselors would be willing to play a role in balancing the need for material against regulation. That is not being undertaken at this point as far as we know.

The Growth Management Act (GMA) requires that counties provide for mineral resources as part of an overall approach to land-use planning. These resources are rapidly diminishing in Clark County. We are finding it necessary to engage in both appellate and civil litigation to enforce this mandate and make material available. How many lawsuits will be necessary for the County to finally get on board in the need for balance as described above?

Regardless of the action you take this evening on the ordinance before you. Please encourage the Board of County Councilors to find a way to revisit the policies around permitting surface mining activity to ensure that material for roads and other projects is available with the cost of importing such material from elsewhere. Failure to maintain locally sourced materials not only may be a GMA violation, but it may result in unnecessarily higher expenses for public works projects such as roads, schools and other critical infrastructure.



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Jamie D. Howsley
Admitted in Oregon and Washington
jamie.howsley@jordanramis.com
Direct Dial: (360) 567-3913

November 21, 2019

VIA EMAIL ONLY

Clark County Planning Commission
ATTN: Sonja Wiser, Program Assistant
Clark County Community Planning
PO Box 9810
Vancouver, WA 98666-9810
E-Mail: Sonja.wiser@clark.wa.gov

Re: **CPZ2019-00033 Clark County Unified Development Code (Title 40.240.440)**
Amendments - Columbia River Gorge National Scenic Area

Dear Planning Commission:

Our office represents Judith Zimmerly, property owner of the Washougal Pit, and we are submitting the following comments regarding Clark County's ("County") proposed amendments to the Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H) to correct a "scrivener's error." Staff has proposed an amendment to CCC 40.240.440(H) to amend the review procedure for the development and production of mineral and geothermal resources to a Type III (quasi-judicial) process. Currently, the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process.

As the property owner of the Washougal Pit, Judith Zimmerly is currently involved in appeal proceedings related to Amended N&O# CDE2017-Z-1069(A), and it is our client's belief that this proposed amendment to CCC 40.240.440(H) is a function of the work that has been done on-site. In addition, although this proposed amendment has been described as a mere attempt to amend a "scrivener's error," the underlying effect of such an amendment to CCC 40.240.440(H) will have a profound impact on our client's current application for a National Scenic Area Permit. We reiterate our client's position that the timing of this interim ordinance is far too convenient to be a coincidence. Our client owns the only operational mine in the National Scenic Area and is currently in the process of applying for a National Scenic Area Permit.

At this time, Clark County has not provided us with the records we requested *prior* to the October 16 Planning Commission meeting. Therefore, our Client cannot properly determine whether the 2003 amendment made to CCC 40.240.240(G) [subsequently renumbered to be 40.240.440(H)] by Ord. 2003-11-01, requiring a Type IV process for the development and production of mineral and geothermal resources was intentional and not the result of a scrivener's error.

Although we wish that we had been provided the requested records in time for tonight's hearing, we look forward to a continued dialog with the Planning Commission and County Council regarding permitting surface mining activity in Clark County.

Very truly yours,

JORDAN RAMIS PC

Jamie D. Howsley

A handwritten signature in blue ink, appearing to read "Jamie D. Howsley", with a long horizontal flourish extending to the right.

From: [Wiser, Sonja](#)
To: [Orjiako, Oliver](#); [Cook, Christine](#); [Hallvik, Taylor](#); [Lumbantobing, Sharon](#); [Sidorov, Larisa](#); [Bryan Halbert](#); [Karl Johnson](#); [Matt Swindell](#); [Richard Torres](#); [Ron Barca-Boeing](#); [Steve Morasch \(stevem@landerholm.com\)](#)
Subject: FW: Permanently Correct CCC 40.240.H
Date: Wednesday, November 20, 2019 12:36:11 PM

fyi

From: chuck williams [mailto:chuck.williams.255526807@p2a.co]
Sent: Wednesday, November 20, 2019 11:36 AM
To: Wiser, Sonja
Subject: Permanently Correct CCC 40.240.H

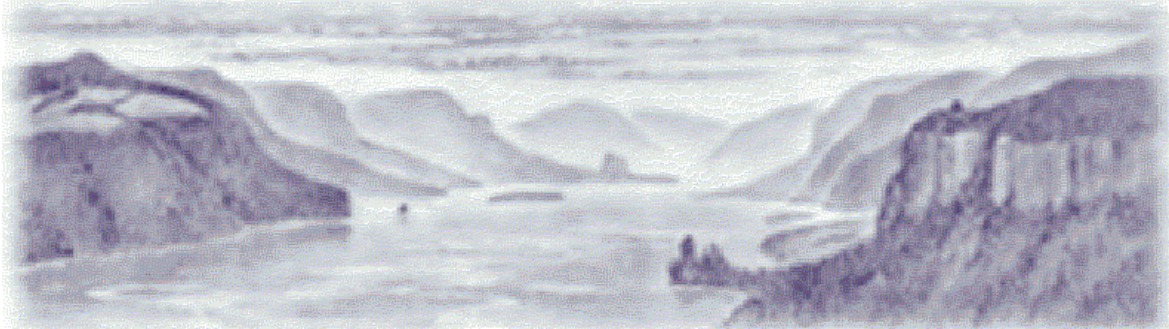
CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
chuck williams
30907 Ne Coyote Dr
Yacolt, WA 98675



FRIENDS OF THE COLUMBIA GORGE

Via email

November 19, 2019

Clark County Planning Commission
C/O Sharon Lumbantobing, Planner II
Clark County Community Planning
PO Box 9810
Vancouver, WA 98666-9810
E-mail: Sharon.Lumbantobing@clark.wa.gov

**Re: CPZ2019-00033 Clark County Unified Development Code (Title 40.240.440)
Amendments to Columbia River Gorge National Scenic Area Districts**

Dear Planning Commission:

Friends of the Columbia Gorge (“Friends”) has reviewed and submits these additional comments on the above-referenced proposed ordinance. These comments augment Friends’ comments of October 17, 2019. Friends is a nonprofit organization with approximately 6,500 members dedicated to protecting and enhancing the resources of the Columbia River Gorge through the effective implementation of the Columbia River Gorge National Scenic Area Act. Our membership includes hundreds of citizens who reside within the Columbia River Gorge National Scenic Area.

Friends supports making the change permanent in Clark County Code (“CCC”) § 40.240.440.H to correct a scrivener’s error. The scrivener’s error was introduced in June of 2003 when changes were made to the CCC to restructure parts of the code. Friends’ October 17 comments point out several pieces of evidence documenting that it truly was a scrivener’s error. In addition, the change from a Type III to a Type IV process was not identified as an intentional change to the Board of County Commissioners on September 17, 2003 (Exhibit 11, p. 12), further indicating that the change was unintentional.

In addition, it should be noted that the scrivener’s error has already been corrected on an interim basis by the County Council, via the September 25, 2019 adoption of Interim Ordinance No. CPZ2019-00033. The Nutter Corporation and Zimmerly have argued that correcting the

scrivener's error will somehow affect their pending pre-application to conduct surface mining in the National Scenic Area or are targeted at them. Their arguments are incorrect. Their pre-application was submitted *after* the County Council corrected the scrivener's error on September 25 and pursuant to CCC § 40.240.050.C, their pre-application is vested, including the correcting language, under the Interim Ordinance contingent on completing their application by May 7, 2020. There is no legal or factual reason for not moving forward with this permanent correction of the scrivener's error.

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. McCoy', with a stylized flourish at the end.

Steven D. McCoy
Staff Attorney

From: [Wiser, Sonja](#)
To: [Bryan Halbert](#); [Karl Johnson](#); [Matt Swindell](#); [Richard Torres](#); [Ron Barca-Boeing](#); [Steve Morasch \(stevem@landerholm.com\)](#)
Cc: [Orjiako, Oliver](#); [Sidorov, Larisa](#); [Lumbantobing, Sharon](#); [Cook, Christine](#); [Hallvik, Taylor](#)
Subject: FW: Permanently Correct CCC 40.240.H
Date: Tuesday, November 19, 2019 7:08:36 AM

From: Carrie Parks [mailto:Carrie.Parks.254986989@p2a.co]
Sent: Monday, November 18, 2019 9:10 PM
To: Wiser, Sonja
Subject: Permanently Correct CCC 40.240.H

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Carrie Parks
13009 NE 93rd St
Vancouver, WA 98682

From: [Wiser, Sonja](#)
To: [Bryan Halbert](#); [Karl Johnson](#); [Matt Swindell](#); [Richard Torres](#); [Ron Barca-Boeing](#); [Steve Morasch \(stevem@landerholm.com\)](#)
Cc: [Cook, Christine](#); [Hallvik, Taylor](#); [Sidorov, Larisa](#); [Lumbantobing, Sharon](#)
Subject: FW: Permanently Correct CCC 40.240.H
Date: Monday, November 18, 2019 2:31:07 PM

From: Karen Pickering [mailto:Karen.Pickering.220147374@p2a.co]
Sent: Monday, November 18, 2019 2:06 PM
To: Wiser, Sonja
Subject: Permanently Correct CCC 40.240.H

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Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

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Regards,
Karen Pickering
25909 NE 52nd Way Vancouver, Apt, Suite, Bldg. (optional)
Vancouver, WA 98682

From: [Wiser, Sonja](#)
To: [Bryan Halbert](#); [Karl Johnson](#); [Matt Swindell](#); [Richard Torres](#); [Ron Barca-Boeing](#); [Steve Morasch \(stevem@landerholm.com\)](#)
Cc: [Orjiako, Oliver](#); [Sidorov, Larisa](#); [Lumbantobing, Sharon](#); [Cook, Christine](#); [Hallvik, Taylor](#)
Subject: FW: Permanently Correct CCC 40.240.H
Date: Tuesday, November 19, 2019 7:08:36 AM

From: Carrie Parks [mailto:Carrie.Parks.254986989@p2a.co]
Sent: Monday, November 18, 2019 9:10 PM
To: Wiser, Sonja
Subject: Permanently Correct CCC 40.240.H

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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Regards,
Carrie Parks
13009 NE 93rd St
Vancouver, WA 98682

From: [Wiser, Sonja](#)
To: [Cook, Christine](#); [Hallvik, Taylor](#); [Lumbantobing, Sharon](#); [Sidorov, Larisa](#); [Bryan Halbert](#); [Karl Johnson](#); [Matt Swindell](#); [Richard Torres](#); [Ron Barca-Boeing](#); [Steve Morasch \(stevem@landerholm.com\)](#)
Subject: FW: Permanently Correct CCC 40.240.H
Date: Tuesday, November 12, 2019 1:10:32 PM

From: Kathee Gaudren [mailto:Kathee.Gaudren.228144360@p2a.co]
Sent: Tuesday, November 12, 2019 12:38 PM
To: Wiser, Sonja
Subject: Permanently Correct CCC 40.240.H

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Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

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Regards,
Kathee Gaudren
36205 SE Wooding Rd
Washougal, WA 98671

From: [William Feddeler](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Monday, November 11, 2019 8:37:47 AM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
William Feddeler
185 N 43rd Pl
Ridgefield, WA 98642

From: [Mona McNeil](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Monday, November 11, 2019 3:04:07 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Mona McNeil
15704 NE 28th Ct
Vancouver, WA 98686

From: [Russell Freeland](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Sunday, November 10, 2019 6:40:04 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Russell Freeland
9212 NW 25th Ave
Vancouver, WA 98665

From: [Thomas Gordon](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Saturday, November 09, 2019 10:21:16 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

The damage this operation causes will be permanent and should be stopped. The loophole should be removed.

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Thomas Gordon
642 I St
Washougal, WA 98671

From: [Marianne Eddington](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Saturday, November 09, 2019 9:42:16 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Marianne Eddington
20520 NE 221st Cir
Battle Ground, WA 98604

From: [Lehman Holder](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Saturday, November 09, 2019 9:37:39 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

My wife and I strongly support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Lehman Holder
8916 NE 11th St
Vancouver, WA 98664

From: [Susi Hulbert](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Saturday, November 09, 2019 8:37:13 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Susi Hulbert
530 Hillcrest
Longview, WA 98632

From: [Luan Pinson](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Saturday, November 09, 2019 7:38:21 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Luan Pinson
826 SE Morgan Rd
Vancouver, WA 98664

From: [Don Steinke](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Saturday, November 09, 2019 7:01:22 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Don Steinke
4833 NE 238th Ave
Vancouver, WA 98682

From: [Carol Panfilio](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Saturday, November 09, 2019 3:34:04 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Carol Panfilio
P O Box 6427
Vancouver, WA 98668

From: [Mark Leed](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Saturday, November 09, 2019 10:27:03 AM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Mark Leed
3419 E. 21st St., Unit 4, Vancouver
Vancouver, WA 98661

From: [Cynthia Disrud](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Saturday, November 09, 2019 7:55:08 AM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Cynthia Disrud
2506 48th St
Washougal, WA 98671

From: [Dorethea Simone](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Saturday, November 09, 2019 5:06:03 AM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications! There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Dorethea Simone
2828 NE Everett St, Unit # 20
Camas, WA 98607

From: [CJ Joyce](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Saturday, November 09, 2019 3:43:03 AM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
CJ Joyce
2516 E 27th St
Vancouver, WA 98661

From: [Scott Johnston](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 7:33:02 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Scott Johnston
1538 41st Ct
Washougal, WA 98671

From: [Virginia Cobb](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 6:58:07 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Virginia Cobb
17948 SE 41st Loop
Vancouver, WA 98683

From: [Deanna Eichler](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 6:45:05 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Deanna Eichler
40205 SE Gibson Rd
Washougal, WA 98671

From: [Peter Christ](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 6:35:02 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Peter Christ
28818 NE Hancock Rd
Camas, WA 98607

From: [Sharon Miller](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 6:30:06 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Sharon Miller
1501 NE 89th Ct
Vancouver, WA 98664

From: [Sarah Hafer](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 5:33:05 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Sarah Hafer
12111 NE 4th St
Vancouver, WA 98684

From: [Stephen Hulick](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 5:05:05 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Stephen Hulick
16607 NE 197th Ave
Brush Prairie, WA 98606

From: [David Finn](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 4:30:04 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

Please take the necessary action to help stop this travesty. They are literally thumbing their noses at the county and the gorge commission. We have witnessed both groups taking swift and decisive actions in the past, for much smaller and seemingly minor transgressions, so it is hard to understand why the buck is continuously being passed from one agency to another.

So long story short, I and most of the community strongly support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
David Finn
3003 SE 297th Avenue
Washougal, WA 98671

From: [Timothy Berry](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 4:23:02 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. I'm aware of the scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). I also understand that Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Timothy Berry
4135 SE 177th Ln
Vancouver, WA 98683

From: [Teresa Meyer](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 4:00:03 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Teresa Meyer
4209 SE 177th LN
Vancouver, WA 98683

From: [Jim Jarzabek](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 3:48:03 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Jim Jarzabek
4209 SE 177th LN
Vancouver, WA 98683

From: [Christopher Kralik](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 3:14:03 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Christopher Kralik
631 NW 18th Loop
Camas, WA 98607

From: [William Sinnett](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 2:47:05 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
William Sinnett
2615 NE 359th Avenue
Washougal, WA 98671

From: [Francis Lenski](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 2:45:03 PM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Program Assistant Sonja Wiser,

Re: Proposed Clark County Unified Development Code Amendments (CPZ2019-00033).

I support the staff recommendation to require surface mining permits to be processed as Type III applications. There is currently a scrivener's error in Clark County Code section 40.240.440.H that requires surface mining permit applications to go through a legislative (Type IV) process rather than going in front of a hearings examiner (as a Type III process). However, the Clark County Code sections that deal with the legislative process have no provisions for reviewing a permit application. This needlessly delivers uncertainty and confusion about how permits are processed. The error has been temporarily corrected by the County Council in Interim Ordinance No. 2019-09-13 which is currently in effect but it will expire if you don't act. Please recommend to the County Council that the interim ordinance be made permanent.

Regards,
Francis Lenski
921 nw 115 circle
Vancouver, WA 98685

From: [LAURA SERNA](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 2:41:02 PM

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Dear Program Assistant Sonja Wiser,

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Regards,
LAURA SERNA
2206 NE STRAND RD
Vancouver, WA 98686

From: [Susan McLaughlin](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 2:40:02 PM

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Regards,
Susan McLaughlin
2015 NW 17th Avenue
Camas, WA 98607

From: [Jane Hillemann](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 2:34:06 PM

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Regards,
Jane Hillemann
6120 NE 22nd CT
Vancouver, WA 98665

From: [Merna Blagg](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 2:32:05 PM

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Regards,
Merna Blagg
1410 Z St
Vancouver, WA 98661

From: [Lyndee Cunningham](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 2:31:04 PM

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Regards,
Lyndee Cunningham
1529 DIVISION
Camas, WA 98607

From: [Joy Lasseter](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 2:14:06 PM

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Regards,
Joy Lasseter
2114 Main Street, Suite 100 #237
Vancouver, WA 98660

From: [Karen Pickering](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 2:02:06 PM

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Regards,
Karen Pickering
25909 NE 52nd Way Vancouver, Apt, Suite, Bldg. (optional)
Vancouver, WA 98682

From: [mary.n](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 2:02:03 PM

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Regards,
mary.n
14005 SE 38th St
Vancouver, WA 98683

From: [Laura Morello](#)
To: [Wiser, Sonja](#)
Subject: Permanently Correct CCC 40.240.H
Date: Friday, November 08, 2019 2:02:03 PM

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Regards,
Laura Morello
11617 NE 16th St
Vancouver, WA 98684

CPZ2019-00033

Columbia River Gorge

Code Update

Presentation to Clark County Planning Commission

Public Hearing – Nov. 21, 2019

Sharon Lumbantobing, Planner II



Proposed code amendments overview

- 40.240.440(H) Review Uses with Additional Approval Criteria, Large-Scale or Small-Scale Agricultural Designations
- Development and production of mineral and geothermal resources, as defined by Section 40.240.040, and pursuant to Section 40.240.080 and all other applicable federal, state and county standards, including those of Section 40.250.022. Type ~~IV~~ III review procedures specified under Section ~~40.510.040~~ 40.510.030 shall be required.



40.500 Overview of Procedures (Excerpt)

Table 40.500.010-1. Summary of Development Approvals by Review Type

	Type I	Type II	Type II-A	Type III	Type IV	Code Reference
Nonconforming Uses						
Nonconforming Use Determination	X					40.530
Expansion of a Nonconforming Use		X		X		40.530
Special Area-Related Reviews						
Columbia River Gorge Permit		X		X		40.240.050
Shoreline (special review process)				X		40.460
Historic Preservation (special review process)		X				40.250.030
Open Space					X	Chapter 3.08 40.560.010(P)(3)



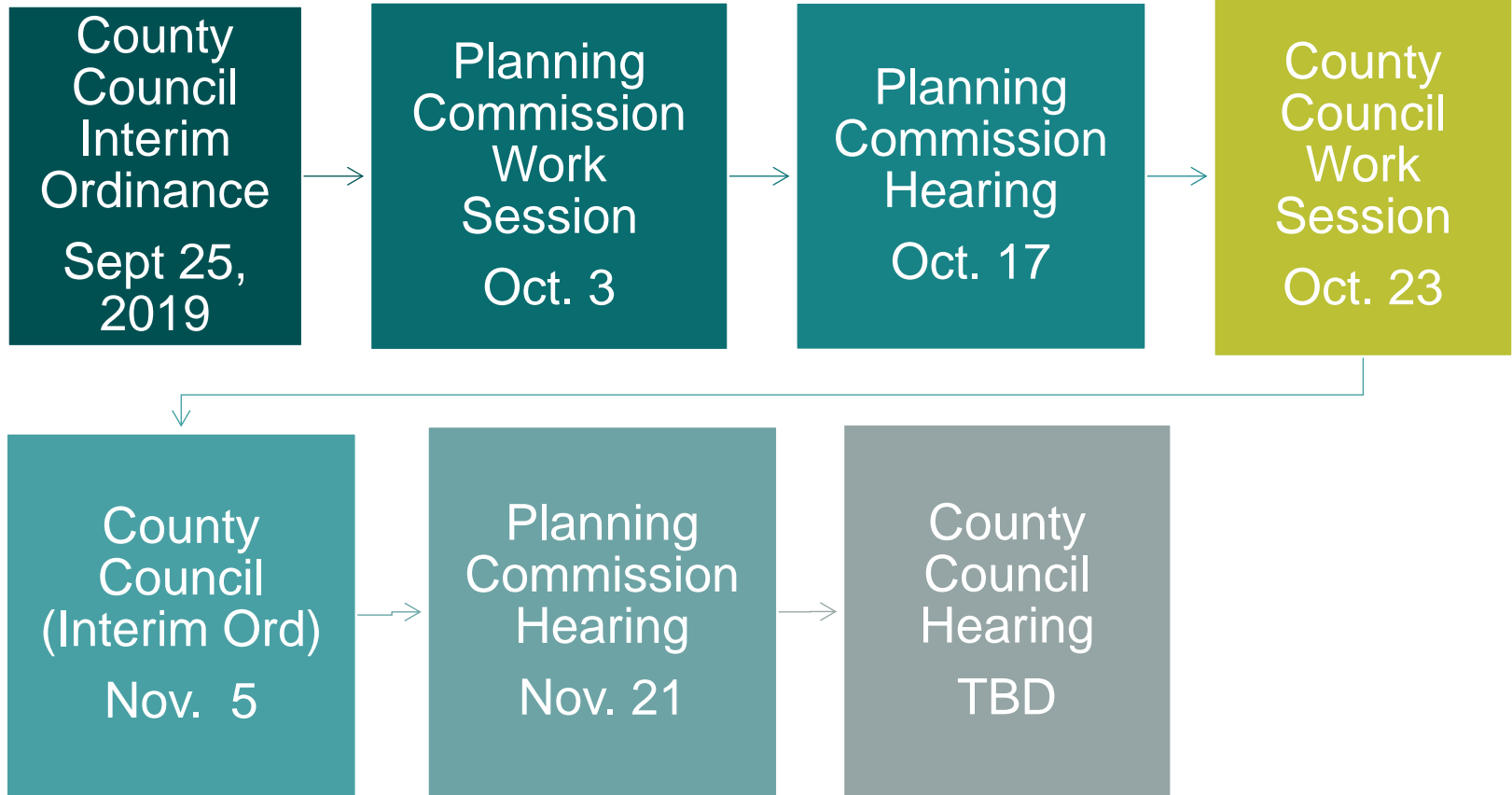
CCC 40.510.040 Type IV Process – Legislative Decisions

A. Decision.

1. The provisions of this section apply to all Type IV legislative decisions, which include and are limited to adoption or amendment, pursuant to the Growth Management Act (GMA), Chapter 36.70A RCW, and Chapter 40.560, of the following:
 - a. Comprehensive plan map and text, and zoning change consistent with the map change;
 - b. Development regulations;
 - c. Arterial atlas; and
 - d. Shoreline Master Program (SMP) pursuant to the Shoreline Management Act, Chapter 90.58 RCW, and Chapter 40.460.



Public process



An aerial photograph of a suburban neighborhood. In the foreground, there's a large green field with a baseball field in the center. To the right, there's a large, dark brown field, possibly a farm or a large lot. The background shows a dense residential area with many houses and trees. The sky is overcast with grey clouds.

Comments and Questions

Clark County Public Service Center

1300 Franklin Street • PO Box 5000

Vancouver, WA 98666-5000

CLARK COUNTY STAFF REPORT

DEPARTMENT: Community Planning

DATE: November 5, 2019

REQUESTED ACTION:

A public hearing to take testimony on the extension of Interim Ordinance No. 2019-09-13 which was adopted by Clark county Council on September 25, 2019. State law (RCW 35.63.200 and RCW 36.70A.390) requires that a hearing on an interim ordinance or resolution be held 60 days of initial adoption.

Consent Hearing County Manager

BACKGROUND

On September 25, 2019, the Council enacted Interim Ordinance No. 2019-09-13 to correct a scrivener's error in the Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H). Prior to the enactment of the Interim Ordinance, CCC 40.240.440(H) stated that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. As set forth in the Interim Ordinance, the review procedure should be a Type III (quasi-judicial) process as provided for elsewhere in the code.

The Council is required to hold a duly advertised public hearing within 60 days in compliance with state law. The purpose of the Interim Ordinance No. 2019-09-13 was to correct a scrivener's error in CCC 40.240.440(H). This would continue that correction for a six-month period, which would allow additional time for public review prior to the Council's consideration and potential adoption of a final ordinance.

Council has several options with regard to the proposed extension of the interim ordinance, including:

Option 1. Take no action, which would allow the interim ordinance to expire on November 24, 2019, 60 days after its passage.

Option 2. Extend the interim ordinance by six months to May 2020.

Option 3. Repeal the Interim Ordinance No. 2019-09-13.

Staff is recommends that council select Option 2 to allow for additional public review.

COUNCIL POLICY IMPLICATIONS

There are no known policy implications.

ADMINISTRATIVE POLICY IMPLICATIONS

N/A

COMMUNITY OUTREACH

N/A

BUDGET IMPLICATIONS

YES	NO	
X		Action falls within existing budget capacity.
		Action falls within existing budget capacity but requires a change of purpose within existing appropriation
		Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS

Local Fund Dollar Amount	
Grant Fund Dollar Amount	
Account	
Company Name	

DISTRIBUTION:

Council staff will post all staff reports to The Web. <https://www.clark.wa.gov/council-meetings>



Oliver Orjiako
Community Planning Director

Shawn Hennessee
County Manager

Primary Staff Contact Name and Extension:
Sharon Lumbantobing, 564-397-4909 or Taylor Hallvic, 564-397-5866

APPROVED: _____
CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: _____

SR# _____

APPROVED: _____
Shawn Hennessee, County Manager

DATE: _____

BUDGET IMPACT ATTACHMENT

Part I: Narrative Explanation

I. A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information

Part II: Estimated Revenues

Fund #/Title	2019 Annual Budget		2020 Annual Budget		2021 Annual Budget	
	GF	Total	GF	Total	GF	Total
Total						

II. A – Describe the type of revenue (grant, fees, etc.)

Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	2019 Annual Budget		2020 Annual Budget		2021 Annual Budget	
		GF	Total	GF	Total	GF	Total
Total							

III. B – Expenditure by object category

Fund #/Title	2019 Annual Budget		2020 Annual Budget		2021 Annual Budget	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual						
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total						

Exhibit 1. Excerpt of Ord 1996-04-30

ORDINANCE NO. 1996-04-30

An ORDINANCE relating to lands in unincorporated Clark County within the Columbia River Gorge National Scenic Area (CRGNSA), amending Clark County Code Chapter 18.334.

WHEREAS, adoption of a local ordinance to allow for local administration of County jurisdictional lands within the CRGNSA is in the public interest, and is required by the Columbia River Gorge National Scenic Area Act; and

WHEREAS, CCC 18.334 was adopted by the County Board of Commissioners on January 30, 1996, and submitted for formal review and approval to the Columbia River Gorge Commission to determine consistency with the Scenic Area Management Plan; and

WHEREAS, the staff of the Columbia River Gorge Commission has reviewed CCC 18.334 and has provided Clark County with a listing of citations in the ordinance which they advise are inconsistencies with the Management Plan; and

WHEREAS, the Board of County Commissioners finds that amendments to CCC 18.334, as indicated in Attachment F adopted with this resolution are necessary to achieve consistency with the Management Plan, and therefore necessary to receive approval from the Columbia River Gorge Commission; and

WHEREAS, the Board further finds that recommended amendments to CCC 18.334 shall have no impact on existing landowners, who are already subject to regulations of the Management Plan as administered by the Columbia River Gorge Commission; and

WHEREAS, the Board finds that in order to achieve consistency with the Management Plan, CCC 18.334 as originally adopted and as maintained through the recommended amendments excludes the Washougal Urban Growth Area (UGA) boundary from the county portion of the Scenic Area. The Board further finds that changes to relocate the Scenic Area jurisdictional boundary require amendment to the federal Scenic Area Act. The Board hereby reaffirms its support for the ongoing efforts of the City of Washougal to seek such changes and corresponding amendments to the Management Plan, such that the Scenic Area no longer includes the originally designated UGA area under dispute; and

WHEREAS, the Board finds further that in the event of such future amendment to the Scenic Area jurisdictional boundary and Management Plan, it is the intent of Clark County to in a timely manner consider changes to the County Comprehensive Plan map to relocate the Urban Growth Area boundary to include the area in dispute, or to designate the area as Urban Reserve; and

WHEREAS, the Board has considered the recommended amendments, include with this resolution, at a duly advertised public hearing held on April 23, 1996; and

ORDINANCE - 1
REQUIRES CODIFICATION

RECEIVED

MAY 06 1996

CLARK COUNTY
Plan & Dev. Review

WHEREAS, the Board finds that upon adoption, amended Chapter 18.334 will be presented for review and approval to the Columbia River Gorge Commission, and that until such review and approval have been completed, the Columbia River Gorge Commission will continue to administer land use regulations in the Clark County portion of the scenic area through the Scenic Area Management Plan; and

BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:

Section 1. New Chapter Attachment F, Amended Clark County Code Chapter 18.334 is hereby adopted, and existing Chapter 18.334 is repealed.

Section 2. Severability. If any section, sentence, clause, or phrase of this ordinance should be held invalid or unconstitutional by a court of competent jurisdiction or the Growth Management Hearings Board, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 3. Effective Date The amended ordinance shall go into effect upon signature of this resolution.

Section 4. Instructions to Clerk. The Clerk to the Board shall:

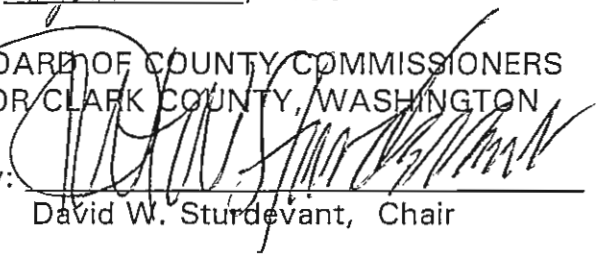
- (1) Transmit a copy of this ordinance as amended to the Washington State Department of Community Trade and Economic Development within ten days of its adoption pursuant to RCW 36.70A.106.
- (2) Record a copy of this ordinance with the Clark County Auditor.
- (3) Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 37.70A.290.

ADOPTED this 30 day of April, 1996.

Attest:

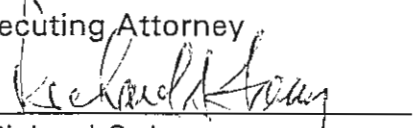

Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

By: 
David W. Sturdevant, Chair

Approved as to Form Only
ARTHUR D. CURTIS
Prosecuting Attorney

By: _____
Mel Gordon, Commissioner

By: 
Richard S. Lowry
Deputy Prosecuting Attorney

By: _____
John C. Magnano, Commissioner

ORDINANCE - 2
REQUIRES CODIFICATION

(NOTE: Previously adopted changes to 350-90, the ordinance used by the Columbia River Gorge Commission, are indicated by underline and strikeout. Changes presently recommended by staff to adopted CCC 18.334 are indicated by double underline and redline.)

Chapter 18.334

CLARK COUNTY IMPLEMENTING LAND USE REGULATIONS FOR THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA

18.334.010 Purpose and Authority

The purposes of the Clark County Implementing Regulations for the Columbia River Gorge National Scenic Area (CRGNSA) are to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge, and to protect and support the economy of the Columbia River Gorge by allowing future economic development in a manner that enhances the scenic, cultural, recreational, and natural resources of the Gorge. These regulations contained within the Clark County Implementing Land Use Regulations for the Columbia River Gorge are intended to be consistent with and implement the Management Plan for the CRGNSA as adopted and amended by the Columbia River Gorge Commission. The full Chapter 18.334 will be incorporated into Title 18 of Clark County Code, and will be available at the Clark County Department of Community Development.

18.334.015 Adoption

The guidelines, standards, and regulations set forth in the Clark County Implementing Land Use Regulations for the Columbia River Gorge are hereby adopted and incorporated herein by this reference pursuant to the authority given to the County under the Columbia River Gorge National Scenic Area Act, and Chapter 43.97 RCW; the Management Plan adopted by the Columbia River Gorge Commission on October 15, 1991, as may be amended, and shall be considered part of this Chapter as is set forth in full.

Unless otherwise specified in the Clark County Implementing Land Use Regulations for the Columbia River Gorge, applicable Clark County land division, zoning, and other ordinances shall apply to all CRGNSA lands within unincorporated Clark County. If conflicts arise between Chapter 18.334 and other County ordinances, Chapter 18.334 shall prevail as to lands within the National Scenic Area.

18.334.020 Area Affected

Chapter 18.334 shall apply to all lands under the jurisdiction of in Clark County which lie within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act, as may be amended.

Chapter 18.334
 Clark County Implementing Regulations for the Columbia River
 Gorge National Scenic Area (CRGNSA)

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- (g) 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.
- (h) Aquaculture.
- (i) Exploration, development, and production of sand, gravel, and crushed rock, as defined by Section 18.334.040, for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the Special Management Area, subject to CCC 18.329, Section 18.334.520, and all other applicable Federal, State and County standards.
- (j) 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.
- (k) Temporary asphalt/batch plant operations related to public road projects, not to exceed six months.
- (l) Signs as specified in Section 18.334.160(2).
- (m) Community facilities and non-profit facilities related to agricultural resource management.
- (n) Expansion of existing non-profit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.
- (o) Recreation, interpretive and educational developments and uses consistent with Section 18.334.620.
- (p) Road and railroad construction and reconstruction.
- (q) 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.
- (r) Structures and vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.

18.334.200. Review Uses with Additional Approval Criteria -- Large-Scale or Small-Scale Agriculture Designations.

(l) The following uses may be allowed on lands zoned Gorge Large-Scale or Small-Scale Agriculture, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (Section 18.334.520 through 620, and 220).

- (a) 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 or forest lands, and
 - (B) The size is the minimum necessary to provide the service.

- (b) Home occupations ~~or cottage industries~~ in existing residential or accessory structures, subject to Section 18.334.150(45).
- (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 on-site viticulture, upon a showing that processing and sales of wine is from grapes grown on the subject farm or in the local region.
- (e) 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.
- (f) Exploration of mineral and geothermal resources subject to Section 18.334.520 of this ordinance.
- (fg) Development and production of mineral and geothermal resources, as defined by Section 18.334.040, subject to Section 18.334.520 of this ordinance, and all other applicable Federal, State and County standards, including those of CCC 18.329, Surface Mining Overlay Zoning District. Type III review procedures specified under CCC 18.600.080 shall be required.
- (gh) 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 and on an infrequent and occasional basis, by invited guests, and by 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.
- (hi) Aquaculture.
- (ij) Recreation development, subject to Section 18.334.610 and the Recreation Development Plan (Management Plan, Part III, Chapter 1).
- (jk) Boarding of horses.
- (kl) Temporary portable asphalt/batch plants related to public road projects, not to exceed six months.
- (lm) Bed and breakfast inns in single-family dwellings, subject to Section 18.334.150(56) 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.

~~(C) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.~~

~~(m) Non-profit, environmental learning or research facilities.~~

~~(n) Expansion of existing schools or places of worship.~~

~~(2) The following uses may be allowed on lands designated Agriculture Special subject to compliance with the appropriate scenic, natural, cultural, and recreation resource guidelines (s 220 and 520 through 620):~~

~~(a) 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.~~

~~(b) New fences, livestock watering facilities, and corrals.~~

~~(c) Soil, water, and vegetation conservation uses.~~

~~(d) Replacement or minor expansion of existing and serviceable structures within a dedicated site. Expansion shall be limited to the dedicated site.~~

~~(e) Fish and wildlife management uses, educational activities, and scientific research.~~

~~(f) 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.~~

~~(g) Single family dwellings that are not in conjunction with agricultural use, if a landowner demonstrates that (1) the dwelling cannot be constructed on a portion of the parcel that is located outside of the natural area, and (2) the dwelling is sited and designed in a manner that minimizes adverse effects to the natural area. All dwellings shall meet the criteria in Section 18.334.190(1)(n). The buffer guidelines for non agricultural dwellings may be waived if they would prevent the optimum siting of a dwelling.~~

~~(h) Recreation uses, subject to the provisions for recreation intensity classes in Section 18.334.620.~~

18.334.210. Approval Criteria for Life Estates -- Gorge Large-Scale or Small-Scale Agriculture Zones.

A landowner who sells or otherwise transfers real property on lands zoned Gorge 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 Section 18.334.040. A second dwelling in conjunction with agricultural use may be allowed, subject to compliance with guidelines in Section 18.334.520 through 620 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 guidelines from Section 18.334.190(1)(e).

(2) Upon termination of the life estate, the original or second dwelling shall be removed.

ORDINANCE NO. 2003-11-01

AN ORDINANCE relating to land use: regulating the development of lands within Clark County.

WHEREAS, Clark County has not undertaken a systematic review of its development regulations since 1980; and

WHEREAS, Clark County land development regulations have grown both in number and complexity; and,

WHEREAS, Clark County land development regulations are located in five different titles of the Clark County Code (CCC); and

WHEREAS, the Board expressed a desire to restructure the CCC as it relates to land development to address inconsistencies in the code, and to make the code easier to use; and

WHEREAS, County staff have prepared a draft of proposed CCC Title 40 Unified Development Code; and

WHEREAS, the Planning Commission following a duly advertised public hearing has recommended adoption of proposed Title 40; and

WHEREAS, following its own duly advertised public hearing the board concludes that adoption of Title 40 contained in this ordinance is in the public interest; now, therefore,

BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:

Section 1. New. A new Title of the Clark County Code, Title 40 Unified Development Code, as shown in Exhibit "A" is hereby adopted.

Section 2. Repealer. The following chapters in CCC Title 12 Streets and Roads are hereby repealed:

Chapter 12.05A Transportation Standards
Chapter 12.06 Neighborhood Parking Plan
Chapter 12.41 Transportation Concurrency Management System

Section 3. Repealer. The following chapters in CCC Title 13 Public Works are hereby repealed:

Chapter 13.04 Flood Control District
Chapter 13.08A Sewerage Regulations
Chapter 13.29 Stormwater and Erosion Control
Chapter 13.36 Wetland Protection Ordinance
Chapter 13.40A Water Supply
Chapter 13.51 Habitat Conservation Ordinance
Chapter 13.55 Forest Practices
Chapter 13.60 Geologic Hazard Areas Regulation
Chapter 13.70 Critical Aquifer Recharge Areas

Section 4. Repealer. The following chapters in CCC Title 17 Land Division Ordinance are hereby repealed:

Chapter 17.101 Purpose
Chapter 17.102 Definitions
Chapter 17.103 Applicability
Chapter 17.105 Legal Lot Determinations
Chapter 17.201 Short Plat and Large Lot Short Plat Provisions
Chapter 17.301 Subdivision and Large Lot Subdivision Provisions
Chapter 17.401 Reservations—Park Sites
Chapter 17.501 Monumentation
Chapter 17.502 Survey Standards
Chapter 17.503 Drafting Standards
Chapter 17.601 Subdivisions of Properties Zoned Commercial and Industrial
Chapter 17.801 Recording Land Surveys

Section 5. Repealer. The following chapters in CCC Title 18 Zoning are hereby repealed:

Chapter 18.65 Impact Fees
Chapter 18.100 Preliminary
Chapter 18.104 Definitions
Chapter 18.200 Establishment of Zone Districts and Maps
Chapter 18.300 Agricultural-Wildlife District (AG-WL)
Chapter 18.302 Forest and Agriculture Districts (FR-80, FR-40, AG-20, AF-20)
Chapter 18.303A Rural District (R)
Chapter 18.303B Rural Cluster Development
Chapter 18.304 Rural Center Residential District (RC-1, RC-2.5)

Chapter 18.305 Urban Reserve Districts (UR-10, UR-20)
Chapter 18.306 Urban Holding Districts (UH-5, UH-10, UH-20)
Chapter 18.307 Single Family Residential Districts (R1-7.5, R1-10, R1-20)
Chapter 18.308 Single Family Residential Districts (R1-6, R1-5)
Chapter 18.311 Residential Districts (R-12, R-18, R-22, R-30, R-43)
Chapter 18.312 Office Residential (OR-15, OR-18, OR-22, OR-30, OR-43)
Chapter 18.313 Commercial Districts (CR1, CR2, C2, C3, CL, CH)
Chapter 18.314A Office Campus (OC)
Chapter 18.315 Business Park (BP)
Chapter 18.317A Industrial Districts (MH, ML)
Chapter 18.318 Airport District (A)
Chapter 18.319 University District (U)
Chapter 18.320 Mixed Use (MX)
Chapter 18.325 Environmental Combining District (E)
Chapter 18.326 Airport Environs Overlay Districts (AE-1, AE-2)
Chapter 18.326A Existing Resort Overlay District
Chapter 18.327 Floodplain Combining District (FP)
Chapter 18.328A Historic Preservation
Chapter 18.329 Surface Mining Combining District (S)
Chapter 18.330 Shoreline Combining District (SL)
Chapter 18.402A Site Plan Review
Chapter 18.403 Uses Permitted Subject to Review and Approval by the Planning Director
Chapter 18.404 Conditional Use Permits
Chapter 18.405 Planned Unit Development Approval
Chapter 18.406 Provisions Applying to Special Uses
Chapter 18.408 Special Setback Lines
Chapter 18.409 Signs
Chapter 18.410 Solid Waste Zoning Permits
Chapter 18.411 Interpretations and Exceptions
Chapter 18.412A Nonconforming Uses, Structures and Lots
Chapter 18.413 Temporary Dwelling Permits
Chapter 18.414 Master Plan Ordinance
Chapter 18.415 Wireless Communications Facilities
Chapter 18.501 Variances
Chapter 18.503 Changes to Districts, Amendments and Alterations
Chapter 18.505 Appeals
Chapter 18.506 Zoning Certificates
Chapter 18.507 Revocation of Permits or Variances
Chapter 18.508 Conditions to be Met Prior to Issuance of a Building Permit
Chapter 18.509 Enforcement and Penalties
Chapter 18.510 Severability and Repealer
Chapter 18.600 Procedures
Chapter 18.610 Plan Amendment Procedural Ordinance
Chapter 18.620 Amendment Dockets

Section 6. Repealer. Chapter 18.334A, Clark County Implementing Land Use Regulations for the Columbia River Gorge National Scenic Area is hereby repealed.

Section 7. Repealer. The following chapters in CCC Title 20 Clark County Environmental Policy Ordinance are hereby repealed:

- Chapter 20.01 Authority and Contents
- Chapter 20.02 General Requirements
- Chapter 20.06 Threshold Determination
- Chapter 20.10 Environmental Impact Statements (EIS)
- Chapter 20.30 Notification and Commenting
- Chapter 20.40 Use of Existing Environmental Documents
- Chapter 20.50 SEPA and County Decisions
- Chapter 20.60 Definitions
- Chapter 20.70 Categorical Exemption
- Chapter 20.80 Agency Compliance
- Chapter 20.90 Forms

Section 8. Effective date. This ordinance shall go into effect at midnight on January 1, 2004, except that the provisions hereof related to the Columbia River Gorge National Scenic Area (Chapter 40.240 CCC adopted by Section 1 and the repeal of Chapter 18.334A by Section 6) shall go into effect at midnight on January 1, 2004 or upon the date these enactments are approved by both the Columbia River Gorge Commission and the U.S. Forest Service, National Scenic Area Office, whichever occurs later..

Section 9. Instructions to Clerk. The Clerk of the board shall:

- (1) Transmit a copy of this ordinance to the state within ten days of its adoption pursuant to RCW 36.70A.106;
- (2) Record a copy of this ordinance with the Clark County Auditor; and
- (3) Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290.

ADOPTED this 4 day of November, 2003

Attest:



Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

By 
Craig Pridemore, Chair

Approved as to Form Only
ARTHUR D. CURTIS
Prosecuting Attorney

By _____
Judie Stanton, Commissioner

By 
Richard S. Lowry
Chief Civil Deputy Prosecuting Attorney

By _____
Betty Sue Morris, Commissioner



CLARK COUNTY
CODE RESTRUCTURE PROJECT

TITLE 40:
UNIFIED DEVELOPMENT CODE

PUBLIC REVIEW DRAFT
JUNE 23, 2003

PREPARED BY



- practices from conflicting uses.
- 6. Bed and breakfast inns subject to Section ~~40.240.190(F), 18.334.150(56)~~. The use or development shall be compatible with agricultural use. Buffer zones should be considered to agricultural practices from conflicting uses.
- 7. Fruit stands and produce stands upon a showing that sales will be limited to products raised on the property and other agriculture properties in the local region
- 8. Aquaculture.
- 9. Exploration, development, and production of sand, gravel, and crushed as defined by Section ~~40.240.060, 18.334.040~~, for the construction, maintenance, or reconstruct roads used to manage or harvest commercial forest products on lands with Special Management Area, subject to ~~CCC 18.329~~, Sections ~~40.250.020 and 40.240.490, 18.334.520~~, and all applicable Federal, State and County standards.
- 10. 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.
- 11. Temporary asphalt/batch plant operations related to public road projects, not to exceed six months.
- 12. Signs as specified in Section ~~40.240.200(B), 18.334.160(2)~~.
- 13. Community facilities and non-profit facilities related to agricultural resource management.
- 14. Expansion of existing non-profit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.
- 15. Recreation, interpretive and educational developments and uses consistent with Section ~~40.240.590, 18.334.620~~.
- 16. Road and railroad construction and reconstruction.
- 17. 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.
- 18. Structures and vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.
- 19. 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 the replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use proposals shall be submitted within 12 months following an emergency/disaster event. ***

18.334.200.

40.240.240 REVIEW USES WITH ADDITIONAL APPROVAL CRITERIA LARGE-SCALE OR SMALL-SCALE AGRICULTURE DESIGNATIONS

The following uses may be allowed on lands zoned Gorge Large-Scale or Small-Scale Agriculture, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (Sections ~~40.240.490 through 40.240.590, 18.334.520 through 620, and 220~~).

- 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 in existing residential or accessory structures, subject to Section ~~40.240.190(E), 18.334.150(45)~~.
- 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 on-site viticulture, upon a showing that processing and sales of wine is from grapes grown on the subject farm or in the local region.
- E. 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.
- F. Exploration of mineral and geothermal resources subject to Section ~~40.240.490, 18.334.520 of this ordinance~~.
- G. Development and production of mineral and geothermal resources, as defined by Section 18.334.040,

and subject to Section ~~40.240.490~~ ~~18.334.520~~ of this ordinance, and all other applicable Federal, State and County standards, including those of Section ~~40.250.020~~ ~~CCC 18.329~~, ~~Surface Mining Overlay Zoning District~~. Type IV review procedures specified under Section ~~40.510.040~~ ~~CCC 18.600.080~~ shall be required.

- 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 and on an infrequent and occasional basis, by invited guests, and by 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. Agriculture.
- J. Recreation development, subject to Section ~~40.240.580~~ ~~18.334.610~~ and the Recreation Development Plan (Management Plan, Part M, Chapter 1).
- K. Boarding of horses.
- L. Temporary portable asphalt/batch plants related to public road projects, not to exceed six months.
- M. Bed and breakfast inns in single-family dwellings, subject to Section ~~40.240.190(F)~~ ~~18.334.150(-56)~~ and provided that the residence:
 - 1. Is included in the National Register of Historic Places; or
 - 2. Is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation.
- N. Non-profit, environmental learning or research facilities.
- O. Expansion of existing schools or places of worship. ***

40.240.250. APPROVAL CRITERIA FOR LIFE ESTATES - GORGE LARGE-SCALE OR SMALL-SCALE AGRICULTURE ZONES

18.334.210

A landowner who sells or otherwise transfers real property on lands zoned Gorge 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 Section ~~40.240.060~~ ~~18.334.040~~. A second dwelling in conjunction with agricultural use may be allowed, subject to compliance with guidelines in Sections ~~40.240.490~~ through ~~40.240.590~~ ~~18.334.520~~ through ~~620~~ for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

- A. The proposed dwelling is in conjunction with agricultural use, using guidelines from Section ~~40.240.230(A)(5)~~ ~~18.334.190(1)(e)~~.
- B. Upon termination of the life estate, the original or second dwelling shall be removed.

18.334.220

40.240.260. APPROVAL CRITERIA FOR SPECIFIED REVIEW USES ON LANDS ZONED GORGE LARGE-SCALE OR SMALL-SCALE AGRICULTURE

Uses identified in Section ~~40.240.240~~ ~~18.334.200(4)~~ may be allowed only if they meet both of the following criteria:

- A. 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; and
- B. The use will be sited to minimize the loss of land suitable for the production of crops or livestock.

18.334.225

40.240.270. DIMENSIONAL STANDARDS

The following dimensional standard provisions shall apply to lands zoned Gorge Large or Small-Scale Agriculture, or Gorge SMA Agriculture unless otherwise noted herein. In the event of conflict with between other Title 40 chapters ~~Clark County ordinances~~ and this chapter, the provisions of this chapter ~~Chapter 18.334~~ ~~Chapter 18.334~~ shall prevail.

- A. All new land divisions shall comply with Section ~~40.240.190(A)(2)~~ ~~18.334.150(1)(b)~~, and all applicable County regulations, ordinances. Newly created lots shall comply with the following minimum lot size requirements:
 - 1. Gorge Large-Scale Agriculture 80 (GLSA-80), 80 acres.
 - 2. Gorge Large-Scale Agriculture 40 (GLSA-40), 40 acres.
 - 3. Gorge Small-Scale Agriculture (GSA), 20 acres.
 - 4. Gorge SMA Agriculture (GSA) 40 acres. New land division shall be permitted in the SMA only

Exhibit 3



DEPARTMENT OF COMMUNITY DEVELOPMENT

Long Range Planning

November 12, 2003

Ms. Martha Bennett
Columbia Gorge Commission
#1 Town and Country Square
White Salmon, WA 98672

Dear Ms. Bennett:

Clark County recently completed a project to restructure its development regulations. The result of the project was the creation of a Unified Development Code, to be codified as Clark County Code Title 40. The major effort was to re-format the current development code to eliminate inconsistencies and gaps, and to standardize definitions and terminology. There was nothing of substance changed or added except where current practice was codified. The Board of County Commissioners passed Ordinance 2003-11-01 (enclosed) on November 4th adopting Title 40, with an effective date of January 1, 2004.

We do not believe there have been any changes to the standards in the Gorge ordinance, but as a result of conversations with Brian Litt of your staff, we are submitting Chapter 40.240 Columbia River Gorge National Scenic Area Districts for your review. To this end we enclose a CD containing current Title 40 files, and a hard copy of the public review draft of Chapter 40.240 that shows (in highlight and ~~strikeout~~) what changes were made. As you'll note in Section 8 of Ordinance 2003-11-01, we acknowledge that Chapter 40.240 takes effect only after approval of the Gorge Commission and the Secretary of Agriculture.

Please contact Gordy Euler at 360-397-2375 ext. 4968 if you have any questions.

Sincerely,

NAME
CASE / SUBJECT
DATE Page 2

Patrick Lee
Long Range Planning Manager

Enclosures

H:Long Range Planning/Projects/CCC 2001-03 Code Rewrite/Public Review Draft



Tuesday, Nov.5, 2019

10 AM

PLEDGE OF ALLEGIANCE

INVOCATION

SPECIAL PRESENTATION

Washington State Department of Transportation – 2019 Award of Excellence, Director's Category

- o NE 10TH Avenue from NE 154th to NE 164th Street Project

CONSENT AGENDA

Consent Agenda items will be considered together and will be approved on a single motion. Any person desiring to remove an item for separate consideration should so request before approval of the agenda.

PUBLIC TESTIMONY ON CONSENT AND SEPARATE BUSINESS ITEMS

CONSENT

WARRANTS

1. Request approval of warrants for payment of claims against various county departments as follows:
 - o 09/15 – 09/30/19 in the amount of \$62,465.06
APPROVED; RES. 2019-11-08
 - o 09/30 – 10/04/19 in the amount of \$2,296,340.20
APPROVED; RES. 2019-11-09
 - o 10/07 – 10/11/19 in the amount of \$9,158,550.10
APPROVED; RES. 2019-11-10
 - o 10/14 – 10/18/19 in the amount of \$6,116,460.07
APPROVED; RES. 2019-11-11
 - o 10/21 – 10/25/19 in the amount of \$2,845,041.68
APPROVED; RES. 2019-11-12

ROUTINE

2. Minutes approved for:
 - o Oct. 15, 2019
APPROVED





3. Acceptance of final plats approved by the County Manager for:
 - o Muhonen Short Plat
 - o Miroslav Short Plat**APPROVED**

HUMAN RESOURCES

4. Request approval of M1, M2, and M3 wage adjustments for 2020.
APPROVED; SR 142-19
5. Request approval of Collective Bargaining Agreements between Clark County and the International Association of Machinists and Aerospace Workers, Local 1432, District Lodge 24, AFL-CIO.
APPROVED; SR 143-19

COMMUNITY PLANNING

6. Request approval of the Historic Preservation Commission's recommendation to fund eight (8) projects for the 2020 Historical Promotions Grant program and one HPC Preservation Project for a total amount of \$58,000.
APPROVED; SR 144-19

COMMUNITY SERVICES

7. Request approval of an interlocal agreement with the City of Vancouver to provide mental health resources as part of a pilot project to assist law enforcement officers in the field, and approval for the County Manager to sign related grant agreements.
APPROVED; SR 145-19

PUBLIC WORKS

8. Request approval authorizing the County Manager to sign an interlocal agreement with the City of Ridgefield for disposal and processing services at the Whatley facility.
APPROVED; SR 146-19
9. Request approval authorizing the County Manager to sign an interagency agreement with the Washington State Department of Ecology for noxious weed control provided by the Washington Conservation Corps in an amount not to exceed \$17,250.
APPROVED; SR 147-19

SEPARATE BUSINESS

PUBLIC HEALTH

1. Request approval to increase position P001359, Medical Examiner, from 0.60 FTE to 1.0 FTE, effective Jan. 1, 2020.
APPROVED; SR 148-19





PUBLIC WORKS

2. Request approval authorizing the County Manager to sign an interagency agreement not to exceed \$27,000 with the Washington Department of Fish and Wildlife for Clark County Vegetation Management to develop an integrated aquatic vegetation management plan for Vancouver Lake.

APPROVED; SR 149-19

3. Request approval of a notice of hearing and resolution directing the County Engineer to review the petition to vacate a portion of Northwest 41st Avenue and right-of-way for an adjacent, unconstructed, east-west road; set the hearing for Jan. 7, 2020.

APPROVED; SR 150-19, RES. 2019-11-13

4. Request approval of a resolution allowing the County Engineer to restrict loads on bridges in compliance with critical findings by the consultant bridge engineer.

APPROVED; SR 151-19, RES. 2019-11-14

OPEN PUBLIC COMMENT

PUBLIC HEARING: 2019 FALL BUDGET SUPPLEMENTAL

To consider the 2019 Fall Budget Supplemental amending the 2019 Annual Budget in the following amounts:

A total decrease in expenditures of \$8,528,885; a total revenue decrease of \$1,109,719; for a net increase in fund balance of \$7,419,166.

Staff: Emily Zwetzig, 564-397-6097

APPROVED WITH AMENDMENT; RES 2019-11-03

PUBLIC HEARING: LOAD RESTRICTIONS ON FOUR COUNTY-OWNED BRIDGES

To consider placing load restrictions for certain trucks on four (4) county-owned bridges to protect the public's investment and slow deterioration and aging of the structures:

1. Bridge # 11 Whipple Creek, NW 179th Street over Whipple Creek
2. Bridge # 12 Knapps Station, NW Krieger Rd over Whipple Creek
3. Bridge # 63 Carson, NE 67th Ave over Mill Creek
4. Bridge # 169, Matney South, NE 232nd Ave over Matney Creek

Staff: Carolyn Heniges, 564-397-1626

APPROVED; ORD. 2019-11-04





PUBLIC HEARING: 2019 ANNUAL REVIEWS AND DOCKETS

To consider 2019 Annual Reviews and Dockets amending the 20-Year Growth Management Comprehensive Plan Text and Map, Zone Map, and Clark County Code (Title 40):

1. **CPZ2019-00025 – Complete Streets:** A proposal to amend Clark County Code (Pedestrian/Bicycle Circulation Standards CCC 40.350.010) to create a complete streets program, renumber CCC 40.350.010 to become 40.350.015, and correct a scrivener's error.
Staff Contact: Gary Albrecht, (564) 397-4318
APPROVED; ORD. 2019-11-05
2. **CPZ2019-00016 Arterial Atlas and Appendix F (NE 106 St to NE 112th St):** A proposal to delete the planned NE 16th Ave, NE 107th St, and NE 110th St. from the Arterial Atlas and Hwy 99 Sub Area Plan.
Staff Contact: Matt Hermen, (564) 397-4343
APPROVED
3. **CPZ2019-00029 Development Agreement Procedures:** A proposal to amend the Clark County Code to add new Section 40.550.030 to create a consistent process and criteria for review and approval of proposed development agreements.
Staff Contact: Matt Hermen, (564) 397-4343
HEARING CONTINUED TO NOVEMBER 12, 2019 AT 10:00 AM
4. **CPZ2019-00028 – Historic Preservation:** A proposal to amend Clark County Code (CCC 40.250.030) to increase the number of commission members from five (5) to (7), allow the City of Vancouver to appoint two of the members, and to amend the appeals process.
Staff Contact: Sharon Lumbantobing, (564) 397-4909
APPROVED; ORD. 2019-11-06
5. **CPZ2019-00033 – Columbia River Gorge National Scenic Area Districts:** A proposal to amend Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H) to correct a scrivener's error.
Staff Contact: Sharon Lumbantobing, (564) 397-4909
APPROVED; ORD. 2019-11-07
6. **Planning Commission recommendation of 2020-2025 Transportation Improvement Program**
Staff: Susan Wilson, (564) 397-4330
APPROVED





CLARK COUNTY WASHINGTON

CLARK COUNTY COUNCIL

Public Service Center
1300 Franklin Street, 6th floor
Vancouver, WA

PUBLIC HEARING: 2020-2025 TRANSPORTATION IMPROVEMENT PROGRAM AND 2020 ANNUAL CONSTRUCTION PROGRAM

To consider adoption of the 2020-2025 Transportation Improvement Program and the 2020 Annual Construction Program in accordance with RCW 36.81.121.

Staff: Susan Wilson, (564) 397-4330

APPROVED; TIP RES. 2019-11-02, ACP RES. 2019-11-02

COUNCILOR COMMUNICATIONS AND COUNTY MANAGER REPORT

ADJOURN

For any questions regarding consent agendas, contact the County Manager's office at 564.397.2232



For other formats, contact
the Clark County ADA Office

Voice 360.397.2322
Fax 360.397.6165

Relay 711 or 800.833.6388
Email ADA@clark.wa.gov

Page 5 of 5

CLARK COUNTY COUNCILORS
MINUTES OF NOV. 5, 2019
ANNUAL REVIEWS & DOCKETS

1

The Board convened in the Councilors' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Councilors Temple Lentz, Julie Olson, John Blom, Gary Medvigy, and Eileen Quiring, Chair, present.

PUBLIC HEARING: 2019 ANNUAL REVIEWS AND DOCKETS

To consider 2019 Annual Reviews and Dockets amending the 20-year Growth Management Comprehensive Plan Text and Map, Zone Map, and Clark County Code (Title 40).

QUIRING: Moving on to the public hearing for 2019, Reviews and Dockets, CPZ2019-00025, Complete Streets.

ALBRECHT: Good morning, Council. Good morning, Chair.

QUIRING: Good morning.

ALBRECHT: Gary Albrecht, Clark County. So I am here to discuss the Complete Streets update, CPZ2019-00025. Here's the agenda that we'll talk about, it's the road map for our discussion this morning.

The PC recommendation, so on October 3rd, 2019, the Clark County Planning Commission voted to approve forwarding a recommendation to adopt a complete streets program and related code changes. A quick background of the complete streets program.

In 2011, the legislature established the complete streets grant program. In 2015, the legislature designated the Washington Transportation Improvement Board, TIB, as the complete streets granting agency giving them the ability to award grants in the range from \$100,000 to \$1,000,000 that could be used as flexible money for any complete streets project.

And what are complete streets? Complete streets are transportation plans and policies standards that enable safe, convenient and comfortable travel and access for users of all ages and abilities regardless of their choice of transportation. And here are some pictures of the past and present projects.

So the picture on the upper left is N.E. 10th Avenue, that's a complete street, we just received a Director's Award from the State on that bridge, that stretch of N.E. 10th Avenue, though the segment just on the other side of the hill in the background is, it's in design from 149th to 154th Street and that's scheduled for construction in 2020/2021 and there's a segment that was built in 2013 from 141st to 149th Street, that's a two-lane collector with center turn lane and bike lanes.

So I had one of my friends this summer park at the park and ride, got on their bikes and rode up to the fairgrounds for a concert.

CLARK COUNTY COUNCILORS
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So the picture on the upper right is N.E. 15th Avenue, that's a two-lane minor arterial with a center turn lane and bike lanes, that was built in 2007, N.E. 137th Avenue was built in 2001.

Another document I'd like to discuss today is the complete streets guidelines, it's a summary document for TIB, it's a document that describes the steps Clark County has taken and continues to take and envisions for the multimodal transportation system and the public. So complete streets they're not new to Clark County, it doesn't mean a bike lane or sidewalk is on every road and having the complete streets program doesn't mean it's a mandate for immediate retrofit.

The complete streets guideline process, it's a three-step process that we've laid out. So Step 1 was the comprehensive plan text and policies that were approved earlier this year. Step 2 is amendments to the transportation and circulation standards in Chapter 40.350 to be consistent with the complete streets policies. And Step 3 is the adopting ordinance as required by the Transportation Improvement Board. And here's a quick review of the policies that were approved earlier this year. They talk about the complete streets program.

So the purpose of the program is to encourage street and road

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designs that incorporate safe access to all users with the goals of promoting health, improving safety, protect the environment and preserving community character. Provided a couple of definitions to the program that are specific to the program.

And when it's time to use the program, projects will be planned, scoped and designed consistent with the comprehensive plan policies, the current policies, the current Standard Design Manual and the current Title 40. So there are built-in exceptions to this program that are at the discretion of the County Engineer that relate to public safety, feasibility and no identified need for the improvement.

So the public process, we started out last year with a Council work session. We had three advisory bodies look at the complete streets program. The Commission on Aging made some recommendations for additional language that's in the supporting documents that you guys have had. The Bicycle and Pedestrian Advisory Committee and DEAB have made recommendations to approve these recommended changes.

The Planning Commission work session was in September and the hearing was October 3rd, with the Council work session earlier this month and the hearing, or last month, sorry, time's flying, and

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today's the Council hearing. And that's it for my presentation. I'm here to answer any questions.

QUIRING: Thank you. Are there questions of this Council?
Councilor Blom.

BLOM: Yeah, I'm not sure if you can answer this or if it's perhaps better for Ahmad, but we -- I know (inaudible) has got some information from the development up at Three Creeks that was looking at ways of building complete streets that may not look exactly like those, different ways of separating pedestrians from vehicles and how the lanes are aligned, would anything in this prohibit alternative ways of building complete streets in terms of, I think we have, right now you have the road lane and then bike lane and then sidewalk, if someone wanted to change that order to do planning strips differently, do you know that information that I'm -- okay.

QAYOUMI: Yeah, we're going to be open to that. The main thing is to make sure that we're providing accessibility to other modes of transportation and pedestrian access and lots of schools and also for vehicles and so we will be open to those, I think there's some flexibility in the code, as Gary mentioned, that allows us to look at that a little differently.

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BLOM: So as long as they're meeting the intent of the complete streets, the exact form has some --

QAYOUMI: Flexibility.

BLOM: -- some flexibility. Okay. Thank you.

QUIRING: Councilor Olson.

OLSON: Yeah, I just want to, yeah, work dates are good if you don't mind, but this is really just codifying what we're already, what our current practices are --

ALBRECHT: Yes.

OLSON: -- and that by doing this grant opportunities are going to be available that they're not currently available.

QAYOUMI: That's a great point, that we are already practicing a lot of those like 10th Avenue and other areas, but this will give us additional resources that we can do more like a section of sidewalk that's missing and other ways that we can ensure the accessibility to all of them.

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QUIRING: And also I saw the phrase that where it's not feasible because of terrain and, you know, topography that there would be you could make exceptions to this and I think that that's, that's an important statement because sometimes it really isn't feasible and very extremely costly even though it opens us up to grants, it also codifying this, also makes it a little bit more compulsory, but the fact that there is that little bit of flexibility is important as far as I'm concerned at least. Councilor Lentz, did you have -- okay. Okay. If there are no further questions, thank you.

ALBRECHT: You're welcome.

QUIRING: I'd entertain a motion. Oh, no. I'm sorry. No motion. We do have to have public, this is a public testimony and we have people signed up to speak. Sharon Kenoski. I'm going to call --

KENOSKI: I'm reserving the option. I don't need to speak.

QUIRING: Oh, all right. Okay. Bill Baumann. Okay. Please spell your name when you, your last name when because the recorder is taking notes here.

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BAUMANN: I'm Bill Baumann, B-a-u-m-a-n-n. So good morning. I'm Bill Baumann, the mobility coordinator for Human Services Council, I work to increase transportation and access to services for seniors and people with disabilities.

HOLLEY: You've really got to slow down, please.

BAUMANN: Nervous. I'm here today to express my support on behalf of the Human Services Council for Clark County's Complete Streets Ordinance.

Complete streets are streets and roadways designed for everyone, all users no matter their age or ability. Complete streets have many positives associated with them, not only do they help reduce traffic and provide us with cleaner air, they make other modes of transportation and travel more appealing to the average user by ensuring necessary facilities are provided.

It doesn't matter which mode of transportation we, Clark residents of Clark County are using, whether it's walking, biking, riding, transit or driving, residents of all abilities need access to the appropriate built environment features including bike lanes, sidewalks and roadways to move about our community in a convenient

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yet safe manner.

Citizens of all abilities have the same need to travel to work, grocery stores, medical appointments, social events, et cetera, in the mode that works best for them. Driving a car to your destination is not always an option for all Clark County residents especially those who are aging and/or have disabilities. It is very important to provide those with the inability to drive or access transportation resources other options so they can pursue all opportunities to live a happy and healthy life. Thank you.

QUIRING: Thank you. Colleen Kuhn and Jan Verrinder.

KUHN: Good morning, Council. I am here also to support the County's proposed complete streets ordinance.

QUIRING: Your name and spell the last.

KUHN: My name is Colleen Kuhn, the last, spelling of my last name is K-u-h-n. I am the Executive Director of Human Services Council and Bill just shared our support on behalf of the Human Services Council. I'm also on the Board of the Washington State Transportation Improvement Board as the special needs representative.

I'm really excited that Clark County is looking at adopting the Complete Streets Ordinance. Since the implementation of the complete streets awards, counties, jurisdictions across the state have really made a lot of progress in developing and approving their Complete Streets Ordinances and then being eligible for complete streets awards through the TIB.

In 2000- -- our last awards happened this spring of 2019, Battle Ground was awarded \$350,000 for their complete streets awards and the City of Vancouver was awarded \$700,000, so you can see that those awards are very helpful in completing whatever has made it through projects at each jurisdiction.

In 2019, TIB awarded approximately \$17 million across the State of Washington in complete streets awards and I can tell you that when we -- I am also on the Board of Community Transportation Association of the Northwest, it's a nonprofit that really focuses on special needs transportation, we're one of the nominating organizations, and the first year that we became a nominating organization we had about eight organizations approach us to be nominated for our complete streets award, this past cycle it was more like 40, so a significant increase in jurisdictions who are looking for complete streets awards.

And on that note, I would encourage the County to really develop relationships with the nominating organizations, that's one of the nice things about these complete streets awards and the intended, part of the intended focus was to get jurisdictions to really partner with the nominating organizations. So thank you for hearing me today.

QUIRING: Thank you. Hi, Jan.

VERRINDER: Hi. I'm Jan Verrinder, and that's V-e-r-r-i-n-d as in dog e-r. I'm a bike rider so I just thought I'd tell you what that means to me when I'm on Clark County streets.

Highway 99 has recently been really improved. Protected bike lanes went in as well as signs at intersections that are pinch points because we've added a right-turn only lane and what that means for me as a rider is I get to merge into the car lane because the bike lane disappears, that's our worst sign, bike lane ends, but now Clark County is doing what Portland's doing and you are adding verbiage to those signs that say right turn only except bicycles so I get to stay to the right and that's a lot safer for me than merging with cars, so I really appreciate the protected bike lanes and I really appreciate that signage. And just all the

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projects that Gary showed us, I ride all those all the time.

Battle Ground's money and projects, I ride that all the time. Vancouver, I live right on McLoughlin so or right off it, so I ride it all the time, I feel safer. I appreciate what you're doing and I really hope you back this project. Thanks.

QUIRING: Thank you. Although, I don't know, you may have put a curse on it by saying doing what Portland does. Just kidding. Okay. That's the testimony on this particular hearing. So I would entertain a motion unless there's further discussion of the Council. I don't see any.

BLOM: Move to approve CPZ2019-00025.

LENTZ: Second.

QUIRING: It's been moved and seconded to approve Ordinance No. 2019-11-05, Complete Streets. Is there a discussion?

OLSON: I actually do have one.

QUIRING: Councilor Olson.

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QUIRING: So the relationships with granting organizations, I would think you guys were nodding your heads over there, Susan and Ahmad, but that's in the works I assume and already established? Yeah. Okay. Thank you.

QUIRING: Okay. Any further discussion? Would you call the roll, please.

LENTZ: AYE

OLSON: AYE

BLOM: AYE

MEDVIGY: AYE

QUIRING: AYE

QUIRING: Motion passes. Item Number 2, CPZ2019-00029, excuse me, 16, Arterial Atlas Appendix F.

HERMEN: Good morning, Councilors. My name is Matt Hermen for the record, H-e-r-m-e-n. I'm here to present CPZ2019-00016. This is an amendment to the Arterial Atlas which is the County's long-range circulation plan for transportation as well as subsequent amendments to Title 40, Appendix F. Title 40, Appendix F is specifically where the Highway 99 subarea plan resides.

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The proposal in front of you today is a removal of a future planned road on N.E. 16th Avenue; a small extension for N.E. 107th Street; and another small extension for N.E. 110th Street. These are planned streets, they do not exist, the right-of-way does not exist, currently they are lines on the map in the Arterial Atlas and in the Highway 99 subarea plan.

This map in front of you shows specifically where those planned streets are located. They occur west of Highway 99, east of I-5, north of 106th Street and south of 112th Street. The map here demonstrates why we're planning on, why we'd like to remove these roads.

Currently a large wetland exists immediately to the west of the planned road. In 2014, Clark County adopted a stormwater management plan which called for habitat buffers associated with those wetlands. Because of the ecological function in preserving the wetland, there's significant costly improvements associated with building a road adjacent to those wetlands. Currently this wetland here would require a buffer from up to 300 feet. So because of that, the improvement and the construction of this road is very costly.

Here is a map of a Highway 99 subarea plan. This map shows those

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exact same streets and the planned alignment in the Highway 99 subarea, specifically the Tenny Creek Commons, the activity center that it's associated with.

The Planning Commission reviewed this proposal, made the recommendation to approve the amendment in the Arterial Atlas and in Title 40, Appendix F with these applicable criteria. With that, I'd be happy to answer any questions that you may have.

QUIRING: Questions of Council? Okay. I think the clerk checked. Are there any -- nobody signed up to testify. So if there are no questions, I'd entertain a motion.

OLSON: Move to approve CPZ2019-00016.

BLOM: Second.

QUIRING: It's been moved and seconded to approve CPZ2019-00016. Is there discussion? Will you call the roll, please.

LENTZ: AYE

OLSON: AYE

BLOM: AYE

MEDVIGY: AYE

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QUIRING: AYE

QUIRING: Motion passes. Thank you. Development Agreement Procedures, CPZ2019-00029.

HERMEN: Again, my name is Matt Hermen for the record, presenting CPZ2019-00029. I'll wait for my presentation to load up, just a minute. So my presentation will include these following agenda items. I will entertain questions after my presentation concludes.

The purpose of development agreements are authorized by Washington State law. They are exceptions to the development code. They provide assurances that development projects can proceed as well as they encourage a public/private partnership. They are authorized by State code both in the Revised Code of Washington as well as in the Washington Administrative Code.

Recently the Clark County Council has seen several development agreements come forward shown here. Along with these there were development agreements that were authorized for approval on August 20th associated with the 179th urban holding project. These projects fall into multiple categories, some of those were comprehensive plan amendments as well as, for instance Cornerstone

Academy which is a private school was a development agreement associated with an actual development occurring, a Type III or a Type II process.

Currently, Clark County has no process when it comes to processing development agreements. This, as the folks behind me in the suits can attest, that this leads to inefficiency, policy negotiation that staff does which is not our purview, that's the purview of the County Council and there's no public process. With the uncertainty that the no public process has, it includes a high amount of risk for the developments.

We would like to propose amending Title 40 to include specific procedures for processing development agreements in order to identify those benefits early in the process, get your engagement early in the process, put it in writing in the County Code so that we can encourage creative developments, as well as focus our staff resources when it comes to the negotiation of those development agreements.

There are several best practices that we looked at when drafting the code in front of you today, included both application processes as well as specific criteria in the processing of those applications. The proposed procedures as presented to you before

include this steps. I agree that this is probably a confusing process for the layman to know, but it specifically outlines the process and where Council engagement comes, negotiation occurs and then Council approval actually occurs.

We have received comments from two entities in regards to this. WSDOT requests to be included early in the development discussions when there are State facilities that are impacted. Friends of the Columbia Gorge wishes to not allow development agreements in the National Scenic Area.

Planning Commission on August 15th heard the proposed procedures and voted unanimously 4 to 0 to recommend the County Council to approve a new section Title 40, Section 40.550.030. On October 9th we had a work session with you where we presented this, there was significant discussion that occurred. I'd like to address some of those comments and how they are reflected in the proposed code moving forward.

So first off, Councilor Olson requested that development agreements be proposed by resolution not by ordinance. So on Page 6 of the draft code, specifically H.4.a, the code specifically cites that approval occurs through a resolution. The language for approval via ordinance has been removed from the proposed code.

Councilor Lentz asked about the DEABs recommendation that included provisions for the Council initiated DAs. Along with that conversation, Councilor Quiring requested that staff return to DEAB to clarify the intention on adding the language related to DAs that are initiated by Clark County and not by a private party.

Unfortunately during that conversation we didn't check our calendar, the last DEAB meeting was held on October 1st before the Council work session. The next DEAB meeting is held on Thursday after this hearing, so unfortunately we weren't able to make it back to DEAB to ask for their intention. The language proposed by DEAB regarding DAs initiated by Clark County has been removed from the draft code language.

In consultation with our Prosecuting Attorney's Office, they have mentioned that a County initiated development agreement has not gone through our process and we don't intend for a County initiated DA to move forward.

Councilor Blom questioned that the development standards for non-project DAs - specifically the draft code that you saw at that time on October 9th - stated that non-project DAs may only allow permitted land use types associated with the zoning.

The draft code proposed today specifically on Page 3 has changed from what you saw on October 9th, it now reads: "Unless otherwise specified, a non-project development agreement may allow only one or more of the following: permitted land use types associated with the zoning, innovative land use types that advance comprehensive plan goals and policies, or existing legally established uses in effect at the time the agreement is approved." Staff believes that this draft code now allows for that innovation to occur.

We've also received comments from Washington State University Vancouver regarding the process to amend DAs that have vested trips. Washington State Vancouver signed a DA with the County in 2008 that reserved peak hour trips. The DAs are, that DA is set to expire the last day of 2025. If the draft code is approved between now and the expiration of the DA between WSU, extending the reserve trip period would follow the amendment process that's shown on Page 7 of the draft code.

This amendment process would include initial authorization by the County Council, negotiation recommendation and final consideration by the County Council. The preliminary review procedures would not apply to those DA amendments. With that, I'd be happy to answer any questions.

QUIRING: Questions of Council? Councilor Olson.

OLSON: Yeah. So on the WSU comment piece, I have not had a chance to circle back around with them, this addresses their concerns about the --

HERMEN: Yeah. It specifically details the amendment process, the amendments. We don't want to make a specific criteria that applies solely to WSU Vancouver, but amendments to an existing DA would skip the preliminary review process which includes the 21-cursory day review and go straight to the County Council to entertain whether you want to proceed with amending the DA that's in existence and follow that process.

OLSON: Okay. Thank you.

MEDVIGY: Quick question.

QUIRING: Councilor Medvigy.

MEDVIGY: So the Friends of the Gorge recommendation not to have the DAs apply in the Gorge, was that accommodated in this amendment?

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HERMEN: We did not carry that forward. Any DA that's in the National Scenic Area will be reviewed by staff and will be made note of when it comes forward to the County Council for consideration of that DA.

QUIRING: Okay. Any questions? So what are the -- if we vote on this, what is this doing? We are actually amending this process?

HERMEN: This proposal will be wrapped into the 2019 dockets, so the official action when it's implemented will come with those in February.

QUIRING: All right. Okay. Thank you. We have one of the suits that wants to --

HORENSTEIN: Actually you have both.

QUIRING: Oh, we have two suits that want to comment. Jamie Howsley and --

HOWSLEY: And Mr. Horenstein.

OLSON: Mr. Horenstein.

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QUIRING: -- Mr. Horenstein. I drew a blank, I'm sorry. Steve Horenstein.

HOWSLEY: Do you want to go first?

QUIRING: Be sure to spell your last name.

HORENSTEIN: Oh, do you want me to go first?

HOWSLEY: Sure.

HORENSTEIN: I don't think the court reporter needs me to spell mine. Okay. For the record, Steve Horenstein. I apologize and confess to being asleep at the switch on this, I didn't know about this until today, I for some reason I didn't pick up on it.

I believe that the kind of pipeline projects we did at 179th won't happen again with this proposal as described and I think that for a couple of reasons. Number one, they're getting harder and harder to do because of the cost of doing those kinds of projects and I've said that before, but more importantly, if you recall, we were modifying development agreements up to the last minute including based on comments from certain of you. If that had to go back to the Planning Commission every time we do that, the process would

just implode, it just wouldn't work.

So my suggestion is, and again, I apologize for not raising this earlier, but this isn't quite ready for prime time for those kind of projects. I suspect what you'll see, always see is development agreements for very large perhaps master plan projects that have a long life anyway in the permitting process so that you can afford to do the development agreement along with all the things that go along; you're requiring either site plans or conceptual site plans, you've got a number of development agreements in advance to make sure we could do a site plan because we had questions about what we could vest to and this and that.

The other thing I would say is I think this proposal comes very close to allowing zone changes which are specifically by case law not allowed and zone changes are not allowed to be accomplished through development agreements. They have to go through the normal Type IV legislative process to conduct a zone change and the kind of flexibility this provides is awfully close to that line, perhaps I'm talking against my client's own interest here, but I don't want to litigate that later either, so... That concludes my comments.

QUIRING: Thank you.

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HOWSLEY: For the record, Jamie Howsley with the law firm of Jordan Ramis. So I haven't seen the proposal before and I do echo some of my concerns raised by my colleague Mr. Horenstein, but on the other hand as a frequent flier here with development agreements at the County, I do agree that having some process rather than no process is in order, but it's probably correct in saying that this is not quite ready for prime time yet in that regard.

I think that there's still a few items that contemplate such as which happens with late amendments, does that need to go back to the Planning Commission and we don't want to be in a revolving door there with continuing to spin our wheels. But more importantly the reason for my testimony today is I really did want to direct it to the written comment provided by the Friends of the Gorge and depending on what Council decides to do here today, I would respectfully ask that you allow a 24-hour period for us to file a written response, but just saying that I do think that they misstate the law first of all in their letter.

Development agreements were not brought about as part of the Growth Management Act, they were brought forward in 1995 as part of regulatory reform in the State of Washington. There was a whole host of other items at that point including reforms to SEPA, reforms

to the shoreline management program, the creation of the Land Use Petition Act, development agreements were created at that time, they've been around since the inception out of a case in California called Avco v. Coast Commission in the 1970s. I happen to know a lot about this because I wrote my third year law school paper on them and I do present CLEs on development agreements often.

The other concern that I have is some of the statements in there regarding the Growth Management Act doesn't apply in the National Scenic Area and that's just, I can't understand that position from them. On another matter considering that that the county comprehensive plan explicitly recognizes the National Scenic Area within there. So, again, I would appreciate if the Council decides to take action today on this just the ability to have a 24-hour response period so I can get that into the record.

QUIRING: Thank you.

HOWSLEY: Thank you.

QUIRING: Are there questions actually of any of those that are here and then I'm going to allow Ms. Cook to answer any -- you came to the desk so maybe you have some comment and we certainly want to hear from you if you do. Okay.

COOK: I do. Thank you.

QUIRING: Any questions?

MEDVIGY: So I guess my initial question is, did you not have enough time to give input in this process?

HORENSTEIN: As I said, Councilor, again I'll apologize again, I was asleep at the switch on this, I didn't notice it was being processed.

QUIRING: It is in draft form; correct?

HERMEN: Currently in draft form.

QUIRING: And what will be the process for these, any amendments that may take place before February? You don't want there to be. Councilor Olson.

OLSON: Can I just, can we get to some of the concerns, can we answer just some of the concerns about the flexibility of this process and to, you know, the idea that it might be pushing up on a zone, just can we just answer just some of the concerns because what the

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process, the idea here wasn't to make it more difficult --

QUIRING: No.

OLSON: -- it was to get some clear direction --

QUIRING: New process.

OLSON: -- on how we, so it's a little bit more predictable. So I want to make sure that if we can answer to some of those that we try to do that.

COOK: Chris Cook, Deputy Prosecuting Attorney. The first concern I wanted to answer, and if you don't mind I'll spit it out because it's in my mind now, is the issue of bringing an amendment to the DA or the proposed DA to Council and would it have to go back to Planning Commission, and there's nothing that I've seen in the ordinance in the process part that requires that.

So my opinion on that is that if there were a proposed amendment that so significantly changed the nature and scope of what the Council would consider, just like now, then it would have to go back to the Planning Commission and that would be the case now as well; however, with the 179th DAs for example, they were reviewed

by the Planning Commission before they came to the Council because they involved an urban holding lift proposal, and when an amendment to a proposal before the Council changes the nature and scope of the proposal, then it needs to be renoticed, that's in our County code. So I would say there's no change, no change to that general rule from this proposed ordinance.

If the suggested amendment to the DA would not be that significant, then it could be considered and adopted by Council at the Council hearing without further noticing, without sending it back to anybody else, without any more SEPAs or anything like that, so that's my thought on that. So your question, Councilor Olson, was about?

OLSON: Mr. Horenstein had a concern about that this would allow a type of a zone change.

COOK: Well, again, we don't have, we don't have process now so I think that the same potential exists now and I would say it is up to staff reviewing a proposed DA too, that's part of what the cursory review is for, to see these giant issues, say, whoa, that looks like a zone change to us, we're not sure that you can do that.

So if we can prevent a DA from causing a zone change now, I think

that the County can prevent a DA from causing a zone change under this ordinance as well.

Now, having said that, I want to go back to the language that says unless otherwise specified, where is that, Matt?

HERMEN: So it's page --

COOK: It's at the top of some page, I don't remember which.

OLSON: 7.

HERMEN: It's at the top of Page 3.

HOWSLEY: D.2.

COOK: D.2. Thank you. So unless otherwise specified there's a limitation, this exact language I have a question about because unless otherwise specified by what? Do you have a thought of what that refers to, Matt?

HERMEN: I don't.

COOK: Yeah. So I'm not sure precisely what that means and that

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does provide some flexibility that another name for that might just be vagueness.

BLOM: I'm going to step in really quick here --

COOK: Yeah.

BLOM: -- and make a motion that we table this until, and we can look at the calendar and set a time, but, one, so that DEAB can take a look at it, and two, since there's a legal concern instead of trying to fix it here. I appreciate the effort, I don't know if this is the right time to do it because we have a lot more things on the agenda, so...

COOK: DEAB has looked and commented on it.

BLOM: Well, we asked them to look at it again and they haven't met since we made that request. So I'll make a motion that we set this for the next time. I know we have more docket items coming before us, so...

QUIRING: I'm going to second it.

BLOM: Okay. So move to our meeting on November 12th.

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QUIRING: I'll second.

OLSON: I'm sorry, what was the date? February.

BLOM: November 12th.

OLSON: November 12th. Okay. And then is that, we're good with the calendar on all that?

COOK: That is a date and November 12th at 10:00 a.m. is that or is that a 6:00 p.m.? I believe it's 10:00 a.m. So that is continued to a date and time certain. It need not be re-noticed, it should simply be posted then to the November 12th meeting as well and that is just fine.

OLSON: And then can I ask one more question on the Gorge thing. That their recommendation was not included or was not affected?

HERMEN: No, it wasn't, Councilor.

QUIRING: Okay. Further discussion on this motion? Well, actually there shouldn't be discussion on a tabled motion, motioned table, so...

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MEDVIGY: It will give the lawyers plenty of time to weigh in and give us their thoughts.

BLOM: Stay awake this time.

QUIRING: All in favor say aye?

EVERYBODY: AYE

QUIRING: Opposed? Motion passes to table. Thank you, Matt. CPZ2019-00028, Historic Preservation. Good morning, or, yeah, good morning.

KAMP: Good afternoon now.

QUIRING: Almost, two minutes after.

KAMP: Wait for the present team. Good morning or good afternoon, excuse me. My name is Jacqui Kamp for the record, K-a-m-p, with, planner with Community Planning. I'll be presenting the information for the docket item today, CPZ2019-00028, amendments to the Historic Preservation Code.

Clark County has interlocal agreements with the seven cities and the town of Yacolt regarding the historic preservation program. The agreements were last updated in 1997 in reference an older old ordinance.

In 2018, the County updated the Historic Preservation Code 40.250.030 to provide revisions and clarification for the programs existing processes which created a new ordinance for the code. Now the interlocal agreement between the County and cities will be updated to reflect the new adopting ordinance and changes that were made in the Title 40 update last year.

The County and the City of Vancouver are both certified local governments, so certified by the State and could each have their own historic preservation programs and historic preservation commissions while the other cities and town are not certified local governments, they're under the umbrella of the County's designation. The County and City have had a joint historic preservation commission since the creation of the program.

During the interlocal update discussion, the City of Vancouver requested consideration to revise the current commission appointment process to allow the city council to appoint members to the commission instead of recommending appointments. The

current process can be cumbersome and long for the applicants who apply for these volunteer positions.

To make a change to the appointment process requires an update to the Historic Preservation Code which will then be reflected in the interlocal agreement updates. In addition to the appointment revision, another code amendment that is part of this case is to add some additional language to the appeal section related to properties within City jurisdiction.

So to illustrate, the current historic preservation commission appointment process, this chart shows the steps that are currently in place and it includes review and potential interviews from three entities, the historic preservation commission, the City at the Vancouver Council and then of course the County Council, so it can be multiple interviews and reviews.

So a little bit about the, this part of the code. So currently the code states there are to be a minimum of five members, but for the last several years we've had seven which the commission feels is working really well. There are certain experience knowledge criteria that is to be considered for members, and we must always include at least two professionals that have specific experience in identifying, evaluation and protecting historical and cultural

resources which can come from a variety of professional and academic disciplines that are listed here.

For this docket, the proposed amendments are to increase the number of members from five to seven. Include language that states the City of Vancouver will appoint two members and the County will appoint five members. And then an update to the appeals language in the code for commission decisions to indicate that their respective city/town code will dictate that jurisdictions appeal process or an absence of code language default to the County process which is an appeal to Superior Court.

So with the amendments to the commission appointment process, the review of applicants by the decision-makers will be streamlined, instead of having three entities to go through for review of applicants, it will be down to two. If it is a city seat, the HPC will make a recommendation to city council; if it is a county seat, the HPC will make a recommendation to County Council. The public process thus far has been beginning with the Council work session on June 12th to initiate the idea for movement.

The Historic Preservation Commission held a work session and reviewed the proposal July 2nd. They held a hearing on August 7th and approved or made a recommendation to approve the amendments

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to the code. Planning Commission held a work session and reviewed the amendments on September 5th, they held a hearing on October 3rd and voted 5 to 0 to approve the amendments.

We had a Council work session with you on October 9th to review the proposal and the Planning Commission recommendation and we're here today, November 5th, for the hearing for these amendments. That is all I have for my presentation. I'm happy to answer any questions you have.

QUIRING: Are there questions of Council? I know we've gone over this and there's nobody signed up to testify. So with that, I will, I would entertain a motion.

LENTZ: Move to approve Ordinance No. 2019-11-06.

OLSON: Second.

QUIRING: It's been moved and seconded to approve Ordinance No. 2019-11-06. Would you call the roll, please.

LENTZ: AYE

OLSON: AYE

BLOM: AYE

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MEDVIGY: AYE

QUIRING: AYE

QUIRING: Motion passes. Thank you. CPZ2019-00033, Columbia River Gorge National Scenic Area Districts.

LUMBANTOBING: Good afternoon, Council.

QUIRING: Good afternoon.

LUMBANTOBING: My name is name is Sharon Lumbantobing with Community Planning for the record. So we're here to discuss CPZ2019-00033, this is a request to extend the interim Ordinance No. 2019-09-13 which was adopted by the County Council on September 25th.

The interim ordinance pertains to an error, scrivener's error in the Columbia River Gorge National Scenic Area District Title 40.240.440. State Law, RCW 35.63.200 requires the Council to hold a public hearing on the interim ordinance within 60 days which would have been November 24th, we're not able to meet that deadline for our hearings so we're requesting a six-month extension of the interim ordinance and allow time, sufficient time.

Title 40.240.440(H) currently states that the development and production of mineral and geothermal resources are required to follow a Type IV legislative process on agricultural lands and staff is requesting this be corrected to the Type III quasi-judicial process.

In reviewing the legislative history, evidence suggests that the initial change from a Type III to a Type IV process was in error and not the result of a conscious policy decision. In Title 18 this was always a Type III process.

In 2003, when the County repealed Title 17 and Title 18 and merged them into Title 40, that was a massive undertaking, that's where the change to the Type IV process occurred, there was no underline or strikethrough text in the adopting ordinances which is how changes are made. This can be seen in the table in Title 40.500.010-1, this is a summary of the approval types, approval processes in the Gorge and you can see that it's only listed as Type II and III, there are no Type IV review processes in the Gorge.

The definition in Title 40.510.040 of a Type IV legislative process does not include permits, these are all policy changes that go through the Planning Commission and then to the Council. There's a lack of consistency with other code sections.

Title 40.250.520(H) which is the same language pertaining to geothermal mineral resources except that it applies to small woodland designations, that is a Type III process. That's all I have for you, and if you have questions, I'd be happy to answer them.

QUIRING: Are there questions of the Council? I know we've gone over this quite a bit. So for public testimony, Steve Horenstein and Jamie Howsley.

HORENSTEIN: Thank you, Madam Chair, members of the Council. For the record, Steve Horenstein, here representing Nutter Corporation who is the lessee and operator of the Washougal Pit. I want to emphasize the word pit. This is a rock pit, not a rock mine. No blasting occurs, we scrape and excavate material from that site, perhaps do some crushing but basically haul it out for road construction and other similar projects. I have tough comments for you today.

On June 6th, 2017, James and I met with the County to discuss the current status of our permits, excavation hauling and perhaps crushing activity at the Washougal Pit. Although the County official we met with seemed enthused and excited about

Mr. Howsley's approach to allow activity to continue and to perhaps amend the code to help others in similar situations with their pits and their mines, that official indicated he was going to talk to staff and get back to us. The next thing that we heard from the County came in the form of a notice and order to stop work at that facility.

We have continued to push for the kinds of changes to the County code that reflect current activity in mines and pits. Since that time, although I think we're finally through doing that now, because since that time the County has done nothing but throw up road blocks to our attempt to build roads, no pun intended, throughout Clark County and elsewhere, work that can't be done without material from such facilities as the Washougal Pit.

We are now engaged in two lawsuits and appeals, one pending, one filed, if not today, tomorrow, with two more on the horizon. One County official yesterday posited without prompting from either James or me that we were probably in for several years of litigation over this. Instead of working with us two years ago to update the process when we asked for it, the County has turned its attention to stopping the excavation activity and now finds itself with an interim ordinance before it to continue to make our lives difficult, our client's life difficult, and without any concern

for public notice and opportunity to be heard.

We're only here today, and the only reason we have this opportunity today is because the Planning Commission heard what we had to say and decided it wasn't -- without making a decision on that ordinance wasn't ready for prime time and has continued it to later this month, which puts the Councilors in the position, if they choose to, to have a public hearing to continue your interim ordinance.

We are going to file a tort claim notice with the County for interference with our business and targeting and I'll talk a little bit about that a little bit later. We are going to shortly also, if we haven't done it already, send a letter to one of the opponents of this project who continues to fly a drone over this pit and take pictures.

Multi-aircraft for purposes of surveillance particularly taking pictures is actionable as trespass and this is the point we've reached in this case, we have no opportunity but just to fight where we need to fight. And it's not about, just about this mine, we're setting precedent for how this plays out, will set a lot of precedent for how permits are issued for surface mining and excavation of pits and such for all the others in Clark County here,

it's become that big of a deal.

Let me address the scrivener's error if I may. There's no proof to support that. It's legislative interpretation, lawyers can interpret legislation lots of different ways. We asked for, we filed a public records request and got three huge piles of information from the period of time when I think its 2003 code amendments occurred, and although we're not quite all the way through it yet, we find no proof to support the County's narrative that the narrative ordinance that is the subject of today's hearing is a scrivener's error.

It's a convenient thing to say, but there's no, the County has not presented any proof in your prior hearing before the Planning Commission or here today. This is all about the County's agenda by its actions can only be described as opposing excavation and probably related to that mining and true mining facilities and related activity in favor of a few complaining neighbors and using a straight interpretation of the code provision that was adopted 16 years ago, 16 years ago.

Why is it coming up now? Why hasn't it been included in so many omnibus code amendments to fix things that the staff felt needed fixing and many times the Council agreed with, why is it being fixed

on an emergency basis? Let me give you some, some history that I have discovered about this.

I mentioned to the Planning Commission I've been doing permitting of mines and pits for a long, long time now, probably 25, 30 years, I've been involved in not all of them but many of them, and I had a vague recollection when I was talking to the Planning Commission this issue of the Type IV came up at the time that that code was adopted.

So I had the opportunity to speak to former County Commissioner Betty Sue Morris who I remember as being quite involved in the discussions around mining. She said to me that it was a Type IV because the Board felt that the opportunity for enhanced public participation was so important at the time that the Board felt it ought to be involved in the inevitable appeals that come with these projects, they're always appealed. She didn't hesitate at all to explain that to me when I talked to her. I would encourage you all to give her a call, she'll tell you this.

I realize that Type IV then and type now are two different things and it's a little awkward the way, it would be a little awkward to keep this as a Type IV under the code, but that's not the point, the point is why aren't we looking for a solution for this rather

than just getting the way of this material being excavated.

Another County official asked me, well, what would you do to fix it? Well, there are a lot of things we could do to fix it. We could make, just a couple of them would be allowing you to hear permits for these types of projects. Another way that does make sense to, I think Mr. Howsley and I know it does to me, is to require that terms and conditions for surface mining be included in development agreements that come to the Board for final approval, if you really care what the public thinks about this, that's a good way to do that.

So just getting rid of the, getting rid of the code as it's currently written and making this Board a bystander in all of these processes puts us in a position where you don't get to balance the need for rock against the public need about the impacts it has on the public and just gives staff the authority with our regulatory mind state, the County authority with it's regulatory mindset to just regulate it and there's two years almost of history here telling you how difficult that can be for somebody in this business.

Let me talk about the opposition briefly, and I have a handout for you. Sorry, not protocol. Let's take a hard look, let's take a hard look at the opposition. There are 52 properties encircling

this pit. There are 12 properties opposing this activity, is part of what I call generically the friends and neighbors that are involved in this litigation.

This chart tells you who moved in while the pit was operating. All of them moved in while the pit was permitted by the Department of Natural Resources and by the County and then various points by the Gorge Commission, there's a whole history of that as you're probably aware of. Of the six that moved in when, during a period of lack of activity on the site while it was still permitted, three are listed, you see this towards the top of the second page as Friends of the Gorge, no site address, just a tax parcel number, I have a hunch those are just properties that the opponents included in this thing, so we're really talking about three people that moved in when there was no activity.

This is -- environmental orders are very good at getting their opponents to call you on a regular basis and send you letters on a regular basis and make this just seem like there's a lot more opposition to this pit than there is. It's not that big, and although there is an opponent on all sides of this project, 40 of the 52 properties are not complaining about this pit. Even if you moved in during a period of inactivity, and these pits do have active periods and inactive periods while their permits remain,

I mean I wouldn't move into a house in that area without checking out what was behind me, it's pretty obvious what it is.

So we're overstating or overprotecting perhaps the opposition here and I get it, you know, I wouldn't want to live by a rock pit, I know what they're like but people choose to do that. Keep in mind that trucks coming out of this pit come out on a private road owned by the owner of the mine, of the pit. The folks that live along that road, I don't know five or six of them perhaps, is that right, use that road by permission from the landowner himself, the owner of the road. So I get the opposition, it happens every time, to some extent it's fair, but let's not overstate what it is.

Let me talk legally about what's before you for a minute here. We don't believe -- we believe that the ordinance before you was before you before and is before you again is flawed, it's legally flawed. Section 1 of the interim ordinance refers you to RCW 35.63.200 and RCW 36.70A.390 as authorities for adopting interim zoning measures, interim zoning measures with certain limitations.

Interim ordinance does not identify what those certain limitations, code word, statutory words are, nor does it explain how the proposed procedural change qualifies as an interim zoning ordinance. RCW 35.63.200 authorizes interim zoning control,

zoning control. Although it isn't defined in the statute, 36.70A.390 authorizes a county or city governing body, that would be you, adopt an interim zoning ordinance. These are the two statutes, State statutes that are being relied on here. Again, this chapter doesn't define zoning ordinance.

But think about it, what we're here doing here is typing an application. The County's attempting to convert it from a Type IV application to a Type III application procedural, they aren't complaining about the zoning on this site, they're not having proposed to change the zoning on this site, this is about simply the way the County processes applications among the four various types they have, it has absolutely nothing to do with zoning.

You know, we consolidated all of our land use regulations into one chapter Title 40 some years ago now. I can remember before that, if you follow the logic with staff here you could change anything in that code on an interim ordinance without notice and opportunity to be heard. Does that make sense? Absolutely not. What if it was authorized this way just for a minute, let's consider that.

The burden of establishing that the Council had the authority it was purported exercises rested with the County Council and we don't see anything in the record that carries that burden, and believe

me, we've listened to every word of the transcript. And, again, it's not clear that the Council can enact interim zoning controls or ordinances.

The code section in Title 40.560.020 outlines the procedures that must be followed to make changes to zoning districts or to amend zoning codes. Those procedures do not include the ability for the Council to make interim zoning controls or interim zoning changes, it just doesn't work like that.

While the County Code does not supersede the RCW, the fact that the code expressly outline zoning code amendment procedures and did not include these interim authorities is pretty telling. Code Section 40.560.020.A.3 -- I'm doing that slowly, how's it going?

HOLLEY: Good. Thank you.

HORENSTEIN: -- explicitly says that "A code amendment must occur through a Type IV process that includes Planning Commission review." Is that what we're doing now? Why are we going through this procedure if in the County's opinion the interim ordinance is valid? I anticipate staff will say because the interim ordinance is only good for six months, but if it's only good for six months, why was it even passed at all? Why are we doing this?

Why did the scrivener's error need to be changed right now when it's been on the code for six years? I'll tell you why.

As part of this overall process, the owner of the pit and the operator of the pit continue to move things along under protest filed an application for a land use permit, and when staff saw that coming, they rushed to you and said, well, we, staff, better get control of this so we want to make this a Type III not a Type IV, but for our desire to find a way to continue to work in that pit therefore filing an application under protest to do so, they came to you to change the code.

I've taken a look at the maps and as best I can tell there is no other property with a surface mining overlay in the Columbia River Gorge, and of course you regulate surface mining and in the Gorge in particular in a special section of Title 40, sections that have been approved by the Gorge Commission a long time ago for you to manage, you to permit, you to enforce, et cetera, et cetera.

When you put together everything we've experienced in the last almost two years now, we can only conclude that the County is targeting this site. Targeting is actionable under the law, it's a due process violation among other things. I don't, I don't want to sound overly critical of you all, you're just responding to

something that was brought to you by staff.

Commissioner Medvigy, I noticed toward the end of the last hearing you made it clear that there's no subterfuge here and no attempt to gain advantage and you want to do, you wanted to put all that on the record which made some sense to me because the only information you had is that this was a scrivener's error, I don't doubt for one minute you're sincere in making those remarks, but I hope by now you can see this is a way bigger deal than that and there are two sides to this story that the County attempted to keep from you by doing the interim ordinance without notice and opportunity to be heard or the courtesy of a phone call to those of us that have been involved in this for almost two years now, saying, hey, we're going to do this, this is why, just want to let you know if you want to be there, here's when we're doing it.

The response one of us got when, well, Jamie got, if I can speak for you, when he called to say what's this, how did you find out about that, that's what we got from the County. I don't know how you could expect our clients to see this anything other than apportions of the County trying to target this with subterfuge and not thinking, really thinking through the legal exposure they're creating for the County in doing this by targeting this one particular pit.

And in conclusion, I would say you have a choice here as the policy maker, you can either be bystanders in this process by stepping out of it and you'll continue to hear from a few of those neighbors on a regular basis but you won't have any role in the process other than that or you can tell the other parts of the County here to get this right, use the development agreement, put yourselves in a position of making the final decision, a number of things we could think of here, but absent that.

You know, I learned from a much older public affairs professional one time, I learned a lot about government relations and public affairs when he said to me, I've never said this openly before, but he said to me, you know, Steve, we work really hard to make things happen and use all the tools we have but sometimes you just have to realize you have an enemy and deal with it accordingly and that's where we are and this will engender all kinds of litigation and we need to do it now, not only for these clients, but to make sure mining activity can continue in Clark County so that we can still build roads and the other things we use rock for. Thank you.

QUIRING: Thank you. Mr. Howsley.

HOWSLEY: So for the record, Jamie Howsley. I'm going to be a lot

more brief than my colleague, but...

HORENSTEIN: Thank you.

HOWSLEY: So I want to talk about how the genesis of this happened. I got a notice of a Planning Commission hearing where this item would have been taken place and I immediately contacted some folks at the County questioning where this was coming from. They said, well, how did you find out about this? I think Steve's summation of my statement was correct.

A day later I get a phone call letting me know that this emergency interim ordinance was passed and I immediately became concerned with how the County was proceeding as a matter of process. I think Councilor Lentz you said we don't do budgeting on the fly, you don't draft ordinances on the fly.

LENTZ: I said we shouldn't.

HORENSTEIN: What did you say?

LENTZ: I said we shouldn't, I didn't say we don't.

HOWSLEY: That we shouldn't be doing that. So I think to the point

is that the County started making allegations that this was some sort of scrivener's error, and with all due respect to the many of great staff that you have here at the County, the last fears, there's not a lot of institutional memory in the positions that would have remembered a lot of these ordinances.

Unfortunately, Steve and I are kind of old guys and have been around here for a couple of decades and do have different memories of things, and in particular do remember the Title 40 update and do remember the Commissioners at the time having different conversations around mining and in particular I can recall specific issues related to Section 40 and the series of development agreements that were entered into out there with those parties in a Type IV legislative process ahead of them being annexed to the City of Vancouver.

So just from my own memory, and I believe my colleague's, we just question whether or not that was a potentially, a conscious policy choice by the Commissioners at the time to do that. To that end, we have filed several public records request that we are still waiting responses from. And, again, we pointed all of this out to the Planning Commission and they agreed that we need to get that information to see, you know, what's what and we would like to find that out.

The other issue I have concern with is this does feel a lot like targeting to me and I'm involved in a case in the city of Tacoma right now, it's a very contentious one where the city did target a specific land use operator and that specific land use operator has sued the city of Tacoma in Federal Court for similar kinds of due process violations.

As Steve alluded, this is the only property in Clark County that is in the Gorge area subject to a surface mining overlay where this ordinance impacts. And, again, I find it very curious that the timing of all this when the County as an entity knew full well that I was going to be walking in any day with an application in hand under protest while the rest of our litigation was pending.

I think where I'm headed with this is I'm just mostly concerned that the County is being a bit self-serving in this ordinance and in this process. I've pointed out other inconsistencies with both the scenic area ordinance and the surface mining ordinance that are there that I would have liked staff and the Council to address because quite frankly it will clean up the process as we proceed with the various avenues that we're going down and yet I feel like Steve and my client are getting stiff-armed on those opportunities and yet when it serves the County's interest, you know, low and

behold just trample all over our due process rights.

I was a little bit impassioned or a lot impassioned at the Planning Commission on this point and, you know, I love this county. My family came here in the late '70s where my father was the planning director, our family has invested a lot of our heart in trying to build, you know, a very good community and have worked with this organization for a very long time.

In all of my memory and in all of my professional working with this as an entity I've never seen such a trampling of a client's due process rights as I have in this case, and I really don't say that lightly, and we can all respectfully agree to disagree about the law, but this one is just very cut and dried to me and again I just felt like this is one of our very few opportunities to get this information in front of Council and maybe hear a different perspective than you're getting from the forest below. Thank you.

QUIRING: Thank you. Are there questions of the Council at this point?

OLSON: I'd like to get some clarification on the reference to the RCW or to the code and the RCW that we're using for this ordinance, if you could clarify that, please.

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COOK: I can certainly refer to the RCW which would supersede, it would allow something that the code might not. And Steve, if Steve could tell me what code section he was citing that would be helpful or if Sharon could. But as far as the RCWs go, there are two RCWs that permit a County to do this, one is RCW 36.70A.390 and that is part of GMA, and the other is RCW 35.63.200 which is the Planning Act.

HORENSTEIN: Those are the two that I --

COOK: Yeah. But what about the code section?

HORENSTEIN: Oh, I'll have to find that for you. But I would say both of those statutes refer to zoning, not --

COOK: Well, this is a zoning control, this is part of the Unified Development Code Title 40, that is in the case law that I have read a classic example of a zoning control. So respectfully I would have to disagree with Mr. Horenstein's assertion that this has nothing to do with a zoning ordinance, Title 40 is Clark County zoning ordinance, so that is my response.

HORENSTEIN: 40.560.020.

COOK: Thank you.

HORENSTEIN: Title 40 is everything land use which is my point, it's not just zoning and this will become a major issue I think going forward.

COOK: Yeah. So this is our zoning code, this is our amendment to our zoning code, it is a zoning control as set forth in the statute and the statutes permit interim amendments to those zoning ordinances.

OLSON: And the action we're being asked to take today to continue an interim ordinance, not adopt a final ordinance, but for six months?

COOK: That is correct.

QUIRING: And that allows for what? That six months is going to allow what?

COOK: That preserves the status quo.

OLSON: So if I'm not mistaken, the Planning Commission wanted to

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hear additional information or see additional information and that hearing is not until the 25th?

COOK: The 21st. The issue with the Planning Commission was as I saw it two things. One was that there were exhibits that were intended to be attached to the staff report that were inadvertently left out so that they, the Planning Commissioners did not feel like they had the adequate background, those exhibits have been posted.

The other was that Council complained that they had sought public records and they wanted to see what's in the public records. So this was rescheduled, was continued to a date and time certain which is the Council meeting on November 21st.

ORJIAKO: No, Planning Commission.

COOK: Planning Commission, yes, I'm sorry, meeting on November 21st.

QUIRING: Councilor Blom.

BLOM: If this is continued and in Council's work they find firm evidence, which I think in about 25 minutes in testimony we've been here, but find firm evidence that this was not a scrivener's error

and that it was intended, could we pass another emergency ordinance reverting back to Type IV if indeed that there is something in the documents, in the record that shows that it was intended to be?

COOK: Absolutely. Absolutely. If I could I would like to comment on the discussion that Mr. Horenstein said that he had with former Commissioner Morris and he said, well, yes, we had those as Type IV because we wanted the public involved in the appeals, type appeals at that point went to the Board --

HORENSTEIN: That's true.

COOK: -- that changed in 2009. So that was part of a Board legislative process then, that doesn't happen now and hasn't happened since 2009, but the provision at issue here does not relate to appeals, it relates to who decides initially on a permit, who gets the application, who reviews the whole application, who says, well, this is complete, this is not complete, you need A, B and C. Yes, A, B and C comply with these criteria or, no, they don't and it's curious to me to think of Council engaging in those activities. I don't know when Council has previously sent out a completeness letter for example on a permit application, in general that is not something that Council does.

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QUIRING: When you say permit application, are you talking general permit application or a conditional use permit?

COOK: Any. Any.

QUIRING: We don't have any say in that.

COOK: You don't do conditional uses, no, ma'am.

QUIRING: We don't review it?

COOK: No.

QUIRING: I guess we hear about it after the fact.

COOK: That could be. That could be. Sometimes during the fact.

QUIRING: Yes. Yeah. Well, I just would, I have a couple of comments because I think that often when you hear one side of the story, you've heard one side of the story and you don't hear the other side until the other side presents it and this is the first time I've heard this side, the other side of the story. And, frankly, I can understand completely why Commissioner Morris would have and that commission would have taken action that would make

this a policy issue partly because of sensitivity of the Columbia Gorge Commission.

I was in the State legislature in Oregon when this was formed and it was not noncontroversial and I can see why various counties would want to have a little bit more control over what was happening in the Gorge and a say there. Passing this, making this interim resolution go for another six months it remains the status quo which is the status quo right now is it's a Type III?

COOK: That's correct.

QUIRING: And not a Type IV?

COOK: That is correct.

QUIRING: If it's a Type IV what happens? We don't pass it.

COOK: Well, that was what I was, that was what I was trying to visualize which of you will be reviewing the application materials for completeness and determining whether it's complete or will that be done in a public process, well, we've got this, we've got -- I don't see that the Council is the body in this county that does permit decisions which is what other council, these counsels

clients would like, they would like a permit.

QUIRING: I actually would like to hear from --

HORENSTEIN: And that proves, I'm sorry, Jamie, that proves our point 100 percent. We agree that you shouldn't be doing the technical land use permitting here, but you should have some control over the decision that is made.

That requires a fix to the code whether it puts you in as the body that hears appeals, whether it puts, requires a development agreement to continue the standards that are recommended as part of the enhanced site plan approval that happens with a surface mining permit which is, it's basically an enhanced site plan approval.

It gives you the ability to balance the need for the material because you have the responsibility to build the roads, the Prosecutor's Office doesn't, the Planning Department doesn't, you have the responsibility to get the roads built and you're being hamstrung here.

It's a red herring to raise these issues about being engaged in the day-to-day permitting process itself, it's the final decision.

It's going to take some work. It's going to take some amendments to the code and we're asking you not to just defer this to the regulators without any policy input whatsoever.

HOWSLEY: All I was going to say is somebody that practices and both stays very actively and probably have been in 50 different jurisdictions, you know, one of the ways that Oregon does it still currently, they don't in a lot of their jurisdictions they don't have a hearings examiner model anymore and a Type IV process would involve going to their planning commission and then ultimately whoever sits as their legislative body as their final decision-maker and various other jurisdictions.

In Clark County until very recently I can think of doing a number of subdivisions in the City of Camas for instance just one instance where that was all done through approval at the PC level with the ultimate authority to make a decision at council, so it's not unheard of, it's not -- the norm is becoming more and more to use a hearings examiner as a professional, you know, land use attorney who can understand the code.

But again that really isn't the point here, the point is, is, you know, what did the County Commission decide as a process back in 2003, '4 when this was going forward, and again I still have a lot

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of questions as to whether they did this consciously or whether it is as staff alleges as a scrivener's error.

OLSON: And so if I could --

QUIRING: Councilor Olson.

OLSON: So I don't disagree with you except that I don't see us going back to this Type IV as it existed prior to this code and be able to answer those questions. I actually think that passing this interim ordinance again gives everyone a chance to take a deep breath without because it's inconsistent in the codes, I mean it's inconsistent with everything else that's in our current code if we left this Type IV.

So I'm with both of you in terms of trying to find solutions and I understand your frustrations with this particular, with this pit and with this process, I understand that. I think in this case it's, for me it is just what does the record support, and if you haven't had time to review it totally and the Planning Commission needs time, then we need to do that, but to go back to the Type IV process to me would be a bigger problem until we understand what the record shows and that it's consistent with our existing code and our prior practices, so that's kind of where I'm at right now

with this.

This is an interim ordinance still, it's not a permanent ordinance, it will give us time to review the record and thoroughly before we make a decision on what we do finally.

HORENSTEIN: Might I respond to you, Councilor Olson, and I apologize to you, I have not made myself clear. We are having to do what we have to do for the Washougal Pit now, and putting us in this position while you take whatever time it takes to come up with a different process will not have any impact on this targeted pit. And not only will you be doing that, but you will be doing quite a bit of other, be involved in quite a bit of other appeals of litigation while this goes forward.

So it isn't just as simple as saying, well, we're going to leave that in place like it normally is, I would agree with you it normally is, it isn't, because we're going to have to do what we have to do here.

OLSON: I understand.

BLOM: I think there's a need to bifurcate the larger issue of pits and gravel mining and surface mining in Clark County from this

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decision and this decision is, was the change from Type IV to Type or Type III to Type IV a scrivener's error or not, that's what we're deciding today.

And I agree with Councilor Olson that we need to take a broader look at all of this, but the decision that we're voting on today is was this a scrivener's error or not. And if there is evidence that can be very clear, a memo saying, hey, we want this to be, and I apologize to Susan, (inaudible), do we want this to be a Type IV instead of a Type III and there's that in writing from 2003 or in an e-mail, then I would want to schedule an emergency ordinance the next day and make that change, that's the case today is whether or not this was a scrivener's error or not and so far I haven't heard anything that says that, yes, this truly was not a scrivener's error, so that's I would support moving the ordinance forward outside of proof otherwise.

QUIRING: Further comments?

HOWSLEY: Thank you.

QUIRING: Thank you. Did anybody want to make a motion?

LENTZ: Move to approve Ordinance 2019-11-07.

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BLOM: Second.

QUIRING: It's been moved and seconded to approve Ordinance No. 2019-11-07. Will you call the roll.

LENTZ: AYE

OLSON: AYE

BLOM: AYE

MEDVIGY: AYE

QUIRING: NO

QUIRING: Motion passes. Moving on to public hearing on to Transportation Improvement Plan and 2020 Annual Construction Program. Good afternoon.

QAYOUMI: Good afternoon, Council. Again, for the record, Ahmad Qayoumi with Public Works.

Today I would like to present to you our transportation improvement plan, and we have our team, they will go over the details, we had a couple of workshop with you and also with the Planning Commission.

So this is a very important document that helps us to outline all

the projects we have for transportation, it helps us to get grants and the discussion we have with other granting agency and also for the public to see what kind of projects we're going to be doing in the next six years.

So with that, I'll turn it over to Susan Wilson and also Rob Klug our Transportation Manager to go over the details of the presentation and be free to, if you have any questions, we will respond to them.

WILSON: A lot of this material is probably familiar to you, but we'd like to discuss guiding principles and the legal compliance of the six-year transportation improvement program.

We talk about some of the financing that goes behind the program and the heart of the program which is the construction program and then also we'll touch base on the I-5/179th urban holding projects and the road balance and leveraging that we have done in the current program and in the past programs, and then we'll talk about the annual construction program and the related funding and then we'll talk about the request for the adoption of the program.

Just a reminder for the guiding principles that the Council has set is that we will pay the debt service for the County road fund

and for our six-year transportation program. Also we'll look at the safety and preservation of existing assets and then we'll look at the capital projects based upon the evaluation of safety, economic development and mobility. The capital projects consist of larger projects such as 179th, 99, Highway 99 improvements.

And then legal compliance, all the projects that we work on for the capital, for capital transportation must be in the six-year program and the 2020 annual construction program. The annual construction program it, the first year of the six-year program, it just has a little more detail about the funding attached to those projects.

We must have priority programming. We must evaluate the projects like I talked about, safety, economic development and mobility. Also the Council must adopt the program before the budget's adopted. And then the transportation improvement program is an implementation of the 20-year capital facilities plan. So that's our box that we build based upon the 20-year capital facilities plan.

Similar accomplishments. As you know, N.E. 10th Avenue we just received an award of excellence. There are three phases to that project, two phases have been completed. The next phase is the

gap segment between 154th, or excuse me, 149th and 154th, we plan to start construction on that hopefully the summer of 2020.

As you can see it was about a \$43 million project for the entire corridor, we have about \$11.3 million in State and Federal grants, 3 million of that is projected for TIB which, Transportation Improvement Board, which they will do their announcements in the next couple of weeks so we'll know if we received a little more money there. We also have proposed REET on this project, partnerships with utilities and traffic impact fees.

119th Street, this was an old country road that we brought up to urban standard from N.E. 50th Avenue to SR-503, we completed the project in four phases. As you can see the project is about \$59 million and we had a lot of funding partners support this project.

We completed some work out at N.W. Pacific Highway, we replaced the culvert out there, it was failing. On February 12th, County crews did spot some undermining of the culvert, we immediately shut down the road and then we started design in February 19th and then we completed the project on March 29th. The County Road Administration Board supplied about half a million dollars in State funds to support this project. The TIP money is spent throughout

the county in multiple areas.

As you can see this year we had a \$200 million secure transportation improvement program. About 55 percent is spent in the urban areas and about 20 percent is spent in the rural road areas. You'll see that we had the rural road projects, that is \$8 million, that consist of all the culverts; however, all the other ongoing programs are in rural areas.

So the road preservation we spent about 16 to \$18 million which is reflected in this pie and the bridge reconstruction is about \$8 million and the transportation safety is about \$6 million for the rural road segment of that. And so we spend about \$20 million on sidewalk and ADA and then about \$17 million in transportation safety and about \$8 million in our bridges and then of course a big pie, a big portion of that money is spent on road preservation. So this pie chart shows a breakdown of the revenue sources.

The bulk of our money does come from county road fund which is about \$67 million, 34 percent, and then also we have some secured grants and projected grants is about \$67 million followed by the urban holding development agreements and the surcharge that's anticipated in this \$200 million program and then REET is about 27 million, about 13 percent, and then we have the County arterial

preservation program about 2 percent and traffic impact fees about \$23 million.

This is a proposed construction schedule in the six-year transportation improvement program. Just note that this does not include all the design, permitting, land acquisition that we're doing, it's just the construction starts of the program.

The projects listed in the gray shade is projects that are under construction or complete. The bulk of these projects right now are complete. We just have just a little bit of mitigation and planting on 119th Street, N.E. Blair Road and then Highway 99 Preservation, that's a safety project. We have completed the ADA ramps and will do the preservation work next year. And the Highway 99, Kline sidewalk has also been completed.

The yellow shaded projects are the fully funded projects, so the grant committed projects. So we have 99th Street from 94th to 503, Highway 99, we're doing some improvements at that intersection. N.E. Manley Road, that's out to ad right now. Mason Creek Culvert, we just received some grant funds to complete some design work, we'll go after more money for construction. Some signal optimization projects and then also some bridge projects that are mostly grant funded. N.E. 68th Street, this is a partnership with

the City of Vancouver to complete sidewalk on Highway 99 to St. Johns. Munch Road, that's mostly funded by the County Road Administration program to complete some pavement improvements and some guardrail.

And then also the pink projects are the highest priority projects that we're seeking funding on, I'll talk about the blue projects in just a few minutes. So N.E. Hazel Dell Avenue sidewalk, we did receive about \$100,000 to complete some design work on the sidewalk project there. N.E. 119th Street at N.E. 152nd, this is a safety project, we've had a lot of accidents there, it's rising in our safety evaluation list and we did receive some information that we'll be getting an award letter for about \$3 million to support that project, so that's really, really good. Davis Bridge, I think we can probably get some County Road Administration money, we're still trying to seek funds for that.

And then the white projects are all the next tier projects or the ongoing program. The ongoing programs again are the preserving what we have, safety, mobility, excuse me, safety, bridges and some right-of-way acquisition. Those have their own evaluation systems, they really can't compete against the larger capital projects and the ongoing programs is about \$89 million of the 200 million. And then the blue projects are the urban holding

projects.

QUIRING: The one pink one that you left out was 182nd and --

WILSON: Oh, excuse me.

QUIRING: -- State Road 500, can you comment on that.

WILSON: I will comment on that. So this we have, I know the Council has provided \$200,000 for, to look at the project and complete some design work on that. We do plan to take it up a 30 percent design with the money you provided; however, we only own 30 percent of that road, so we are we've been working with WSDOT to get this project funded together. Legally we cannot pay for more than 30 percent of the road, so that's where we're at right now, we've been in communication with them and hoping to form a partnership.

QAYOUMI: And that 30 percent is going to really help us to get a better construction estimate and what the impacts would be in order to get the project be more in line what we need to do and also help us to talk to WSDOT and other granting agency that this is a needed project and to have priority for Council that we will at least help us to move forward instead of just talking about it.

WILSON: We'll have a better chance just to get grants once we know what we're doing, so... And then the blue projects are the urban holding projects that's contingent on the funding package that was approved by Council on August 20th, so I'll talk about that right now.

So just like I stated that the urban holding projects are reasonably funded in this six-year transportation improvement program contingent on the funding plan as adopted via resolution on August 20th. Looks like we have a lot of County road fund, we have real estate excise tax, we have some more County road fund, we also have real estate excise tax and then we have a really large contribution from the developers to support these, these projects. And I'll turn this over to Ahmad.

QAYOUMI: One of the thing that I mentioned before to Council about road fund and the status of road funds we rely heavily on funding a lot of project or leveraging the dollars for road funds. So just a little history on how the funds are doing in the last, since 2014, in the last five years and some of the projects that has funded to road funds and has continued to decline.

So we are, several factors, one, the construction cost has gone

up for projects and also our, because of some other issues that we have with the Growth Management Act, some of the -- our ability is to get more grants has gone down. So I just want Council to be aware of where -- how the status of the road funds are and how we're trying to manage those, but it is something that's going to continue to do in terms of the road funds and where we're at and in terms to get more project funded.

MEDVIGY: May I ask a quick question, Madam Chair?

QUIRING: Councilor Medvigy.

MEDVIGY: So one thing I've been thinking about and never brought up regarding this particular chart which we've seen many many times, what does it look like going back ten years?

QAYOUMI: Ten years actually we had a little bit more healthier balance for the road because of the construction costs were lower. One of thing that happened after the recession in 2008 there was a lot of projects were able to do with a lot less dollars.

There was a lot of contractors were trying to survive and we received, I mean amazing bid prices on a lot of projects and we were able to do a lot more with a lot less dollars, but what had

happened in recent years as the economy has gotten better, the cost of construction has gone up, the cost of the right-of-way acquisition has gone up and some of the complications with the environmental permitting has gotten more complex and longer duration.

A lot of times if we anticipate the project to start at a certain time, but because of delays either right-of-way negotiation or environmental permitting process, add an additional cost of inflation for construction. So what we were able to do ten years ago or five years ago we're not able to do that right now because of the cost of construction has gotten really high and I've seen some years that average a six percent or more a year in terms of cost of construction going up.

MEDVIGY: Let me just ask in a different way. In 2009, where would that bar graph be as far as millions? If you don't know, that's fine.

QAYOUMI: I don't have the -- but we can provide you that information.

MEDVIGY: Thank you.

QUIRING: Just going along with that or commenting on that particular question and what the construction that has been accomplished for one thing the 2014 because I was going to ask, when did 119th Street start, that was a huge project and I would imagine that some of these projects have actually brought the balance down because we're actually using that money to do a lot of construction and we've done a good job of it.

I mean some very nice projects have been completed and I do understand the other difficulties with the cost of construction with the fact that there's other construction going on therefore contractors don't bid or the bid that they give isn't just to put their guys to work, it's, you know, it's also to make a profit, so I understand the two sides of the coin.

WILSON: Another thing I wanted to say is that the funding packages aren't as large anymore from like the Feds or the or, you know, the State TIB, I mean for Salmon Creek interchange we received \$28 million of appropriations from the Federal government, 119th we didn't receive that.

In addition, TIB supported, you know, \$8 million. Now, their awards are maximized at probably 3 to \$4 million, so that's another big change that I've seen with this program since I've been managing

it.

QAYOUMI: And I think the next slide has a history of how we've been able to leverage the road dollar funds and other local shares. If you look at the last ten years been over \$220 million of other money that we've been able to leverage with our road fund.

So the last ten years we had about \$85 million of road funds would have been able to bring in with projects, as you can see about \$86 million in Federal grants, \$48 million in State grants. So if you look at the calculation, almost \$2.60 we've been able to get for every dollars that we've been using to leverage for those projects.

And as Susan mentioned, they're becoming more and more competitive, and that was one reason when we did the estimation for 179th, we took a very conservative approach on estimating this and what we could get in terms of grant, we're estimating, we're counting a lot more local share to be able to get more grants and they're becoming a lot more competitive and a lot of local granting agencies are asking for more, not only delivery, but also more local shares in order to get those grants approved or awarded.

WILSON: I'm going to move on to the first year of the

transportation improvement program which is the 2020 annual construction program.

So there's about \$25 million that we plan to work, we plan to complete in the annual construction program. We have about 55 projects included in the program, and of all those projects, about 23 projects are starting construction or completing construction or under construction, so quite a few, quite a few projects we're working on.

About \$15 million is we plan to anticipate to spend on construction and then 6 million or 24 percent in permitting and design work and then about \$4 million in land acquisition. This is the proposed revenue for the \$25 million for the annual construction program. About \$10 million in County road fund, \$8 million in secured and projected grants and then \$4 million in real estate excise tax too and then a small amount in county arterial preservation and partnership funds and then \$2 million in the traffic impact fees.

So the public process that we went through for the 2020-2025 transportation improvement program and annual construction program was we met with the Council twice on April 17th and October 9th. We also went to the county fair, we went to neighborhood associations and then every time we had a capital open

house like for 179th Street, 68th Street we had a table presenting our program.

And then we went, and then we talked to the Planning Commission through a work session and then through a hearing. Met with Development Engineering Advisory Board and we did public notices, SEPAs and now we are here today to adopt our transportation improvement program and our annual construction program. We're asking the Council for three actions today.

The first action is to adopt the 2020-2025 transportation improvement program. The second action is to adopt the 2020 annual construction program. And the third action is to approve the 2019 Annual Review and Dockets for the Planning Commission recommendation of the 2020-2025 transportation improvement program. And so the third action is per County Code Title 40, the first two actions is State mandated.

QUIRING: Okay. Are there questions of Council or clarification? I guess I'd entertain -- now you're asking for three actions and they will be taken separately; is that correct? Okay.

BLOM: I do have one question.

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QUIRING: Councilor Blom.

BLOM: And I will still want to ask the question. But the six-year TIP is partially funded by developer agreements to my understanding, is it not, all those developer agreements have been signed and returned? If one of them is not, what happens, do we have to just make amendments to the TIP or what happens in that scenario?

QAYOUMI: Yeah. We can do an amendment next year, yes.

BLOM: Thank you. Then I'd move to approve Resolution 2019-11-01.

OLSON: Second. No public comment?

LENTZ: Do we have no comment?

BLOM: Oh, I'm sorry.

QUIRING: And actually the people that signed up for public comment have exited, they are no longer present, so we don't have any public comment unless anybody out there would like to make public comment. Hearing and seeing none, we can have a second to that motion. Did we?

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OLSON: Second.

QUIRING: It's been moved and seconded to adopt Resolution was it 2019-11-01?

BLOM: Yes, it's right there I think.

QUIRING: Oh, yes. Okay. Further discussion? Call the roll. No? No roll. All in favor say aye?

EVERYBODY: AYE

QUIRING: Opposed? Hearing and seeing none, the motion passes. Next resolution is.

LENTZ: Move to approve ACP Resolution 2019-11-02.

BLOM: Second.

QUIRING: It's been moved and seconded to approve ACP Resolution 2019-11-02. Is there discussion? All in favor say aye?

EVERYBODY: AYE

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QUIRING: Opposed? Hearing and seeing none, the motion passes.
Approve the 2019 Annual Review and Dockets.

OLSON: So moved.

BLOM: Second.

QUIRING: Been moved and seconded to approve the 2019 Annual Review
and Dockets. Any further discussion? No? Any further
discussion? All in favor say aye?

EVERYBODY: AYE

QUIRING: Opposed? Hearing and seeing none, the motion passes.
Thank you very much.

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CLARK COUNTY COUNCIL

Eileen Quiring, Chair

Temple Lentz, Councilor

Julie Olson, Councilor

John Blom, Councilor

Gary Medvigy, Councilor

ATTEST:

Rebecca Messinger, Clerk to the Council

Minutes Transcribed by:
Cindy Holley, Court Reporter/Rider & Associates, Inc.

NOTICE OF PUBLIC HEARING CLARK COUNTY COUNCIL

NOTICE IS HEREBY GIVEN that the Clark County Council will conduct a public hearing on **November 5, at 10:00 a.m.**, at the Public Services Center, 1300 Franklin Street, Hearing Room, 6th Floor, Vancouver, Washington to consider the following:

- 1) **CPZ2019-00025 – Complete Streets:** A proposal to amend Clark County Code (Pedestrian/Bicycle Circulation Standards CCC 40.350.010) to create a complete streets program, renumber CCC 40.350.010 to become 40.350.015, and correct a scrivener's error.

Staff Contact: Gary Albrecht, Gary.Albrecht@clark.wa.gov or (564) 397-4318

- 2) **CPZ2019-00016 Arterial Atlas and Appendix F (NE 106 St to NE 112th St):** A proposal to delete the planned NE 16th Ave, NE 107th St, and NE 110th St. from the Arterial Atlas and Hwy 99 Sub Area Plan.

Staff Contact: Matt Hermen, Matt.Hermen@clark.wa.gov or (564) 397-4343

- 3) **CPZ2019-00029 Development Agreement Procedures:** A proposal to amend the Clark County Code to add new Section 40.550.030 to create a consistent process and criteria for review and approval of proposed development agreements.

Staff Contact: Matt Hermen, Matt.Hermen@clark.wa.gov or (564) 397-4343

- 4) **CPZ2019-00028 – Historic Preservation:** A proposal to amend Clark County Code (CCC 40.250.030) to increase the number of commission members from five (5) to (7), allow the City of Vancouver to appoint two of the members, and to amend the appeals process.

Staff Contact: Sharon Lumbantobing, Sharon.Lumbantobing@clark.wa.gov or (564) 397-4909

- 5) **CPZ2019-00033 – Columbia River Gorge National Scenic Area Districts:** A proposal to amend Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H) to correct a scrivener's error.

Staff Contact: Sharon Lumbantobing, Sharon.Lumbantobing@clark.wa.gov or (564) 397-4909

The staff report, related materials, and hearing agenda will be available 15 days prior to the hearing date on the county's web page at <https://www.clark.wa.gov/community-planning/housing-initiative>. Copies of materials are also available at Clark County Community Planning, 1300 Franklin Street, 3rd Floor, Vancouver, Washington. For other formats, contact the Clark County ADA Office at ADA@clark.wa.gov, voice 564-397-2322, Relay 711 or 800-833-6388, or Fax 564-397-6165.

Anyone wishing to attend this hearing should appear at the time and place stated above. Spoken testimony regarding this matter may be given there. Written testimony can be provided by e-mailing the clerk of the council at Rebecca.Messinger@clark.wa.gov or via US Postal Service to the Clark County Councilors, c/o Rebecca Messinger, PO Box 5000, Vancouver, WA 98666-5000. Written testimony may also be submitted for the record during the hearing. Please ensure that testimony is received at least two (2) business days before the hearing if you would like staff to forward it to the County Council before the hearing.

Approved as to Form only:

CLARK COUNTY COUNCIL

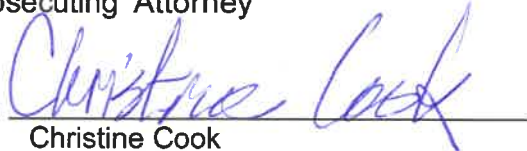
Clerk of the Board

Approved as to Form only:

ANTHONY F. GOLIK

Prosecuting Attorney

By:



Christine Cook

Senior Deputy Prosecuting Attorney

PLEASE PUBLISH:

Monday, October 21, 2019

Please Bill:

Clark County Community Planning
Attn: Sonja Wisser, Program Assistant
P. O. Box 9810
Vancouver, WA 98666-9810

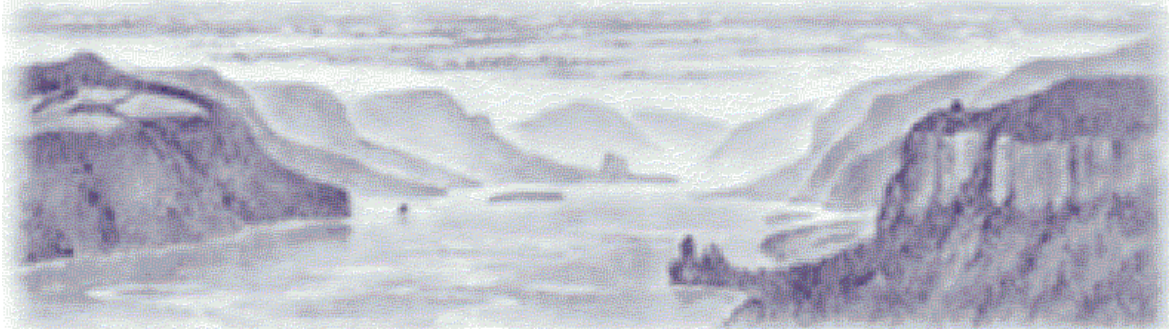
Columbian Account 70914



For other formats, contact
the Clark County ADA Office

Voice 360.397.2322
Fax 360.397.6165

Relay 711 or 800.833.6388
Email ADA@clark.wa.gov



FRIENDS OF THE COLUMBIA GORGE

Via email

November 4, 2019

Clark County Council
C/O Sharon Lumbantobing, Planner II
Clark County Community Planning
PO Box 9810
Vancouver, WA 98666-9810
E-mail: Sharon.Lumbantobing@clark.wa.gov

**Re: CPZ2019-00033 Clark County Unified Development Code (Title 40.240.440)
Amendments to Columbia River Gorge National Scenic Area Districts**

Dear Ms. Lumbantobing:

Friends of the Columbia Gorge has reviewed and submits these comments on the above-referenced proposed ordinance. Please distribute them to the County Council and add me to the notice list for this matter. Friends is a non-profit organization with approximately 6,500 members dedicated to protecting and enhancing the resources of the Columbia River Gorge through the effective implementation of the Columbia River Gorge National Scenic Area Act. Our membership includes hundreds of citizens who reside within the Columbia River Gorge National Scenic Area.

Friends supports extending the Interim Ordinance correcting a clear scrivener's error in Clark County Code ("CCC" or "the code") § 40.240.440.H. The error was temporarily corrected by the County Council on September 25, 2019 in Interim Ordinance No. 2019-09-13 which is currently in effect. The County Council's actions on the current proposal will merely extend the current state of affairs until the Ordinance can be made permanent.

The scrivener's error was introduced in June of 2003 when changes were made to the CCC due to a restructuring of parts of the code. The change from a Type III (quasi-judicial) review process to a Type IV (legislative) review process for "development and production of mineral and geothermal resources" was not indicated as a change to the code through strikeouts and underlining as the other changes were. *See* Exhibit 2 to Interim Ordinance No. 2019-09-13. In

addition, the County sent a letter to the Gorge Commission assuring them that “[t]here was nothing of substance changed or added except where current practice was codified” and that the “public review draft” of the changes “shows (in highlight and ~~strikeout~~) what changes were made.” See Exhibit 3 to Interim Ordinance No. 2019-09-13. Clearly a mistake was made when the review type was changed from Type III to Type IV in 2003.

Furthermore, in the “summary of procedures and processes” in the CCC, applications in the National Scenic Area (referred to as the Columbia River Gorge in the Table) are to be reviewed as Type II or Type III permits and not as Type IV permits. CCC § 40.500.010 (Table 40.500.010-1). This further illustrates that the change was inadvertent. The County should make the temporary correction permanent.

Under CCC § 40.240.050(C), any pre-applications or applications that were submitted after the Interim Ordinance was initially adopted on September 25, 2019, including the pre-application for the Washougal Pit, are vested as to the CCC that was in effect at the time of the submission. There is no legal or factual reason not to move forward with an extension to the existing Interim Ordinance.

Thank you for this opportunity to comment.

Sincerely,



Steven D. McCoy
Staff Attorney

cc: Bill Richardson, Clark County Prosecuting Attorney’s Office
Taylor Hallvik, Clark County Prosecuting Attorney’s Office
Sonja Wisser, Program Assistant, Clark County
Gary Kahn, Reeves, Kahn, Hennessy & Elkins
Peggy Hennessy, Reeves, Kahn, Hennessy & Elkins
Nathan Baker, Senior Staff Attorney, Friends of the Columbia Gorge

NUTTER CORPORATION – SURROUNDING PROPERTIES

Properties Purchased Before 2005 (Activity)			
<i>Owner Last Name</i>	<i>Property Address</i>	<i>Year Purchased</i>	<i>Complainant</i>
Gjendem	6500 SE 356 th Ave.	1999	
Akers	35570 SE Evergreen Hwy	1997	X
Washougal District #112	School 35300 SE Evergreen Hwy	1993 (unclear)	
Rule	25120 SE Wooding Rd.	DT 2005 (unclear)	
Dunn	35935 SE Sunset View Rd.	1999	
Derry	5010 SE 362 nd Ave.	2004	
Gaudren	No situs address; 36205 SE Woodings Rd.	1995	X
Boorman	5007 SE 363 rd Ave	1949 Built (unclear)	
Streeter	36867 SE Wooding Rd.	2004	X
Streeter	36861 SE Wooding Rd.	2003	X
Streeter	No situs address; 36861 SE Wooding Rd.	2004	X
Coy	37203 SE Gibson Rd.	1999	
Williams	37136 SE Gibson Rd.	1973 Built (unclear)	
USA	No situs address	1994	
Ross	35736 SE Evergreen Hwy	2004	
Properties Purchased Between 2005 & 2015 (No Activity)			
Condon	6400 SE 356 th Ave.	2014	
Fry	35560 SE Evergreen Hwy	2015	
McDonald	6006 SE 354 th Ave	2008	
Anderson	35317 SE Sunset View Rd.	2013	
Marti	No situs address; 7409 NE 87 th Cir.	2018	
Kim	35609 Sunset View Rd.	2007	
Kuo	5119 SE 362 nd Ave.	2014	
Yang	No situs address; 4519 NW 122 nd St.	2015	
Warren	37138 SE Gibson Rd	2003	X
Hiller	37112 SE Gibson Rd	2015	
Murrell	37118 SE Gibson Rd.	2013	X

Properties Purchased Between 2005 & 2015 Cont'd (No Activity)

<i>Owner Last Name</i>	<i>Property Address</i>	<i>Year Purchased</i>	<i>Complainant</i>
USA	No situs address	2019	
USA	No situs address (purchased from Warren & Misarti)	2019	X (when owned by Warren & Misarti)
Palmer	36306 SE Evergreen Hwy	2012	
Friends of the Gorge	No situs address; 134386000	2009	X
Friends of the Gorge	No situs address; 134384000	2009	X
Friends of the Gorge	No situs address; 134393000	2009	X
Bottemiller	35908 SE Evergreen Hwy	DT 2000 (unclear)	
McCauley	36109 SE Evergreen Hwy	2014	
Kench	35900 SE Evergreen Hwy	2011	
Black Swan	No situs address	2015	

Properties Purchased After 2015 (Activity)

Talley & Olivas	35604 SE Evergreen Hwy	2019	
Grice	6302 SE 356 th	2018	X
Logan	6403 SE 354 th Ave.	2018	
Townsend	No situs address; 2212 Salmon Falls Road	2016	
Bazurto	No situs address; 7720 NE Hwy 99 #D402	2018	
Nelson	36205 SE Wooding Rd.	2018	
Liu	No situs address; 1260 NW Klickitat Ln	2018	
Kingfisher Agri	5500 SE Hans Nagel Rd.	2018	
USA	No situs address; Fish and Wildlife Service	2018	
Gutierrez	35902 SE Evergreen Hwy	2018	
Williams, D	35806 SE Evergreen Hwy	2016	
Luxe Group	No situs address	2016	
Alexander	6505 SE 356 th Ave	2019	



Staff Report

TO: Clark County Planning Commission
FROM: Oliver Orjiako, Director *MO*
PREPARED BY: Sharon Lumbantobing, Planner II
DATE: October 17, 2019
SUBJECT: **CPZ2019-00033 CLARK COUNTY UNIFIED DEVELOPMENT CODE (TITLE 40.240.440) AMENDMENTS - COLUMBIA RIVER GORGE NATIONAL SCENIC AREA**

PROPOSED ACTION

Amend the Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H) to correct a scrivener's error. CCC 40.240.440(H) currently states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedure should be a Type III (quasi-judicial) process as provided for elsewhere in code.

BACKGROUND

In Ordinance 1996-04-30, Clark County Code (CCC) Section 18.334A.200(g) states that the development and production of mineral and geothermal resources in the Columbia River Gorge National Scenic Area will be reviewed under a Type III process (Exhibit 1).

In reviewing the legislative history, no amendments to section 18.334A.200(g) were found between the adoption of Ordinance 1996-04-30 and its repeal by Ordinance 2003-11-01.

On November 4, 2003, Clark County adopted Ordinance 2003-11-01 that repealed Titles 17 and 18 and replaced them with Title 40. In that ordinance, Chapter 18.334A became Chapter 40.240 - Columbia River Gorge National Scenic Area Districts. In Ord. 2003-11-01, proposed amendments were indicated by using the underline and strikethrough method.

In Ord. 2003-11-01, an amendment was made in CCC 40.240.240(G) - Review Uses with Additional Approval Criteria Large-Scale or Small-Scale Agriculture Designations without the underline/strikethrough to indicate the change. Under CCC 40.240.240(G) as revised, the development and production of mineral and geothermal resources in the Gorge would no longer be reviewed under a Type III process but a Type IV process instead (Exhibit 2).

On November 12, 2003, county staff sent a letter to the Columbia River Gorge Commission with the recently adopted code changes to Chapter 40.240 and stated that "there was nothing of substance changed or added, except where current practice was codified," and provided the



For other formats, contact the Clark County ADA Office
Voice 564.397.2322 / Relay 711 or 800.833.6388
Fax 360.397.6165 / Email ADA@clark.wa.gov

underline/strikethrough code amendments (Exhibit 3). The Columbia River Gorge Commission and the Secretary of Agriculture approved the amended code.

In reviewing the legislative history, the evidence indicates that the initial change from a Type III to a Type IV process in 40.240.240(G), [which was subsequently renumbered to be 40.240.440(H)], was a scrivener's error and not the result of a policy decision, due to the lack of underlined/strikethrough text and inconsistency with other code sections. For example, in the same adopting ordinance, Section 40.240.310(G) - Review Uses with Additional Approval Criteria for Gorge Small Woodland Designations, states that a Type III review procedure shall be required.

The Columbia River Gorge National Scenic Area Districts do not require the Type IV process as can be seen in CCC 40.500.010-1, Summary of Development Approvals by Review Type. CCC 40.500.010-1 shows that only a Type II and Type III process is required for a Columbia River Gorge permit and a Type II-A review process for Conditional Use Permits (Exhibit 4). CCC 40.510.040(A) lists the limited actions that are subject to a Type IV Process (Exhibit 5).

The Columbia River Gorge National Scenic Area Districts 40.240.030(A), Amendments to this Section, states that the scrivener errors may be undertaken administratively by county staff. Due to the length of time that has transpired since this scrivener's error was made, it was determined to be in the public interest to amend this error through the legislative process.

On September 25, 2019, the council adopted an interim ordinance (Ord 2019-09-13) to correct the scrivener's error to 40.240.440(H) (Exhibit 6). Interim ordinances are authorized by RCW 35.63.200 and RCW 36.70A.390 and Clark County Code 40.510.040(H).

RCW 35.63.200 states that a council that adopts an interim zoning control, without holding a public hearing on the interim zoning control, shall hold a public hearing on the interim zoning control within at least sixty days of its adoption, and the interim ordinance may be effective for not longer than six months.

Exhibit 1. Excerpt of Ord 1996-04-30

ORDINANCE NO. 1996-04-30

An ORDINANCE relating to lands in unincorporated Clark County within the Columbia River Gorge National Scenic Area (CRGNSA), amending Clark County Code Chapter 18.334.

WHEREAS, adoption of a local ordinance to allow for local administration of County jurisdictional lands within the CRGNSA is in the public interest, and is required by the Columbia River Gorge National Scenic Area Act; and

WHEREAS, CCC 18.334 was adopted by the County Board of Commissioners on January 30, 1996, and submitted for formal review and approval to the Columbia River Gorge Commission to determine consistency with the Scenic Area Management Plan; and

WHEREAS, the staff of the Columbia River Gorge Commission has reviewed CCC 18.334 and has provided Clark County with a listing of citations in the ordinance which they advise are inconsistencies with the Management Plan; and

WHEREAS, the Board of County Commissioners finds that amendments to CCC 18.334, as indicated in Attachment F adopted with this resolution are necessary to achieve consistency with the Management Plan, and therefore necessary to receive approval from the Columbia River Gorge Commission; and

WHEREAS, the Board further finds that recommended amendments to CCC 18.334 shall have no impact on existing landowners, who are already subject to regulations of the Management Plan as administered by the Columbia River Gorge Commission; and

WHEREAS, the Board finds that in order to achieve consistency with the Management Plan, CCC 18.334 as originally adopted and as maintained through the recommended amendments excludes the Washougal Urban Growth Area (UGA) boundary from the county portion of the Scenic Area. The Board further finds that changes to relocate the Scenic Area jurisdictional boundary require amendment to the federal Scenic Area Act. The Board hereby reaffirms its support for the ongoing efforts of the City of Washougal to seek such changes and corresponding amendments to the Management Plan, such that the Scenic Area no longer includes the originally designated UGA area under dispute; and

WHEREAS, the Board finds further that in the event of such future amendment to the Scenic Area jurisdictional boundary and Management Plan, it is the intent of Clark County to in a timely manner consider changes to the County Comprehensive Plan map to relocate the Urban Growth Area boundary to include the area in dispute, or to designate the area as Urban Reserve; and

WHEREAS, the Board has considered the recommended amendments, include with this resolution, at a duly advertised public hearing held on April 23, 1996; and

ORDINANCE - 1
REQUIRES CODIFICATION

RECEIVED

MAY 06 1996

CLARK COUNTY
Plan & Dev. Review

WHEREAS, the Board finds that upon adoption, amended Chapter 18.334 will be presented for review and approval to the Columbia River Gorge Commission, and that until such review and approval have been completed, the Columbia River Gorge Commission will continue to administer land use regulations in the Clark County portion of the scenic area through the Scenic Area Management Plan; and

BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:

Section 1. New Chapter Attachment F, Amended Clark County Code Chapter 18.334 is hereby adopted, and existing Chapter 18.334 is repealed.

Section 2. Severability. If any section, sentence, clause, or phrase of this ordinance should be held invalid or unconstitutional by a court of competent jurisdiction or the Growth Management Hearings Board, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 3. Effective Date The amended ordinance shall go into effect upon signature of this resolution.

Section 4. Instructions to Clerk. The Clerk to the Board shall:

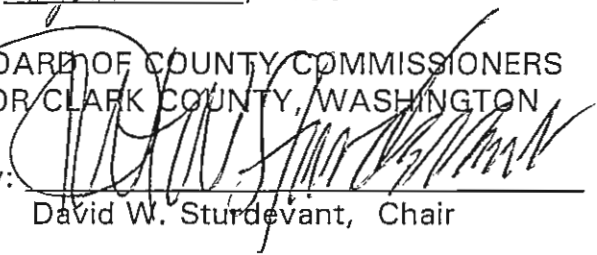
- (1) Transmit a copy of this ordinance as amended to the Washington State Department of Community Trade and Economic Development within ten days of its adoption pursuant to RCW 36.70A.106.
- (2) Record a copy of this ordinance with the Clark County Auditor.
- (3) Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 37.70A.290.

ADOPTED this 30 day of April, 1996.

Attest:

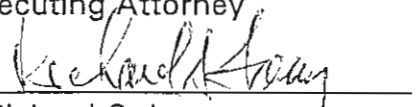

Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

By: 
David W. Sturdevant, Chair

Approved as to Form Only
ARTHUR D. CURTIS
Prosecuting Attorney

By: _____
Mel Gordon, Commissioner

By: 
Richard S. Lowry
Deputy Prosecuting Attorney

By: _____
John C. Magnano, Commissioner

ORDINANCE - 2
REQUIRES CODIFICATION

(NOTE: Previously adopted changes to 350-90, the ordinance used by the Columbia River Gorge Commission, are indicated by underline and strikeout. Changes presently recommended by staff to adopted CCC 18.334 are indicated by double underline and redline.)

Chapter 18.334

CLARK COUNTY IMPLEMENTING LAND USE REGULATIONS FOR THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA

18.334.010 Purpose and Authority

The purposes of the Clark County Implementing Regulations for the Columbia River Gorge National Scenic Area (CRGNSA) are to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge, and to protect and support the economy of the Columbia River Gorge by allowing future economic development in a manner that enhances the scenic, cultural, recreational, and natural resources of the Gorge. These regulations contained within the Clark County Implementing Land Use Regulations for the Columbia River Gorge are intended to be consistent with and implement the Management Plan for the CRGNSA as adopted and amended by the Columbia River Gorge Commission. The full Chapter 18.334 will be incorporated into Title 18 of Clark County Code, and will be available at the Clark County Department of Community Development.

18.334.015 Adoption

The guidelines, standards, and regulations set forth in the Clark County Implementing Land Use Regulations for the Columbia River Gorge are hereby adopted and incorporated herein by this reference pursuant to the authority given to the County under the Columbia River Gorge National Scenic Area Act, and Chapter 43.97 RCW; the Management Plan adopted by the Columbia River Gorge Commission on October 15, 1991, as may be amended, and shall be considered part of this Chapter as is set forth in full.

Unless otherwise specified in the Clark County Implementing Land Use Regulations for the Columbia River Gorge, applicable Clark County land division, zoning, and other ordinances shall apply to all CRGNSA lands within unincorporated Clark County. If conflicts arise between Chapter 18.334 and other County ordinances, Chapter 18.334 shall prevail as to lands within the National Scenic Area.

18.334.020 Area Affected

Chapter 18.334 shall apply to all lands under the jurisdiction of in Clark County which lie within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act, as may be amended.

Chapter 18.334
 Clark County Implementing Regulations for the Columbia River
 Gorge National Scenic Area (CRGNSA)

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- (g) 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.
- (h) Aquaculture.
- (i) Exploration, development, and production of sand, gravel, and crushed rock, as defined by Section 18.334.040, for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the Special Management Area, subject to CCC 18.329, Section 18.334.520, and all other applicable Federal, State and County standards.
- (j) 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.
- (k) Temporary asphalt/batch plant operations related to public road projects, not to exceed six months.
- (l) Signs as specified in Section 18.334.160(2).
- (m) Community facilities and non-profit facilities related to agricultural resource management.
- (n) Expansion of existing non-profit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.
- (o) Recreation, interpretive and educational developments and uses consistent with Section 18.334.620.
- (p) Road and railroad construction and reconstruction.
- (q) 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.
- (r) Structures and vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.

18.334.200. Review Uses with Additional Approval Criteria -- Large-Scale or Small-Scale Agriculture Designations.

(l) The following uses may be allowed on lands zoned Gorge Large-Scale or Small-Scale Agriculture, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (Section 18.334.520 through 620, and 220).

- (a) 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 or forest lands, and
 - (B) The size is the minimum necessary to provide the service.

- (b) Home occupations ~~or cottage industries~~ in existing residential or accessory structures, subject to Section 18.334.150(45).
- (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 on-site viticulture, upon a showing that processing and sales of wine is from grapes grown on the subject farm or in the local region.
- (e) 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.
- (f) Exploration of mineral and geothermal resources subject to Section 18.334.520 of this ordinance.
- (fg) Development and production of mineral and geothermal resources, as defined by Section 18.334.040, subject to Section 18.334.520 of this ordinance, and all other applicable Federal, State and County standards, including those of CCC 18.329, Surface Mining Overlay Zoning District. Type III review procedures specified under CCC 18.600.080 shall be required.
- (gh) 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 and on an infrequent and occasional basis, by invited guests, and by 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.
- (hi) Aquaculture.
- (ij) Recreation development, subject to Section 18.334.610 and the Recreation Development Plan (Management Plan, Part III, Chapter 1).
- (jk) Boarding of horses.
- (kl) Temporary portable asphalt/batch plants related to public road projects, not to exceed six months.
- (lm) Bed and breakfast inns in single-family dwellings, subject to Section 18.334.150(56) 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.

~~(C) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.~~

~~(m) Non-profit, environmental learning or research facilities.~~

~~(n) Expansion of existing schools or places of worship.~~

~~(2) The following uses may be allowed on lands designated Agriculture Special subject to compliance with the appropriate scenic, natural, cultural, and recreation resource guidelines (s 220 and 520 through 620):~~

~~(a) 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.~~

~~(b) New fences, livestock watering facilities, and corrals.~~

~~(c) Soil, water, and vegetation conservation uses.~~

~~(d) Replacement or minor expansion of existing and serviceable structures within a dedicated site. Expansion shall be limited to the dedicated site.~~

~~(e) Fish and wildlife management uses, educational activities, and scientific research.~~

~~(f) 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.~~

~~(g) Single family dwellings that are not in conjunction with agricultural use, if a landowner demonstrates that (1) the dwelling cannot be constructed on a portion of the parcel that is located outside of the natural area, and (2) the dwelling is sited and designed in a manner that minimizes adverse effects to the natural area. All dwellings shall meet the criteria in Section 18.334.190(1)(n). The buffer guidelines for non agricultural dwellings may be waived if they would prevent the optimum siting of a dwelling.~~

~~(h) Recreation uses, subject to the provisions for recreation intensity classes in Section 18.334.620.~~

18.334.210. Approval Criteria for Life Estates -- Gorge Large-Scale or Small-Scale Agriculture Zones.

A landowner who sells or otherwise transfers real property on lands zoned Gorge 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 Section 18.334.040. A second dwelling in conjunction with agricultural use may be allowed, subject to compliance with guidelines in Section 18.334.520 through 620 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 guidelines from Section 18.334.190(1)(e).

(2) Upon termination of the life estate, the original or second dwelling shall be removed.

ORDINANCE NO. 2003-11-01

AN ORDINANCE relating to land use: regulating the development of lands within Clark County.

WHEREAS, Clark County has not undertaken a systematic review of its development regulations since 1980; and

WHEREAS, Clark County land development regulations have grown both in number and complexity; and,

WHEREAS, Clark County land development regulations are located in five different titles of the Clark County Code (CCC); and

WHEREAS, the Board expressed a desire to restructure the CCC as it relates to land development to address inconsistencies in the code, and to make the code easier to use; and

WHEREAS, County staff have prepared a draft of proposed CCC Title 40 Unified Development Code; and

WHEREAS, the Planning Commission following a duly advertised public hearing has recommended adoption of proposed Title 40; and

WHEREAS, following its own duly advertised public hearing the board concludes that adoption of Title 40 contained in this ordinance is in the public interest; now, therefore,

BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:

Section 1. New. A new Title of the Clark County Code, Title 40 Unified Development Code, as shown in Exhibit "A" is hereby adopted.

Section 2. Repealer. The following chapters in CCC Title 12 Streets and Roads are hereby repealed:

Chapter 12.05A Transportation Standards
Chapter 12.06 Neighborhood Parking Plan
Chapter 12.41 Transportation Concurrency Management System

Section 3. Repealer. The following chapters in CCC Title 13 Public Works are hereby repealed:

Chapter 13.04 Flood Control District
Chapter 13.08A Sewerage Regulations
Chapter 13.29 Stormwater and Erosion Control
Chapter 13.36 Wetland Protection Ordinance
Chapter 13.40A Water Supply
Chapter 13.51 Habitat Conservation Ordinance
Chapter 13.55 Forest Practices
Chapter 13.60 Geologic Hazard Areas Regulation
Chapter 13.70 Critical Aquifer Recharge Areas

Section 4. Repealer. The following chapters in CCC Title 17 Land Division Ordinance are hereby repealed:

Chapter 17.101 Purpose
Chapter 17.102 Definitions
Chapter 17.103 Applicability
Chapter 17.105 Legal Lot Determinations
Chapter 17.201 Short Plat and Large Lot Short Plat Provisions
Chapter 17.301 Subdivision and Large Lot Subdivision Provisions
Chapter 17.401 Reservations—Park Sites
Chapter 17.501 Monumentation
Chapter 17.502 Survey Standards
Chapter 17.503 Drafting Standards
Chapter 17.601 Subdivisions of Properties Zoned Commercial and Industrial
Chapter 17.801 Recording Land Surveys

Section 5. Repealer. The following chapters in CCC Title 18 Zoning are hereby repealed:

Chapter 18.65 Impact Fees
Chapter 18.100 Preliminary
Chapter 18.104 Definitions
Chapter 18.200 Establishment of Zone Districts and Maps
Chapter 18.300 Agricultural-Wildlife District (AG-WL)
Chapter 18.302 Forest and Agriculture Districts (FR-80, FR-40, AG-20, AF-20)
Chapter 18.303A Rural District (R)
Chapter 18.303B Rural Cluster Development
Chapter 18.304 Rural Center Residential District (RC-1, RC-2.5)

Chapter 18.305 Urban Reserve Districts (UR-10, UR-20)
Chapter 18.306 Urban Holding Districts (UH-5, UH-10, UH-20)
Chapter 18.307 Single Family Residential Districts (R1-7.5, R1-10, R1-20)
Chapter 18.308 Single Family Residential Districts (R1-6, R1-5)
Chapter 18.311 Residential Districts (R-12, R-18, R-22, R-30, R-43)
Chapter 18.312 Office Residential (OR-15, OR-18, OR-22, OR-30, OR-43)
Chapter 18.313 Commercial Districts (CR1, CR2, C2, C3, CL, CH)
Chapter 18.314A Office Campus (OC)
Chapter 18.315 Business Park (BP)
Chapter 18.317A Industrial Districts (MH, ML)
Chapter 18.318 Airport District (A)
Chapter 18.319 University District (U)
Chapter 18.320 Mixed Use (MX)
Chapter 18.325 Environmental Combining District (E)
Chapter 18.326 Airport Environs Overlay Districts (AE-1, AE-2)
Chapter 18.326A Existing Resort Overlay District
Chapter 18.327 Floodplain Combining District (FP)
Chapter 18.328A Historic Preservation
Chapter 18.329 Surface Mining Combining District (S)
Chapter 18.330 Shoreline Combining District (SL)
Chapter 18.402A Site Plan Review
Chapter 18.403 Uses Permitted Subject to Review and Approval by the Planning Director
Chapter 18.404 Conditional Use Permits
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Chapter 18.408 Special Setback Lines
Chapter 18.409 Signs
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Chapter 18.412A Nonconforming Uses, Structures and Lots
Chapter 18.413 Temporary Dwelling Permits
Chapter 18.414 Master Plan Ordinance
Chapter 18.415 Wireless Communications Facilities
Chapter 18.501 Variances
Chapter 18.503 Changes to Districts, Amendments and Alterations
Chapter 18.505 Appeals
Chapter 18.506 Zoning Certificates
Chapter 18.507 Revocation of Permits or Variances
Chapter 18.508 Conditions to be Met Prior to Issuance of a Building Permit
Chapter 18.509 Enforcement and Penalties
Chapter 18.510 Severability and Repealer
Chapter 18.600 Procedures
Chapter 18.610 Plan Amendment Procedural Ordinance
Chapter 18.620 Amendment Dockets

Section 6. Repealer. Chapter 18.334A, Clark County Implementing Land Use Regulations for the Columbia River Gorge National Scenic Area is hereby repealed.

Section 7. Repealer. The following chapters in CCC Title 20 Clark County Environmental Policy Ordinance are hereby repealed:

- Chapter 20.01 Authority and Contents
- Chapter 20.02 General Requirements
- Chapter 20.06 Threshold Determination
- Chapter 20.10 Environmental Impact Statements (EIS)
- Chapter 20.30 Notification and Commenting
- Chapter 20.40 Use of Existing Environmental Documents
- Chapter 20.50 SEPA and County Decisions
- Chapter 20.60 Definitions
- Chapter 20.70 Categorical Exemption
- Chapter 20.80 Agency Compliance
- Chapter 20.90 Forms

Section 8. Effective date. This ordinance shall go into effect at midnight on January 1, 2004, except that the provisions hereof related to the Columbia River Gorge National Scenic Area (Chapter 40.240 CCC adopted by Section 1 and the repeal of Chapter 18.334A by Section 6) shall go into effect at midnight on January 1, 2004 or upon the date these enactments are approved by both the Columbia River Gorge Commission and the U.S. Forest Service, National Scenic Area Office, whichever occurs later..

Section 9. Instructions to Clerk. The Clerk of the board shall:

- (1) Transmit a copy of this ordinance to the state within ten days of its adoption pursuant to RCW 36.70A.106;
- (2) Record a copy of this ordinance with the Clark County Auditor; and
- (3) Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290.

ADOPTED this 4 day of November, 2003

Attest:



Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

By 
Craig Pridemore, Chair

Approved as to Form Only
ARTHUR D. CURTIS
Prosecuting Attorney

By _____
Judie Stanton, Commissioner

By 
Richard S. Lowry
Chief Civil Deputy Prosecuting Attorney

By _____
Betty Sue Morris, Commissioner



CLARK COUNTY
CODE RESTRUCTURE PROJECT

TITLE 40:
UNIFIED DEVELOPMENT CODE

PUBLIC REVIEW DRAFT
JUNE 23, 2003

PREPARED BY



- practices from conflicting uses.
6. Bed and breakfast inns subject to Section ~~40.240.190(F), 18.334.150(56)~~. The use or development shall be compatible with agricultural use. Buffer zones should be considered to agricultural practices from conflicting uses.
 7. Fruit stands and produce stands upon a showing that sales will be limited to products raised on the property and other agriculture properties in the local region
 8. Aquaculture.
 9. Exploration, development, and production of sand, gravel, and crushed as defined by Section ~~40.240.060, 18.334.040~~, for the construction, maintenance, or reconstruct roads used to manage or harvest commercial forest products on lands with Special Management Area, subject to ~~CCC 18.329~~, Sections ~~40.250.020 and 40.240.490, 18.334.520~~, and all applicable Federal, State and County standards.
 10. 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.
 11. Temporary asphalt/batch plant operations related to public road projects, not to exceed six months.
 12. Signs as specified in Section ~~40.240.200(B), 18.334.160(2)~~.
 13. Community facilities and non-profit facilities related to agricultural resource management.
 14. Expansion of existing non-profit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.
 15. Recreation, interpretive and educational developments and uses consistent with Section ~~40.240.590, 18.334.620~~.
 16. Road and railroad construction and reconstruction.
 17. 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.
 18. Structures and vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.
 19. 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 the replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use proposals shall be submitted within 12 months following an emergency/disaster event. ***

40.240.240 REVIEW USES WITH ADDITIONAL APPROVAL CRITERIA LARGE-SCALE OR SMALL-SCALE AGRICULTURE DESIGNATIONS

18.334.200.

The following uses may be allowed on lands zoned Gorge Large-Scale or Small-Scale Agriculture, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (Sections ~~40.240.490 through 40.240.590, 18.334.520 through 620, and 220~~).

- 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 in existing residential or accessory structures, subject to Section ~~40.240.190(E), 18.334.150(45)~~.
- 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 on-site viticulture, upon a showing that processing and sales of wine is from grapes grown on the subject farm or in the local region.
- E. 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.
- F. Exploration of mineral and geothermal resources subject to Section ~~40.240.490, 18.334.520 of this ordinance~~.
- G. Development and production of mineral and geothermal resources, as defined by Section 18.334.040,

Exhibit 3



DEPARTMENT OF COMMUNITY DEVELOPMENT

Long Range Planning

November 12, 2003

Ms. Martha Bennett
Columbia Gorge Commission
#1 Town and Country Square
White Salmon, WA 98672

Dear Ms. Bennett:

Clark County recently completed a project to restructure its development regulations. The result of the project was the creation of a Unified Development Code, to be codified as Clark County Code Title 40. The major effort was to re-format the current development code to eliminate inconsistencies and gaps, and to standardize definitions and terminology. There was nothing of substance changed or added except where current practice was codified. The Board of County Commissioners passed Ordinance 2003-11-01 (enclosed) on November 4th adopting Title 40, with an effective date of January 1, 2004.

We do not believe there have been any changes to the standards in the Gorge ordinance, but as a result of conversations with Brian Litt of your staff, we are submitting Chapter 40.240 Columbia River Gorge National Scenic Area Districts for your review. To this end we enclose a CD containing current Title 40 files, and a hard copy of the public review draft of Chapter 40.240 that shows (in highlight and ~~strikeout~~) what changes were made. As you'll note in Section 8 of Ordinance 2003-11-01, we acknowledge that Chapter 40.240 takes effect only after approval of the Gorge Commission and the Secretary of Agriculture.

Please contact Gordy Euler at 360-397-2375 ext. 4968 if you have any questions.

Sincerely,

NAME
CASE / SUBJECT
DATE Page 2

Patrick Lee
Long Range Planning Manager

Enclosures

H:Long Range Planning/Projects/CCC 2001-03 Code Rewrite/Public Review Draft

SUBTITLE 40.5

PROCEDURES

40.500 OVERVIEW OF PROCEDURES

Table 40.500.010-1. Summary of Development Approvals by Review Type						
	Type I	Type II	Type II-A	Type III	Type IV	Code Reference
Interpretations						
Code Interpretation – Written	X					40.500.010(A)(2)
Classification of an Application	X					40.500.010(D)(3)(a)
Similar Use Determination	X	X				40.500.010(A)(3)
Pre-Application Waiver	X					40.510.020(A)(2) 40.510.030(A)(2)
Counter Complete	X					40.510.010(A) 40.510.020(B) 40.510.030(B)
Fully Complete	X					40.510.010(B) 40.510.020(C) 40.510.030(C)
Submittal Requirements Waiver	X					40.510.010(B) 40.510.020(C) 40.510.030(C)
Permits and Reviews						
Accessory Dwelling Units	X					40.260.020
Legal Lot Determination	X					40.520.010
Review and Approval (R/A)	X	X				40.520.020
Conditional Use Permit (CUP)			X			40.520.030
Site Plan Review	X	X		X		40.520.040
Final Site Plan Review	X					40.520.040(F)
Sign Permit	X					40.520.050
Post-Decision Review	X	X		X		40.520.060
Master Plan			X	X		40.520.070
Planned Unit Development (PUD)			X			40.520.080
Nonconforming Uses						
Nonconforming Use Determination	X					40.530
Expansion of a Nonconforming Use		X		X		40.530
Boundary Line Adjustments and Land Divisions						
Boundary Line Adjustment	X					40.540.010
Short Plat		X				40.540.030

Table 40.500.010-1. Summary of Development Approvals by Review Type						
	Type I	Type II	Type II-A	Type III	Type IV	Code Reference
Subdivision				X		40.540.040
Final Plat	X					40.540.070
Lot Reconfiguration		X				40.540.120
Plat Alteration		X		X		40.540.120
Plat Vacation				X		40.540.120
Modifications and Variances						
Road Modification	X	X		X		40.550.010
Variance	X	X		X		40.550.020
Sewer Waiver	X					40.370.010
Plan and Code Amendments						
Annual Reviews					X	40.560.010
Zone Change within CP designation				X		40.560.020
Zone Change Text Amendments					X	
Special Area-Related Reviews						
Columbia River Gorge Permit		X		X		40.240.050
Shoreline (special review process)				X		40.460
Historic Preservation (special review process)		X				40.250.030
Open Space					X	Chapter 3.08 40.560.010(P)(3)
Critical Areas						
Critical Aquifer Recharge Areas (CARAs) Permit	X	X		X		40.410
Floodplain Review	X	X		X		40.420
Geo-Hazard	X	X		X		40.430
Habitat Permit		X				40.440
Preliminary Wetland Permit		X		X		40.450.040(H)
Wetland Variance				X		40.450.040
Final Wetland Permit	X					40.450.040(I)
Emergency Wetland Permit	X					40.450.040(L)

(Amended: Ord. 2004-12-12; Ord. 2005-04-12; Ord. 2007-06-05; Ord. 2009-03-02; Ord. 2009-06-15; Ord. 2010-08-06; Ord. 2019-05-07)

Exhibit 5

40.510.040 Type IV Process – Legislative Decisions

A. Decision.

1. The provisions of this section apply to all Type IV legislative decisions, which include and are limited to adoption or amendment, pursuant to the Growth Management Act (GMA), Chapter 36.70A RCW, and Chapter 40.560, of the following:
 - a. Comprehensive plan map and text, and zoning change consistent with the map change;
 - b. Development regulations;
 - c. Arterial atlas; and
 - d. Shoreline Master Program (SMP) pursuant to the Shoreline Management Act, Chapter 90.58 RCW, and Chapter 40.460.
2. This section is intended to supplement, and not to limit, county authority and procedures for adopting legislation.
3. When revisions to the comprehensive plan are made through the periodic update pursuant to RCW 36.70A.130(5), the procedures in this chapter are to be used as a guide, with the exception that public noticing per Section 40.510.040(E)(1)(b)(4) is not required.

1 INTERIM ORDINANCE NO. 2019-09-13

2 **An interim ordinance amending a portion of Clark County Code related to the**
3 **Columbia River Gorge National Scenic Area Districts to correct a scrivener's error**
4 **in CCC 40.240.440(H) regarding the review procedures for development and**
5 **production of mineral and geothermal resources.**

6 WHEREAS, Clark County adopted Ordinance No 1996-04-30, which contains a
7 reference to Title 18 subsection 18.334.200, Review Uses with Additional Approval Criteria –
8 Large-Scale or Small-Scale Agricultural Designations; and

9 WHEREAS, in Ord. 1996-04-30, Clark County Code (CCC) Section 18.334.200(G)
10 states that "Development and production of mineral and geothermal resources, as defined by
11 Section 18.334.040, subject to Section 18.334.520 of this ordinance, and all other applicable
12 federal, state and county standards, including those of Chapter 18.329 - Surface Mining Overlay
13 Zoning District. Type III review procedures specified under CCC 18.600.080 shall be required"
14 (Exhibit 1. Excerpt of Ord 1996-04-30); and

15 WHEREAS, Clark County adopted Ordinance 2003-11-01 which repealed Title 18 and
16 replaced it with Title 40, and Chapter 18.334 Columbia River Gorge National Scenic Area
17 became Chapter 40.240 Columbia River Gorge National Scenic Area; and

18 WHEREAS, the proposed code changes in Ord. 2003-11-01 are generally indicated with
19 underline and strikethrough, and that ordinance changed the Type III process to become a Type
20 IV process in CCC 40.240.240(G) - Review Uses with Additional Approval Criteria, Large-Scale
21 or Small-Scale Agriculture Designation, but no underline/strikethrough was used to indicate this
22 change (Exhibit 2. Excerpt of Ord. 2003-11-01); and

23 WHEREAS, on November 12, 2003, county staff sent a letter to the Columbia Gorge
24 Commission with proposed changes to Chapter 40.240, stating that "there was nothing of
25 substance changed or added, except where current practice was codified" (Exhibit 3); and

26 WHEREAS, CCC 40.240.520, which applies to development and production of mineral
27 and geothermal resources in forest land, reflects the same Type III process as was in place in
28 Chapter 18.334; and

29 WHEREAS, Clark County staff believes this change from a Type III process to a Type IV
30 process in CCC 40.240.440(G), which is applicable to agricultural land, to have been a
31 scrivener's error; and

32 WHEREAS, Clark County adopted Ordinance 2006-05-04 which repealed and replaced
33 Ord. 2003-11-01 and CCC 40.240.240(G) was renumbered to be CCC 40.240.440(H) - Review
34 Uses with Additional Approval Criteria, Large-Scale or Small-Scale Agriculture Designation; and

35 WHEREAS, Council finds and concludes that this interim ordinance would further the
36 public health, safety, and welfare, and is necessary for the immediate support of the County
37 government and its existing public institutions; now, therefore,

1 **BE IT HEREBY ORDERED, RESOLVED, AND DECREED BY THE CLARK COUNTY**
2 **COUNCIL, CLARK COUNTY, STATE OF WASHINGTON, AS FOLLOWS:**

3 **Section 1. Findings.** RCW 35.63.200 and RCW 36.70A.390 authorize adoption of interim
4 zoning measures with certain limitations. In compliance with the requirements of these statutes,
5 the Clark County Council adopts as findings the pronouncements contained in the above recital
6 provisions.

7 **Section 2. Amendatory.** Sec. 1 (Attachment F) of 1996-04-30, and amended as Sec. 1 (Ex. A)
8 of Ord. 2003-11-01, and codified as CCC 40.240.440, and most recently amended as Ord.
9 2018-03-04, is hereby amended as follows:

10 **40.240 Columbia River Gorge National Scenic Area Districts**

11 ***

12 Section 40.240.440 - Review Uses with Additional Approval Criteria, Large-Scale or Small-Scale
13 Agricultural Designations

14 The following uses may be allowed on lands zoned Gorge Large-Scale or Small-Scale
15 Agriculture, subject to compliance with Sections 40.240.800 through 40.240.900, consistent with
16 Section 40.240.460:

- 17 A. Utility facilities and railroads necessary for public service upon a showing that:
- 18 1. There is no practicable alternative location with less adverse effect on agricultural or
19 forest lands; and
- 20 2. The size is the minimum necessary to provide the service.
- 21 B. Home occupations in existing residential or accessory structures, subject to
22 Section 40.240.240.
- 23 C. Fruit and produce stands, upon a showing that sales will be limited to agricultural products
24 raised on the subject farm and other farms in the local region.
- 25 D. Wineries, in conjunction with on-site viticulture, upon a showing that processing and sales of
26 wine is from grapes grown on the subject farm or in the local region.
- 27 E. Wine tasting rooms, in conjunction with an on-site winery.
- 28 F. Agricultural product processing and packaging, upon a showing that the processing will be
29 limited to products grown primarily on the subject farm and sized to the subject operation.
- 30 G. Exploration of mineral and geothermal resources subject to Section 40.240.800.
- 31 H. Development and production of mineral and geothermal resources, as defined by
32 Section 40.240.040, and pursuant to Section 40.240.800 and all other applicable federal,
33 state and county standards, including those of Section 40.250.022. Type ~~IV~~ III review
34 procedures specified under Section ~~40.510.040~~ 40.510.030 shall be required.

1 ***

2 **Section 3. Severability.** If any section, sentence, clause, or phrase of this ordinance is held
3 invalid or unconstitutional by a court of competent jurisdiction or the Growth Management
4 Hearings Board, such invalidity or unconstitutionality shall not affect the validity or
5 unconstitutionality of any other section, sentence, clause, or phrase of this ordinance.

6 **Section 4. Effective Date.** The interim ordinance will take effect immediately upon adoption by
7 the affirmative votes of at least 4 (four) members of the County Council, or in 10 (ten) days if
8 adopted by the affirmative votes of only 3 (three) Councilors, and will expire upon adoption of a
9 new ordinance following consideration of this matter in a public hearing by the County Council,
10 or 60 days from adoption, whichever is earlier.

11 **Section 5. Instructions to the Clerk.**

12 The Clerk of the County Council shall:

- 13 1. Record a copy of this ordinance with the Clark County Auditor.
 - 14 2. Transmit a copy of this ordinance to the Washington State Department of Commerce
15 within ten days of its adoption pursuant to RCW 36.70A.106.
 - 16 3. Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW
17 36.70A.290, and Clark County Code 1.02.140, and transmit a copy to Community
18 Planning.
 - 19 4. Transmit a copy of the adopted ordinance to the Community Development Department
20 Director and Permit Manager.
 - 21 5. This ordinance is temporary in nature and is not to be codified.
- 22

23 **Section 6. Roll Call Vote.** The following persons voted in favor of the above ordinance
24 [amendments]:

25 Temple Lertz, Julie Olson, Gary Medvigy, and
26 Eileen Quiring.

27


28 ADOPTED this 25th of Sep. 2019.

29 CLARK COUNTY COUNCIL

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Attest:



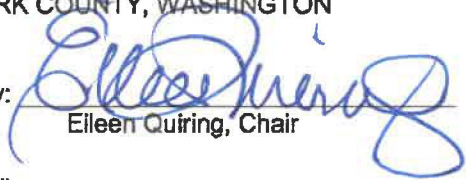
Clerk to the Council

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

By: 

Taylor Hallvik
Deputy Prosecuting Attorney

FOR CLARK COUNTY, WASHINGTON

By: 

Eileen Quiring, Chair

By: _____
Temple Lentz, Councilor

By: _____
Julie Olson, Councilor

By: _____
John Blom, Councilor

By: _____
Gary Medvigy, Councilor





Clark County Planning Commission

Karl Johnson, Chair
Ron Barca, Vice Chair
Rick Torres
Steve Morasch
Bryan Halbert
Matt Swindell

CLARK COUNTY PLANNING COMMISSION THURSDAY, OCTOBER 17, 2019

5:30 P.M. – WORK SESSION
Shoreline Master Plan Update

6:30 P.M. - PUBLIC HEARING

**CC HEARING ROOM, 6TH FLOOR
PUBLIC SERVICES BUILDING
1300 FRANKLIN STREET
VANCOUVER, WA**

AGENDA

I. CALL TO ORDER

II. ROLL CALL & INTRODUCTION OF GUESTS

III. GENERAL & NEW BUSINESS

- A. Approval of Agenda for October 17, 2019
- C. Communications from the Public

IV. PUBLIC HEARING ITEMS:

- A. Clark County completed a review and update of its comprehensive plan according to the Growth Management Act (GMA) on June 28, 2016. The plan was appealed to the Growth Management Hearings Board (GMHB) and a hearing on the issues was held February 8, 2017. The GMHB ruled on March 23, 2017 that certain portions of the 2016 plan update, including the establishment of a Rural Industrial Land Bank (RILB) had not complied with certain requirements of GMA. The county appealed the RILB decision. On Aug. 20, 2019, the Washington State Court of Appeals filed its decision on review of the GMHB decision. The court decision upheld the GMHB ruling that the portion of the 2016 Plan related to the RILB had failed to comply with the GMA. The Planning Commission will consider amendments to the **Comprehensive Growth Management Plan 2015-2035, zoning maps and Title 40** as a response to the GMHB final decision and order regarding the **Rural Industrial Land Bank (RILB)**, CPZ2019-00032_GMA Compliance RILB.

**Staff Contact: Gary Albrecht at Gary.Albrecht@clark.wa.gov or (564) 397- 4318
and Oliver Orjiako at Oliver.Orjiako@clark.wa.gov or (564) 397- 4112**

B. 2019 Annual Reviews amending the 20-Year Growth Management Comprehensive Plan and Zone Map:

CPZ2019-00008 Whipple Creek – A proposal to amend the comprehensive plan and zoning designation from Rural 10 (R-10) with Rural (R-10) zoning to Rural 5 (R-5) comprehensive plan designation with Rural (R-5) zoning on one parcel as follows: 180317002.

Staff Contact: Sharon.Lumbantobing@clark.wa.gov or (564) 397-4909

C. Clark County Unified Development Code (Title 40.250.030) Amendments (CPZ2019-00033 Columbia River Gorge National Scenic Area Code update) –

The proposal is to amend the Clark County Code pertaining to the Columbia River Gorge National Scenic Area to correct a scrivener’s error to CCC 40.240.H, which states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedures should be a Type III (quasi-judicial) process as they are elsewhere in code.

V. NEW BUSINESS

VII. COMMENTS FROM MEMBERS OF THE PLANNING COMMISSION

VIII. ADJOURNMENT

STAFF REPORT AND RECOMMENDATIONS:

Staff recommendations to the Planning Commission will be available 14 days prior to the hearing date listed above. Staff reports and other information can be accessed on the following web page at: <https://www.clark.wa.gov/community-planning/planning-commission-hearings-and-meeting-notes>

Or, contact Sonja Wiser, Program Assistant at (360) 397-2375, ext. 4558, or e-mail Sonja.wiser@clark.wa.gov

SUBMISSION OF WRITTEN TESTIMONY:

If you bring written testimony to read at the hearing, the Planning Commission would request submission of at least ten copies for the record (seven copies for Planning Commission and three copies for staff).

E-MAIL TESTIMONY:

PLEASE NOTE: All e-mails need to be received no later than 48 hours prior to the hearing and need to include full name, address, city, zip code, and phone number to be included as parties of record. Testimony can be e-mailed to the above-listed planners or to Sonja.wiser@clark.wa.gov

ACCOMMODATION OF PHYSICAL IMPAIRMENTS:

*The Public Service Center is wheelchair accessible. If you need auxiliary aids or services in order to attend, contact the Clark County ADA Office. **Relay** (800) 833-6384 or 711; **E-mail** ADA@clark.wa.gov.*

HEARING COVERAGE:

Coverage of this evening's hearing may be cable cast live on Clark/Vancouver television channel 23 or 21, on cable television systems. For replay dates and times, please check your local television guide or www.cvtv.org.

Web Page at: <https://www.clark.wa.gov/community-planning/planning-commission-hearings-and-meeting-notes>



Clark County Planning Commission

Karl Johnson, Chair
Ron Barca, Vice Chair
Rick Torres
Steve Morasch
Matt Swindell
Bryan Halbert

CLARK COUNTY PLANNING COMMISSION MINUTES OF PUBLIC HEARING THURSDAY, OCTOBER 17, 2019

Public Service Center
Council Hearing Room
100 Franklin Street, 6th Floor
Vancouver, WA
6:30 p.m.

CALL TO ORDER & ROLL CALL

JOHNSON: Okay. Good evening. I'd like to call this meeting to order for Thursday, October 17th, 2019. My name is Karl Johnson, I'm the Planning Commission Chair. Can we have a roll call, please.

ROLL CALL

SWINDELL: HERE
MORASCH: HERE
HALBERT: HERE
TORRES: HERE
BARCA: HERE
JOHNSON: HERE

GENERAL & NEW BUSINESS

A. Approval of Agenda for October 17, 2019

JOHNSON: At this time I would like to ask if any of the Planning Commissioners would like to disclose any conflicts of interest? Seeing none, we will move on and I am looking for a motion to approve the agenda for October 17th, 2019.

BARCA: **Motion** to approve the agenda as written.

SWINDELL: **Second** it.

JOHNSON: All those in favor?

EVERYBODY: AYE

JOHNSON: All those opposed? Before we begin the next part of the hearing, I have a little thing to read here.

Planning Commission Opening Statement:

The procedures for tonight will be as follows: We will begin the hearing with a staff report. The Planning Commission members will ask staff questions if they have any at this point. I will then open the hearing for public testimony.

Members of the audience who wish to testify on a hearing item need to sign in on the sign-in sheets at the back of the room. Members of the public wishing to give oral testimony are to come to the front of the room at the table facing the Planning Commission.

The Chair has the discretion to make the following statement if reasonable and appropriate under the circumstances, testimony on this matter is limited to X amount of minutes per person. Your testimony should be related to the applicable standards for this hearing item. The relevant standards are set out in the staff report, copies of which are available at the table in the back of the room.

If you have any exhibits you want us to consider such as a copy of your testimony, photographs, petitions or other documents or physical evidence, please hand it into staff. This information will be included in the record for the hearing item, we will consider it as part of our deliberations.

When you testify you must testify at the front table in the front of the microphone so the court reporter can hear your testimony. State your name and address for the record and spell your name for the court reporter. Be relevant and concise and don't repeat yourself or others testifying.

I will then close the public testimony portion of the hearing. The Planning Commission will deliberate and ask staff to answer questions or make rebuttals. The Planning Commission will then take a vote on their decisions. It is important to understand that our recommendations will be forwarded to the Board of County Councilors who have the final decision-making authority.

B. Communications from the Public

JOHNSON: With this said, I would first like to ask, are there any communications from the public, excuse me, from the public regarding anything that is not on our agenda at this time?

Seeing none, we will move to our first item and that is the Comprehensive Growth Management Plan for 2015-2035, zoning maps and Title 40.

PUBLIC HEARING ITEMS

- A. Clark County completed a review and update of its comprehensive plan according to the Growth Management Act (GMA) on June 28, 2016. The plan was appealed to the Growth Management Hearings Board (GMHB) and a hearing on the issues was held February 8, 2017. The GMHB ruled on March 23, 2017 that certain portions of the 2016 plan update, including the establishment of a Rural Industrial Land Bank (RILB) had not complied with certain requirements of GMA. The county appealed the RILB decision. On Aug. 20, 2019, the Washington State Court of Appeals filed its decision on review of the GMHB decision. The court decision upheld the GMHB ruling that the portion of the 2016 Plan related to the RILB had failed to comply with the GMA. The Planning Commission will consider amendments to the **Comprehensive Growth Management Plan 2015-2035, zoning maps and Title 40** as a response to the GMHB final decision and order regarding the **Rural Industrial Land Bank (RILB), CPZ2019-00032_GMA Compliance RILB.**
Staff Contact: Gary Albrecht at Gary.Albrecht@clark.wa.gov or (564) 397- 4318 and Oliver Orjiako at Oliver.Orjiako@clark.wa.gov or (564) 397- 4112

ALBRECHT: Good evening, Chair. Good evening, Planning Commission members. Gary Albrecht, Clark County. I'm here to discuss --

JOHNSON: Gary, can I interrupt you, I missed one thing, sorry about that. We have something being removed from our agenda, and in case there's anybody in the audience, I need to just get this out.

The applicant of CPZ2019-00008, which is Whipple Creek, has withdrawn their request to amend the comp plan and zoning designation. They were simultaneously pursuing a determination about this case from the Hearing Examiner. They received a determination from the Hearing Examiner that their request could be handled through the Type III process.

If anyone here tonight is to testify -- is there anyone here tonight that is going to be testifying on this? If so, please note that we will not be hearing this case or will we be taking any public testimony on it. Sorry about that. Continue, Gary.

ALBRECHT: Thank you, sir. I'm here to discuss CPZ2019-00032. Thank you. There's the agenda we'll talk about this evening.

The background, it's a rather lengthy background starting back in 2007 when Clark County receives a rural industrial land bank application that Clark County prepared an addendum to evaluate and disclose potential environmental impacts and mitigation measures associated with the application.

The addendum is an appending document to the Clark County comprehensive growth management plan final environmental impact statement from May 2007. They created a master plan in 2007. The SEPA for environmental impact statement was appealed. The SEPA is

a State Environmental Policy Act just in case you didn't remember what it was for. So, and then moving on to 2014, there was some development regulations created for the rural industrial land bank.

In 2016 the comprehensive growth management plan was updated. It adopted the rural industrial land bank overlay, made some arterial atlas amendments for circulation around the industrial land bank and as you know the comprehensive plan was appealed to the Growth Management Hearings Board.

In 2017 the Growth Management Hearings Board decision came out, the final decision order. As a result of that, one of the pieces from it was the County amended the 2015 buildable lands report. And in 2018 the Growth Management Hearings Board issued some compliance orders, you can see them on the slide there, and in 2019 the Court of Appeals' decision came out and Clark County decides to not appeal that decision.

Here's the vicinity map of the rural industrial land bank. As you can see, it's between the City of Vancouver or the City of Vancouver's urban growth boundary and the City of Battle Ground's urban growth boundary. And the Court of Appeals, so the August 20th, 2019, decision, the cities of Ridgefield and La Center annexed land recently designated in their UGAs in 2016.

This Court's decision said the annexed land is moot because the County has no ability to plan for annexed land and the Hearings Board cannot compel the County to take action. That decision is supported, has supported the Board's ruling of de-designation of agricultural land was out of compliance with the Growth Management Act. And the Council direction, the Council is not appealing the summer ruling of 2019, the Court of Appeal decision, the proposed amendments to comply with the rulings.

So what's being removed, basically everything that is related to the rural industrial land bank is a caption of it and the next few slides will go more into detail of what's getting removed. We'll start off by repealing the three ordinances related to the rural industrial land bank, I'll just call it the RILB for short.

So the 2016-04-03 establishes the parcels, there's about, well, there's 13 parcels, about 600 acres of land and the 2016-05-03 added a couple more parcels to that, and the 2018-12-64 ordinance was a moratorium for that land so no permits could be brought in to develop it.

So the purpose is to amend the comprehensive plan designations to take off the rural industrial land bank and to change it to the agricultural land designation, amend the zoning of light industrial with a rural industrial land bank overlay and taking it back to the agricultural land that it was previously designated.

There's a number of proposed comprehensive plan text amendments on the screen. And there's a number of proposed Clark County Code Amendments, amendments are for the Employment Districts, the 40.230.085; the Master Planned Development, that's the 40.520.070; the Rural Industrial Development Master Plan, the 40.520.075; and the Plan Amendment Procedures for the 40.560.010.

And the Arterial Atlas Amendments that it changes for the circulation taking away everything that we put in place for that, I'll have a map of that later on. There's the map right there. And the public process.

The Growth Management Hearings Board, we started the process in August 20th, 2019, the Department of Commerce, the SEPA. So we've gotten two comments on the SEPA, they're in your supporting documents in the, in your, on your electronic packet and one was from the Nisqually Indian Tribe saying there were no concerns and that to keep them informed of any independent disclosures of archeological resources of human burials are noticed and the other comment was from the Department of Ecology for mapped wetlands. Their comment was to recommend determination, wetland determination, delineations be conducted in the future development proposals which that would occur at the time of development and that's it.

That's all I have for a presentation. So I'm ready to take comments and questions if you have any.

JOHNSON: Any questions? It's pretty straightforward. At this time is there any comments from the public? Seeing none, we will bring it back for any discussion or a motion.

SWINDELL: So just to be clear, these are things that we have to do this, this isn't a matter of I'd like to change this or that, nope, this is what we need to do to be in compliance; correct?

ALBRECHT: This will ensure, this will help us to come into compliance. Chris Cook can answer more on that.

SWINDELL: Thanks, Chris.

COOK: Christine Cook, Deputy Prosecuting Attorney. What it -- to summarize this in really quickly, it's repealing everything about the rural industrial land bank and restoring code and arterial atlas and comp plan and to what they were before the rural industrial land bank was adopted or in the absence of the rural industrial land bank and, you know, sure, the County could decide to do otherwise, that would keep in place the order of noncompliance and invalidity that has been imposed by the Growth Board, and that order of noncompliance and invalidity is one of the reasons why Public Works has not received some grant money this year, ten million at least that just was earmarked for the County and the County couldn't sign the contract. There are other grants and loans that the County was unable to apply for because of that.

I mean, this is an appellate body, they have jurisdiction over growth management, when they say you did it wrong, they have some clout and I think that the Council has come to decide that it may make more sense to come into compliance than to try to continue with something that is at this point not helping the County.

SWINDELL: Okay. That makes sense.

JOHNSON: Thank you. Any other questions? I would take a motion if that's appropriate. Anything else from the public on this matter?

PUBLIC TESTIMONY

BOLEN: Can I come forward or should I speak from here?

JOHNSON: Yes, you should come forward and state your name and spell it out for the reporter so she can hear it and it's on the record, please.

BOLEN: Sorry, we came late. I'm Bill Bolen, my wife Alice behind me.

HOLLEY: Spell your name.

BOLEN: Pardon me?

HOLLEY: Spell your last name.

BOLEN: B-o-l-e-n. And I'm a little confused what I'm doing. I just wanted to, I was notified of this hearing and I need to make a statement regarding our property. We live on 61st Avenue, N.W. 61st Avenue just south of 192nd Street. Pardon me. Yeah, 192nd Street. We purchased our property two years ago and we purchased an incredibly beautiful view of some fields and trees which we continue to love. Operated with the idea that we were in basically 20-acre country and recognizing that a good deal of that neighborhood has been --

BARCA: He's in Whipple Creek.

BOLEN: -- converted into one acre, effectively one-acre property, possibly fives, I don't know how they --

JOHNSON: Excuse me, sir. Right before you got here, I think you're speaking of the Whipple Creek.

BOLEN: Correct.

JOHNSON: Okay. Right before you got here, and I'm going to read this statement again for you just so you can hear it again. Okay.

BOLEN: Sure.

JOHNSON: And I apologize that --

BOLEN: We came three minutes late and we didn't hear that.

JOHNSON: Yeah. So the applicant of Whipple Creek has withdrawn their request to amend the

comp plan and zoning designation. They were simultaneously pursuing a determination about the case from the Hearing Examiner. They received a determination from the Hearing Examiner that their request could be handled at a Type III process.

So for here tonight we're not going to take any testimony on this case, we're not going to hear it tonight, it's been removed from our agenda and we're not going to take any public testimony on it. And I'm sorry I didn't, I was trying to figure out which one you were talking about. So tonight --

BOLEN: I'm sorry, I wish I could have been better organized. We didn't hear any of this, anything about what the proposal was until about two to three weeks ago.

JOHNSON: That's okay. I would encourage you to get with staff to help them clarify that just a little bit more for you, but for tonight nothing is going to happen on this matter at all, and I apologize for your trip all the way down here, we just got this notice at the very last minute right before the hearing.

BOLEN: I love walking in the rain especially here. Okay. Thank you very much.

JOHNSON: Thank you, sir. Yeah. With that said, is there anybody else from the public that would like to speak on the matter at hand? Seeing none, I would hear a motion.

RETURN TO PLANNING COMMISSION

TORRES: I **MOVE** that the Commission approve CPZ2019-00032 as written.

SWINDELL: I'll **second** it.

JOHNSON: The motion's been made and seconded. Roll call, Sonja, please.

ROLL CALL VOTE

SWINDELL: AYE

MORASCH: AYE

HALBERT: AYE

TORRES: AYE

BARCA: AYE

JOHNSON: AYE

JOHNSON: Motion passes 5/0. And with that said, we'll move on to our next item. Our next item on the docket is Clark County Unified Development Code Amendments on the Columbia River National Scenic Area Code Update. Staff.

PUBLIC HEARING ITEMS, continued

- B. Clark County Unified Development Code (Title 40.250.030) Amendments (CPZ2019-00033 Columbia River Gorge National Scenic Area Code update)** – The proposal is to amend the Clark County Code pertaining to the Columbia River Gorge National Scenic Area to correct a scrivener’s error to CCC 40.240.H, which states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedures should be a Type III (quasi-judicial) process as they are elsewhere in code.
Staff Contact: Sharon.Lumbantobing@clark.wa.gov or (564) 397-4909

LUMBANTOBING: Good evening, Planning Commissioners. My name is Sharon Lumbantobing with Clark County Community Planning for the record. Let me -- okay. One moment, please. Okay.

So this is CPZ2019-00033, this is a proposal to correct a scrivener's error to Clark County Code 40.240.440(H). The review procedures for development and production of mineral and geothermal resources should be a Type III quasi-judicial process not a Type IV legislative process. Nowhere in the Gorge Code is a Type IV process applicable.

This is an excerpt from Table 40.500 in the code and it shows what procedure types are applicable. You can see in the midway, midway to the bottom of the table, the Columbia River Gorge permit uses Type II and Type III processes, nothing in Type IV, and in Title 40.510.040 this lists the description of what types of changes are made through a Type IV process, it's things like the comprehensive plan map, it's policy changes, so comp plan map and text and zoning changes, development regulations, arterial atlas, shoreline master program, not permitting processes, those don't go through the Planning Commission to the Council.

So staff believes these to be a scrivener's error, was not a conscious policy decision, it occurred when the entire Title 18 was repealed and replaced with Title 40. Council approved an interim ordinance on September 25th to correct the scrivener's error and the County now has 60 days to adopt a permanent ordinance through the Type IV process which is what we're doing now.

We received three public comments earlier today, those are forwarded to you and they're on the website. We are here in the process Planning Commission hearing. We'll be going to, let's see, where are we, okay, so we'll be going to a County Council work session on October 23rd and then a hearing on November 5th, it has its own adopting ordinance that would take effect after we go to Council. That's all I have. Are there any questions?

BARCA: Based on the last minute inputs from the public it has the appearance that this has become contentious probably because there is something pending, has there been any discussion to resolution of that before we go forward?

HALLVIK: I think I can speak to that a little bit and I'm sure that others in the audience will also speak to it. There has been pending --

HOLLEY: And you are?

HALLVIK: Excuse me, I'm sorry. My name is Taylor Hallvik and I am a Deputy Prosecuting Attorney with Clark County, the spelling is H-a -- maybe I'm not on.

BARCA: No, you're on, just get a little closer to the microphone.

HALLVIK: All right. My spelling of my last name is H-a-l-l-v as in Victor i-k. There has been pending essentially code enforcement litigation both in Clark County through a Hearing Examiner process as well as through the Columbia River Gorge Commission that culminated yesterday in a final decision from the Columbia River Gorge Commission, which I anticipate will be appealed. There is an application that was, a pre-application that was received for some mining activity in an area that would be subject to this code change and that was received I believe a week or so ago after the interim ordinance was adopted.

So there does, there is pending litigation and I expect that there will be an appeal of the Gorge Commissions' decision, so that is a backdrop that I think exists. I believe it's unrelated to the merits of whether this is or is not a scrivener's error and I believe the record is pretty overwhelming and clear that it is a scrivener's error that is being corrected now by the Council.

BARCA: Thank you for the enlightenment.

TORRES: So I have a question. So you said the permit was applied for after the Council made their conditional determination or --

HALLVIK: It was a pre-application that was received by the County after that.

TORRES: And that was received before or after?

HALLVIK: After.

TORRES: After.

MORASCH: I have a question. Why are the exhibits to the staff report not online and do you have them tonight so that we can look at them?

LUMBANTOBING: They are online. They should be.

MORASCH: Where? They're not online on the Planning Commission website.

LUMBANTOBING: They could be on the -- I will check and then get them up online.

MORASCH: Do you have copies today that I can look at or can you point to me to where they are online because I --

LUMBANTOBING: On your projects page.

MORASCH: I'm on the Planning Commissions agenda page, 10/17/19, Item CPZ2019-00033, I've got a Staff Report, SEPA, Public Comments, Supporting Documents and Presentation and I've gone through all those links and I haven't found the exhibits.

LUMBANTOBING: We can -- we'll make sure that they're there. I can try to -- they should be there. If not, we will put them up, we'll get them up tonight.

TORRES: Are they, the comments dated the 16th of October?

LUMBANTOBING: Those are online.

TORRES: Those are online.

MORASCH: Yeah, the comments are.

BARCA: The comments are.

MORASCH: It's just the exhibits, some of which I wouldn't mind looking at.

LUMBANTOBING: These were the pieces of the past ordinance and showing that the strikethrough.

BARCA: We can't hear you.

LUMBANTOBING: Oh, these were exhibits from the past ordinance, the Title 18 ordinance, showing there was no strikethrough.

MORASCH: That's the one I'm most interested in looking at, that's Exhibit 3, and also Exhibit 1 which is the old 1996 ordinance.

LUMBANTOBING: Okay. My apologies, they should be here. Since we moved away from the binders I don't have copies on me right now, but they should have been up online and my apologies for that. The only other place is possibly here. I don't know if you want to take the time now. I can get them up online tonight. I can try to see if they're on the Grid from the interim ordinance. So that's where they didn't crossover. Okay. So is this it, interim ordinance, that's somebody else's.

COOK: That's it.

LUMBANTOBING: That's it. Okay. It should be attached here. So these are all the, so it was on the Council Grid for the adopting interim, for the interim ordinance and you want to see the exhibit where the strikethroughs are missing?

BARCA: Yeah, Exhibit 3.

LUMBANTOBING: We're in the right section code. That's the letter.

SWINDELL: It said Type IV right up there on the top there on the top of that page.

LUMBANTOBING: Is it right here?

SWINDELL: I believe it was --

LUMBANTOBING: Go up. Go down.

COOK: Up. Right there.

LUMBANTOBING: Right there. Okay. Right up here.

MORASCH: I can't see that not with my eyesight.

LUMBANTOBING: Right here it says Type IV.

MORASCH: I can hardly see this.

HALLVIK: At the very top of the page.

SWINDELL: And what we're saying is that needs to be Type III?

HALLVIK: That's right.

SWINDELL: Everything is Type III.

HALLVIK: In fact one notable point is that this particular section of code relates to the large scale ag zone within the Columbia River Gorge area. I think it's also worth noting that this same use in the forest area zone of the Columbia River Gorge area is a Type III, so it's the same paragraph in an adjacent area, forest as opposed to ag in the Columbia River Gorge National Scenic Area and it reflects a Type III process as well, so I think that's another point that's worth noting.

BARCA: So all resource land is being treated in the same fashion then?

HALLVIK: Under the proposed solution, yes.

BARCA: Okay. All right.

JOHNSON: Steve, do you have any other questions for staff right now?

MORASCH: I just want to see the exhibits, but you referenced a forest zone section, do you know what code section that is?

HALLVIK: 40.240.310(G).

MORASCH: 310. Okay. 40.240.310?

LUMBANTOBING: Do you want to see it where it is in the current code?

MORASCH: I mean, I've got the code but 310 is Historic Structures.

LUMBANTOBING: 40.240.440(G).

MORASCH: 440.

LUMBANTOBING: That's the current location.

MORASCH: I was asking about the forest, you said there was a forest zone in the Gorge that was a Type III for aggregate resources and I wanted to look at that provision.

HALLVIK: I was reading the staff report, that section.

LUMBANTOBING: It is, it's 40.240.310(G) in the current code.

MORASCH: 40.240.310.

LUMBANTOBING: 310(G).

MORASCH: But 40.240.310 says Special Uses in Historic Buildings, I'm looking at the UDC right now and there is no 310(G).

COOK: So the staff report says it was --

MORASCH: Am I reading that right, 40.240.310, Special Uses, okay, because I mean my eyesight is failing a little bit so I want to make sure.

LUMBANTOBING: 520.

HALLVIK: 520. It's 40.240.520(H).

MORASCH: Okay. There it is. Thank you.

HALLVIK: It was a long way to go. Sorry. Took the long way.

JOHNSON: Any other questions for staff? Okay. With that said, at this time we will take public comments. Mr. Howsley, it looks like you want to speak too, I got your name written here twice. Okay. Mr. Horenstein.

HOWSLEY: Do you mind if we come up together?

JOHNSON: Sure, why not.

BARCA: Don't talk at the same time.

PUBLIC TESTIMONY

HORENSTEIN: We know to talk slowly and distinctly, don't we. Thank you, Chair Johnson, members of the Planning Commission. For the record, Steve Horenstein, 500 Broadway, Suite 370 in Vancouver, here representing Nutter who is the operator of this mine in Washougal.

The confusion you've just been through is the confusion that we've been through and I'd like to start by asking for you to continue this hearing because as a matter of due process the ordinance you're considering, I can't believe you didn't have it, but we didn't have it either.

Although, we know we have had seen the interim ordinance, we have no idea what you're really considering tonight because it failed to be posted, that is fundamental a due process violation and it would be hard for you to make a good decision with the confusion that's already been created, this needs a little more time.

To Mr. Barca, to say this is a contentious process is the understatement of 2019. There is litigation happening and there's more to come and this is in our view a bit of an end run by staff. They knew our application was coming and the interim ordinance was rushed through in order to give staff rather than the Board control over this process. So staff to tell you that there's plenty of support for this being a scrivener's error is laughable in my view, none of these people were here in 2003, I was.

I could submit a declaration and will when the Board gets through hearing eventually on this if necessary to tell you that the Board specifically wanted to have involvement in decisions regarding surface mining. That Board was very cognizant of the number of mines we had then which is certainly more than we have now, cognizant of the community issues involved, cognizant of the definite need for the rock, that was a considered decision at that time.

There's nothing in the record that tells you that this is a scrivener's error other than staff who weren't there then telling you so. So let me go through some of the technical issues that we think are flaws here and Mr. Howsley will talk to you about more on the merits of what's going on here.

Again, are you considering whether to make the original interim ordinance permanent, is there some other ordinance involved here, why doesn't the ordinance tell us that and why wasn't there an ordinance draft attached. I realize staff makes mistakes now and then as do we, but that's a due process mistake that requires you to continue the hearing. The interim ordinance, if adopted by you as a final ordinance just moving forward a little bit here is flawed.

Section 1 of the interim ordinance recites essentially two RCW 65 63.200 and it's 36.70A.390 as authorities for adopting the interim ordinance. 36.70A.390 part of the Growth Management

Act deals with moratoriums and zoning controls. Now, those of us that have been around for a while know what that means, it relates to stopping development within an existing zone.

What's before you in this ordinance is not about zoning, it's not about use of the site, it's about the procedure followed to permit mining activity under the surface mining ordinances and such. To call it, to try to fit it under, in and under the moratorium I think that's what, that's perhaps staff's mindset on this to stop this, but that's not what we're doing here, they're amending a procedural part of the code that deals with I would make it make a point that it's analogous to site plan approval.

When you get a surface mining permit it's really an enhanced site plan approval process because there's much more involved, but to try to couch this as an emergency ordinance that you can, an ordinance you can do on an interim or emergency basis is inconsistent with State statute and the County code is silent, it doesn't have any provisions for an interim ordinance so we have to rely on the RCW and this is not a zoning issue, this is essentially a site plan approval issue.

So we think the original interim ordinance is flawed in the first place and you would just further that flaw by adopting it. What we're not even sure about is whether this is a process to make that ordinance a permanent ordinance because it's not clear from the notice if that's the case.

The interim ordinance does not identify itself even in its text as an interim zoning control or moratorium or an interim zoning ordinance. Those are the statutory words that are involved in the process staff has chosen to move forward with. If we do have an interim zoning control ordinance, here is the burden of staff is or on Council to establish that it has the authority it was purporting to exercise when it adopted this ordinance and it's just so clear to us that that is not the case.

You know, we used to have more than one land use ordinance, now we have combined everything into Title 40, we have the zoning in Title 40, we have the processes in Title 40, we have the comp plan material in Title 40. So to say this, you can find this in the zoning ordinance, it's not what this is about, this is about process, how to approve surface mining.

Clark County Code 40.560.020 Subsection A.3. explicitly says that "A code amendment must occur through a Type IV process that includes Planning Commission review." Is that what we're doing now? Why are we going through this procedure if in the County's opinion the interim ordinance was valid, they just have to have a hearing in six months to make it permanent, we don't know why we're here, that's not clear from the staff report.

Staff again might say, well, it's because of the scrivener error and it needed to be changed while we work on a permanent change, well, why did you pick just this, there are a lot of things we need to change in the code. Those of you that deal with it daily and those of you that have been here a while know that, why did we just pick this one little piece out to change on an urgent or emergency or maybe the word is interim basis. Why does it need to be changed right now. It's been there for 16 years, that's been the code as staff told you, that's when it was last adopted.

Let me tell you why. Because our clients have been directed to file an application for a mining permit and the County staff wants to make sure that the proposed procedural change was made immediately so it would apply to our clients application. Staff has expressed to us over many, many, many months of working on this that they don't view mining permits in the same way that the County Councilors does. This gives staff total control over this and cuts out the County Councilors.

You know, there's a concept in the law called targeting. Targeting is a due process violation and I'm not talking about the due process violation inadvertently made here by failing to file the notice, but the proposed procedural step is another step the County staff is taking to try to shut down the Zimmerly/Nutter rock mine, rock pit -- excuse me, I'm not supposed to use the word mine, am I.

HOWSLEY: No.

HORENSTEIN: Okay. Excuse me. -- in the Columbia River Gorge without involving the County Council. Now, Jamie will discuss with you in some detail the steps we've gone to try to just to fix this process in a collaborative way, we are officially through trying to do that at this point because it cannot be done with County staff. It's just one more attempt, this interim ordinance is just more attempt to deny our clients' procedural and substantive due process.

County staff rushed a procedural change through disguised as an interim zoning ordinance without proper legal justification just to make sure it would impact our clients. There are no other mines involved in this same situation now just to make sure the County Council would not be involved in the decision of whether mining, a legally permitted activity in the Columbia River Gorge by the way, would be allowed to continue.

The County Council understands the need for rock, there's no such thing as road construction, house construction, commercial construction or industrial construction without rock. The County Council wants us to find a way for mining to continue so that that rock is available; county staff apparently does not. And with that, I'll answer any questions or turn it over to my colleague Mr. Howsley. And my motion again I am making a formal motion to continue tonight.

BARCA: So, Mr. Howsley, you -- sorry.

HORENSTEIN: Mr. Horenstein.

BARCA: Sorry, Horenstein.

HORENSTEIN: You know better.

BARCA: I do. I was thinking of another question but it's too soon. Mr. Horenstein --

HORENSTEIN: Yes, sir.

BARCA: -- you mention the 2003 decision --

HORENSTEIN: Yes.

BARCA: -- and you mention understanding what the County Commissioners at the time and their intent was, staff in the staff report has built up a record including Exhibit 2 and 3 that point towards this as being an oversight based on the way that the exhibits look, do you have anything in the way of minutes of a meeting or any kind of written documentation from the County Commissioners' thought processes that would help counteract that?

HORENSTEIN: Thank you for asking that question. We have filed a public records request and coincidence we've gotten some of it now, the rest isn't due till just about -- according to what we hear from the public records staff which is working with Community Planning to get us this information, that we won't get it until around the time of the County Council hearing on to try to make this interim ordinance or whatever ordinance we're talking about permanent, so we're looking for that.

BARCA: All right. Thank you.

HORENSTEIN: I was involved with Section 30 mining, with mining on 192nd for the companies involved at that time, that's where a lot of the mining activity were concerned, so we're paying very close attention to what was happening at that time.

MORASCH: Did you ask for the Ordinance 2006-05-04 as well, that's the ordinance that amended both sections 40.240.440 as well as the other section, the forest section that also refers to surface mining, it looks like both those sections were amended in 2006?

HORENSTEIN: We would expect to receive that as part of what we've asked for.

MORASCH: I'd be interested -- if we do continue it, I would be interested in seeing that ordinance that amended both of those sections to see if it had any relevance or not.

HORENSTEIN: Sure.

JOHNSON: Any other comments?

HORENSTEIN: We would, in response to your question, we certainly would submit it if it turns out to be relevant as part of our -- it's hard for us to submit a detailed response to exactly what you're adopting here without knowing exactly what's in front of you, but we would expect to have a much more robust presentation when we know what the ordinance you're considering is.

JOHNSON: Mr. Howsley.

HOWSLEY: Yes. Good evening. For the record, Jamie Howsley, 1499 S.E. Tech Center Place, Suite 380, Vancouver, Washington, 98683. I am the attorney for Judith Zimmerly, the owner of

the Washougal Pit property. I'm here to, I guess supplement the or amplify the letter that I submitted to you and the County yesterday and to provide some additional background from Steve's and my perspective of how this may have come to pass in such a rushed fashion and why again we felt very targeted by County staff in this entire process.

So I had gotten wind that this was going to be on the Planning Commission agenda for tonight by my typical e-mail address. I get every one of your Planning Commission meeting agendas, I review them to see whether or not there's matters of interest either to my clients or just me from an intellectual standpoint addressing code.

I noticed that this item was up, and while we were aware of this issue going back for some time, I did have a discussion with County legal counsel about that issue and I told him that I had intended on showing up at this hearing and voicing my concern with changing this so suddenly given the fact that we were about to submit an application under protest for a Gorge permit.

The next day I get notice from County staff that they rushed through an interim ordinance through County Council and I about hit the roof. I phoned my colleague here to let him know that what had taken place.

HORENSTEIN: He was angry.

HOWSLEY: I don't get angry very often. Mr. Horenstein and I have practiced law in this community a very long time, Steve a lot longer than I have, but to again echo what he said, we were both around in 2003 at a different time with the County Commissioners and there was a very serious concern around rock supply even then and I just find it very strange that this could be considered a scrivener's error.

I could understand if it was a Type II to Type III, but a V, a Roman Numeral V is a lot different than a vertical line, and so to that end we started requesting what the County's legal basis was to make that determination that this in fact was a scrivener's error.

All that our office got back in response was basically this staff report item.

We then asked them to send us basically a whole host of other documents, they said go file a public records request, so we went and did that. As Mr. Horenstein indicated, we don't expect that information to come back to us certainly not in time for this hearing but maybe not even before the County Council hearing. The concern I have primarily is again I don't believe there's adequate justification by the history nor our memory to indicate that this in fact was a scrivener's error.

The second concern that I've outlaid in our letter that Mr. Horenstein alluded to was it's clearly that this ordinance is only targeted at this specific property. There's very limited property in the, in Clark County that is subject to the Gorge Commission rules in the first place, it's just a very small sliver of property on the east side of the county and there's only one property that has a surface mining overlay designation over it and that is my client's property. I'm not sure from a due process standpoint whether or not that that is fair or not.

I'm currently involved in another case in the City of Tacoma on a very similar issue that's in Federal Court right now. This is very concerning.

Finally, this is emblematic of a lot of other issues that we've seen with the code. We have for the better part of a year pointed out inconsistencies between the Gorge Scenic Act Regulations and the County Code Regulations and we have asked multiple times, multiple meetings, multiple letters that the County staff work to reconcile those inconsistencies partly because we now find ourselves in the position where we're seeking a permit under protest and we don't even know what the standards are. We would like to see the County address this holistically rather than a piecemeal fashion which seems to address what their perceived concerns are rather than addressing all of the other inconsistent issues here in the code.

I don't take pleasure in doing this at all. I've never been put in the position I can recall of having to make this sort of testimony, but as Mr. Horenstein indicated we do feel like our clients rights are being trampled over right and left by staff on this.

So with that, you know, first of all, I think a continuance is most definitely in order for the fact of failure to put the proper documents out there for even you guys to review, us to review, but secondly, we need time to get to the bottom of this more from a historical standpoint and just taking staff's word at it versus doing a diligent search of the records needs to happen.

So with that, I'll conclude my testimony and see if there's any questions that Planning Commission may have.

RETURN TO PLANNING COMMISSION

JOHNSON: Gentlemen, any questions?

MORASCH: I have one and it's for either one of you and that has to do with the Gorge Small Woodlands Code section that Mr. Hallvik pointed out, 40.240.520(H), I don't know if you've looked at that or not, it's an interesting section, it's similar to the one they're trying to amend 40.240.440(H) that applies to ag and in the Section 40.240.520(H) it's got very similar language, except for that it specifies that in that zone a Type III review will be required under 40.510.030.

Do you have any knowledge or recollection of why the Board in the past may have wanted a Type III for aggregate in the small woodlands but not in the ag?

HORENSTEIN: I can only surmise and repeat what I said a little earlier and that is ag is ag, we've got thousands and thousands and thousands of acres of it in Clark County, it's pretty standard stuff.

Mining, surface mining is not and it gets back to my recollection of the Board's desire to remain involved in permitting that process because of the high interest of the need for the rock and the natural tension that that creates. The Boards they were a little more politically courageous back then than perhaps than now.

MORASCH: Well, I guess the point that I think that Mr. Hallvik was trying to make is, well, if they were so interested in it, why wouldn't they have required Type IV for ag, for aggregate in the forest land as well as the ag land, why the difference in treatment.

HORENSTEIN: I can't tell you any more than I have.

HOWSLEY: I would just surmise, Commissioner Morasch, that, so mining regulation in the State of Washington is pretty complex, you can mine up to three acres without getting a permit from Department of Natural Resources to do reclamation activity.

So it may be a situation where small woodland, and again I'd have to go back and dig through the record there because that would be a less impactful use there might warrant some differences versus in the case of the Washougal Pit, that the Washougal Pit had been there since 1972, was a pre-existing mine for that predated the County's comp plan in 1980, predated the Growth Management Act, predated the Gorge Scenic Act, there may have been specific consideration to those existing large scale operations, but without that additional discovery that we need to undertake, we don't know that for sure.

Personally, I've had such a bad experience with staff in this entire case, and I'm not even going to get into what Steve and I witnessed during the Hearing Examiner's case, but I don't trust them.

MORASCH: Well --

HORENSTEIN: The other thing --

MORASCH: -- I would certainly look at that if you get your public records documents, I would certainly compare and contrast those two and they were both amended in 2006 so I would look at that as well.

HORENSTEIN: Just one other thought on that, it might have been a scrivener's error, that's just as likely with the information before you that this one was.

HOWSLEY: The other way.

HALLVIK: I disagree. First of all, I don't think the changes as we've indicated in 2003 when changes are made, any time changes are made to code there's an underline and a strikethrough process when that is intentional and that was not the case for the, for the scrivener's error that has been identified in the interim ordinance in the staff report today.

MORASCH: Do we have the underline and strikethrough for 40.240.520?

HALLVIK: Not today I don't think we do.

LUMBANTOBING: Not for that, no.

HALLVIK: Not for that.

MORASCH: Well, that's probably something I'd like to see.

HALLVIK: I do think if it -- a couple of points that I'd like to address just briefly in response and I think Sharon can address the continuance request as well, but first of all, I wanted to just rebut the idea that this is a staff directed effort to exert greater control over mining approvals. The Clark County Council adopted the interim ordinance reflected in the change, this is not an ordinance, an interim ordinance that staff approved, that's of course not possible.

The other thing I would point out is that a point that's been overlooked by Mr. Horenstein and Mr. Howsley is that Type IV review processes are extremely limited in their scope and what they can apply to, they are legislative processes, not quasi-judicial processes, and to assume that this is a choice between Type III or Type IV I think is a false choice.

There is a Type III quasi-judicial process in Clark County's Code, there is not a Type IV quasi-judicial process that would allow for a project level review by through a Type IV process as it's defined very clearly and explicitly in Clark County Code which I think further buttresses the already strong case that this is a scrivener's error in 2003.

And, lastly, I would point to 40.510.040(H) as the interim ordinance authority in Clark County Code that does exist contrary to what you heard a little bit ago. That's all I have.

BARCA: Mr. Howsley, can you tell me at the time that the emergency ordinance was adopted at what was the status of your application at that time?

HOWSLEY: So there's a lot of inconsistencies that I alluded to between the Gorge Scenic Act that's in County Code or Gorge Scenic Permit Ordinances and the County Code, we were in active discussions with County legal counsel as well as the Gorge Commissions' attorney in trying to understand everybody's positions.

We were -- they knew quite emphatically because we had told them on multiple occasions that we were coming in for a permit under protest, and again, I got notification of your guys' hearing saying that this was going to be on the agenda, I talked to County legal counsel and then the next day the interim ordinance passed. I mean, there's a lot of shenanigans going on in the Federal government, this just smells funny to me.

HORENSTEIN: If I might respond to one thing that Mr. Hallvik said, there was a Type IV process for this sort of thing back in the day which gets to my point that we have much younger and newer staff that weren't around then and didn't and probably don't even know that, but to try to equate it with the way the quote is today does not reflect what existed back in the day.

LUMBANTOBING: Chair, we'd like to suggest that maybe you continue this hearing to November 7th, a date certain, at 6:30 p.m. It would be a special hearing, you don't have a regularly scheduled hearing on that date, we don't have any other agenda items.

JOHNSON: Okay. So we want to move it forward. So, Chris, is there anything that would stop us from doing that?

SWINDELL: I guess I'd just like to ask, does everybody feel that's enough time to be prepared for that?

HORENSTEIN: We've been told to count on the public records, and as I said we've gotten a few, but you can count on the balance by November 5th, so that may not give us quite enough time.

JOHNSON: Well, we'll stick with what staff asked us, what's best for them right now and then if anything changes, we'll let staff work that out.

SWINDELL: Can I ask one other question if we're going to continue?

BARCA: We need to get a little bit clearer on this before we go to motion I think. Go ahead.

SWINDELL: I just wanted to ask just one more question. You had, Mr. Horenstein had mentioned that this particular change really only affects this one piece of property in Clark County, or maybe it was Jamie that had mentioned that, is that accurate, is this pretty much the only piece of property in Clark County that this thing is going to affect?

HALLVIK: I can't speak to that specifically. I think I don't have the information about what other types of uses or projects there may be in the large scale ag area in the Columbia River Gorge. This is a very -- part of the reason that I think there are a limited number is because there are a very limited number of, this is a very refined use as well as a very refined subset of Clark County, so that may well be true, I don't know though.

SWINDELL: And before we come, I'd like to know if I could ask for that to know in general how many pieces of property this is going to affect.

COOK: Commissioner, I would think it would affect any property that has surface mining overlay or any property that is capable of applying for a permit in the Columbia Gorge area.

SWINDELL: Okay. Is there a map that would show that?

MORASCH: Yes, the surface mining overlay map.

COOK: The surface mining overlay would certainly show that.

SWINDELL: We could have that for the hearing. I mean, that's what I was asking.

COOK: Yeah. I was going to say I would think we could pull that up right now.

JOHNSON: You can pull that up right now.

SWINDELL: Well, if we could just have that for the next hearing, that's fine, just wanted to

make sure we had that for the next.

BARCA: So fellow Commissioners, I am not available on the 7th and don't know if everybody's had a chance to ensure that they're available on the 7th.

TORRES: Yeah, I'm going to be out of town on the 7th and 8th.

SWINDELL: I will be here. One, two, three, four, that makes four of us.

BARCA: So you are at bear minimum of a quorum.

MORASCH: And it doesn't sound like that may not be enough time depending on when they get the public records.

BARCA: And so I guess I'd like to bring it back to the Commission and just talk about the idea that whatever we choose to do is not the same thing as what Council chooses to do. Our recommendation is just that at this moment in time. Us holding on and waiting isn't going to change the outcome ultimately.

We can endorse staff or we can oppose staff, but I think it's really going to come down to what's in the public record and what is the intention. You know, right now I look at this thing and saying that if County Council is pro mining it appears strange that they would have passed an emergency ordinance. Perhaps there's more to it than that.

Right now I don't see that this body is the decision-maker for this type of contentious issue, but if you're interested in holding it to the 7th, I just need everybody to understand that I won't be there for that particular hearing and whatever it is Rick won't be there either.

JOHNSON: Any other comments to Ron's?

MORASCH: Pardon?

JOHNSON: Any other comments?

MORASCH: About what?

JOHNSON: About what Ron said?

BARCA: About --

MORASCH: About continuing it to the 7th?

JOHNSON: Yeah.

BARCA: Yeah.

MORASCH: Oh, it just doesn't seem like the 7th is going to be enough time.

COOK: To do what?

MORASCH: To get the public records.

COOK: Well --

MORASCH: I would like them to get their public records in response to their public records request and then come back and present those records to us and it sounds like if the County has promised to get them by the 5th, then if there's a day or two delay, then we won't even get the records until after the 7th, so...

COOK: I would think that the --

MORASCH: If we come back on the 7th and we don't have any more records to look at, then we won't have any more information than we have here tonight, so what would be the point.

COOK: I would expect that for example the ordinance can be provided well before then and the exhibits to it, they may not be able to get, you know, hundreds of pages of conversion of Titles 17 and 18 to Title 40, I don't know, maybe they can. Mr. Howsley has had his office come to our office directly and copy pieces of paper before and I don't -- so that's a possibility, but as to whether they can get all of the records that they want before the Planning Commission meeting, I'm not sure that that is due process issue, I think not having the ordinance and the exhibits might be, but...

MORASCH: Well, I would like to have as much information as possible.

SWINDELL: Can I ask it --

MORASCH: I see some arguments on both sides here and we can get into those if we get into deliberation on the merits, but...

SWINDELL: I guess I'm asking, I want to ask this question, if it really is only affecting one piece of property what is the rush, why are we pushing this through so fast, why are we in a hurry to do this? It's not really a big thing. Can't it wait, make sure we got all our ducks in a row, fix all the other issues and take care of business, what's the push?

HALLVIK: I think to that point there I would come back to the point that there really isn't a Type IV quasi-judicial process by which to process an application for the exploration and development of mineral resources, so the County's in a position where it has a tool or a process that's specified in the code and through an apparent scrivener's error that doesn't really exist and so that's the part of the dilemma.

BARCA: When was the 60-day emergency ordinance adopted?

HALLVIK: September 25th.

BARCA: So --

COOK: November 24 would be the 60 day.

BARCA: -- November 24 Council has to hear it again.

COOK: Before then, yeah.

JOHNSON: I just looked at my calendar too and I won't be able to be here so we won't have a quorum, I just glanced at it, so...

SWINDELL: So did you say you weren't going to be here?

JOHNSON: I'm not going to be able to be here.

SWINDELL: So I mean do we want to just go ahead and push this thing through as a vote tonight and I mean based on what I'm hearing there's so much confusion and I mean honestly there's just, I mean personally there's just no way that I could recommend this moving forward with the change myself, I just there's too much, too much movement. We've got a lot of questions.

It sounds like there's a lot of history and knowledge that maybe we don't currently have and the purpose of why that was there so, and I personally don't understand what the big rush is to do this, so I don't know why there was an emergency ordinance that only affects one piece of property, it sounds a little, a little too rushed to me, but...

HALLVIK: And I would point out that it's not an emergency ordinance, there is a, it was an interim ordinance to make this --

SWINDELL: Oh, an interim ordinance that was done pretty quickly.

COOK: Yeah.

SWINDELL: So, okay, I might describe that as an emergency ordinance to stop something, but, okay. But that's where I'm at guys.

BARCA: But 60 days still applies.

MORASCH: Well, but the headline, the title of the section you're relying on is interim actions moratorium emergency, so I mean you can say it wasn't an emergency but I agree it was pushed through pretty darn fast.

JOHNSON: Comments? Questions? I would entertain some type of motion.

MORASCH: Well, before we have a motion, I think we need to finish the public testimony, close the public hearing and then have some deliberation.

JOHNSON: Oh, I thought we closed public testimony.

MORASCH: I mean, we still have people up here testifying and there's more people in the audience, I don't know who else wanted to testify, but --

JOHNSON: At this time -- yeah, I don't have anybody else.

MORASCH: -- I would like to close the hearing and then I would like some deliberation before we have a motion.

HOWSLEY: I think, just the only thing I would say in closing is I'm pretty frustrated with the processes of this, this is not done appropriately, you guys should not be put in this position, so with that.

HORENSTEIN: And I would add a decision to move it forward tonight especially with the due process issue and the substantive issues involved will just make this more complicated for everybody including County staff.

JOHNSON: Thank you.

HALLVIK: I would add, it does look like there's a date on November 21st that may be available for a continued hearing as well and that would --

LUMBANTOBING: Well, that would have been -- we don't have a Planning Commission hearing, but that would have been the date we would have if there had been an agenda item.

SWINDELL: I'll be here.

BARCA: And how does that fit within the 60-day window?

HALLVIK: Not well.

BARCA: It doesn't fit within the 60-day window because you have to still get it before County Council. Right.

COOK: One solution could be for County Council to extend the interim ordinance by holding another public meeting or by holding a public hearing actually.

BARCA: So the proponents could go forward with that extension and start the whole fight all over again. Okay.

JOHNSON: So at this time I'd like to close the public testimony part of this hearing and bring it back to the Planning Commission for deliberation.

HALBERT: There are no others who are here to testify?

JOHNSON: There are no others here to testify.

COOK: Excuse me, if you could talk into the mic, please, Commissioner.

HALBERT: I will.

SWINDELL: Steve, you want to do some deliberating here.

MORASCH: I did. I just had a few points and I mean I feel like we don't have enough information to really make a determination on whether this is really a scrivener's error or not, but because I would like to see for instance the redline page for that other Section 40.240.520. I'd like to see the amendment that occurred in 2006 to both of these sections just to see what was changed and on and to the extent there may be staff reports available or minutes from some of the hearings adopting these things that might be relevant.

So I think there's a lot more information that could be provided, but if I was going to make a decision tonight, on the one hand we do have the Section 40.240.520 that specifies Type III for small woodlands and we have 40.240.440 that specifies Type IV, but on the other hand I'm looking at this redline and it's true that Type IV review procedures were not underlined on the redline but the Section 40.510.040 was underlined and that is the section that would be applicable if it were a Type IV, so I don't know. It's hard for me to look at this and say it was obviously a scrivener's error because it wasn't underlined, because at least part of it was underlined.

So based on what we have here, I'm not comfortable saying it was a scrivener's error so I guess I would vote if there were a motion to approve the interim ordinance I guess I would vote no at this point. I may or may not change my mind after I see more information that's not available today, so that's where I'm at.

SWINDELL: And I agree with Steve, I don't believe we have enough information and I think there's a lot of it seems very rushed to me. I think we really just need to take a minute, take a breath, let everybody get the ducks in a row and move forward at a later date, but to move forward tonight I just, I couldn't, I wouldn't.

BARCA: So my thought is there's enough legal counsel already involved, it doesn't really matter whether we say yes or no.

SWINDELL: I think it does. I disagree with that. I think it does. I think it does make a difference. We're here to represent the people and I think it does make a difference.

BARCA: When it comes to mining and the multiple times that County Council has overruled Planning Commission's thought process about it, I think there is a higher agenda than necessarily what we believe is the way either the law is written or is intended.

To say that mines are political, I think is a fair statement, to say that there's a large desire to have the aggregate industry healthy is probably a fair statement, that is not the same thing as saying that staff has some sort of agenda against it, it may not be the case.

When I see how quickly County Council was willing to adopt the interim ordinance, that gives me pause because I would have thought that they themselves would have not wanted to be on board with something that would have limited the industry. So there's lots of times that I think it's important for us to be on the record and make the Council aware of what's going on, but I think this has already reached a point that it's out of our pay grade and our decision yes or no is not going to slow down or speed up the process. The public records will come when the public records come and County Council can choose to extend this at their discretion based on the information that is available to them.

So I'm open for a motion tonight to pass it along and I would honestly say that if we all say no, that's our determination. I say no because I don't have enough information, I've said that lots of times and I'm fine with that. I can't make a good decision because I don't have enough information, that's the most I can do and I've come to terms with that over 20 years, sometimes it just happens that way.

TORRES: Yeah, from my perspective Steve brings up some good points and I think I'd like to see a little bit more information to clarify the points that he brought up so, I'm in favor of postponing.

HALBERT: I'd be in agreement with that also, I agree with Steve, I'd like to see more information. The exhibits weren't even available to us to review tonight. I'd like to see what the public records come up with, even if it's not every detail at least the gist of this.

So I feel like it's a responsibility that's given to us to do the best review we can even if the answer is we still don't get all the information, but we get as much as possible, we understand tonight we don't have even or we only have a very small portion of information to make a decision from whether or not it matters in the long run.

BARCA: When do we think we're going to get together again, if indeed nobody's available until the 21st and the ordinance expires on the 24th?

TORRES: Well, I guess how difficult would it be to get Council to extend?

LUMBANTOBING: We can get Council to extend it.

HALLVIK: We can ask them, that's how I would put it I guess.

JOHNSON: I believe at this time, you know, I'll put quotes around it, that's their problem, but I just I appreciate it, it is a divisive topic. One thing I want to say is, Mr. Howsley, when you come up here I listen to you many, many times and you have a plethora of information, but one thing I would counsel you on is the idea that staff has a nefarious something, and I know from your

side it is your side, and I take I'm looking at this, but I personally rely on staff to tell me what they think and I've never heard them tell me anything that isn't true.

So I would encourage you to, as you go through this to, as frustrating as it may be, to try to adopt that because that was frustrating for me to hear from you which was, yeah, whatever. With that said, I would entertain a motion if necessary or close our portion of it.

SWINDELL: Do we need to make a motion to continue? Make a **MOTION** we continue this hearing to November 21st at 6:30 p.m.

JOHNSON: Date certain.

TORRES: **Second.**

JOHNSON: We have a motion that's been made and seconded. Sonja, roll call.

ROLL CALL

MORASCH: AYE
HALBERT: AYE
TORRES: AYE
SWINDELL: AYE
BARCA: AYE
JOHNSON: AYE

JOHNSON: Motion's been passed 5/0.

OLD BUSINESS

None.

NEW BUSINESS

None.

COMMENTS FROM MEMBERS OF THE PLANNING COMMISSION

JOHNSON: With that said, is there any new business at hand? Hearing none, any comments from the Planning Commissioners? With that said, we're adjourned.

ADJOURNMENT

The record of tonight's hearing, as well as the supporting documents and presentations can be viewed on the Clark County Web Page at:

<https://www.clark.wa.gov/community-planning/planning-commission-hearings-and-meeting-notes>

Television proceedings can be viewed on CTVV on the following web page link:

<http://www.cvtv.org/>

*Minutes Transcribed by: Cindy Holley, Court Reporter/Rider & Associates, Inc.
Sonja Wiser, Program Assistant, Clark County Community Planning*

From: [James Gordon](#)
To: [Wiser, Sonja](#); [Lumbantobing, Sharon](#); [Jolivette, Stephanie \(DAHP\)](#)
Subject: [Contains External Hyperlinks] RE: CPZ2019-00033 Columbia River Gorge National Scenic Area Code Update
Date: Monday, September 30, 2019 4:01:13 PM
Attachments: [Cowlitz Indian Tribe Inadvertent Discovery Language.pdf](#)
[150428 Cultural Resource Protection Laws.pdf](#)

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To Whom It May Concern:

Given that the above-referenced project is within the Cowlitz Tribe's area of concern, the Cultural Resources Program (CRP) of the Cowlitz Indian Tribe would like to state its interest.

In the event of ground-disturbing activity, the Cowlitz Indian Tribe recommends an Inadvertent Discovery Plan be attached to the permit; we have included language for your consideration. In addition, we request Consultation as individual projects come up for review.

This determination is based on all currently available knowledge, and is subject to revision should new information arise. Please contact us with any questions or concerns you may have. We look forward to working with you on this undertaking.

Thank you for your time and attention.

Nathan Reynolds
Interim Cultural Resources Manager
Cowlitz Indian Tribe
PO Box 2547
Longview, WA 98632
360-575-6226 Office
360-577-6207 Fax
nreynolds@cowlitz.org

From: Wiser, Sonja <Sonja.Wiser@clark.wa.gov>
Sent: Tuesday, September 24, 2019 8:00 AM
Subject: CPZ2019-00033 Columbia River Gorge National Scenic Area Code Update

WARNING: This email originated outside of the Cowlitz Indian Tribe. Please verify sender before replying, opening attachments or clicking on links.

DESCRIPTION: *Clark County Unified Development Code (Title 40.250.030) Amendments (CPZ2019-00033 Columbia River Gorge National Scenic Area Code update)* – The proposal is to amend the Clark County Code pertaining to the Columbia River Gorge National Scenic Area

to correct a scrivener's error to CCC 40.240.H, which states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedures should be a Type III (quasi-judicial) process as they are elsewhere in code.

Comments are Due by: Wednesday, October 16, 2019

Staff Contact: Sharon Lumbantobing, Planner II

Email: Sharon.Lumbantobing@clark.wa.gov

Phone: 564-397-4909



Sonja Wiser

Program Assistant

COMMUNITY PLANNING

360.397.2280 ext 4558



This e-mail and related attachments and any response may be subject to public disclosure under state law.

CULTURAL RESOURCE PROTECTION LAWS

**NOTE: This list is not all-inclusive, and does not take place of consultation.
Not all laws will apply in all situations.**

Federal Laws

National Historic Protection Act (NHPA)	36 CFR 60	http://www.achp.gov/docs/nhpa%202008-final.pdf
Native American Graves Protection and Repatriation Act (NAGPRA)	43 CFR 10	http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=abefc428407c704d63fef71637939827;idno=43;region=DIV1;q1=NATIVE%20AMERICAN%20GRAVES%20PROTECTION%20AND%20REPATRIATION;rgn=div5;view=text;node=43%3A1.1.1.1.10 or http://tinyurl.com/yc4sx7o
Executive Order 13175— Consultation and Coordination With Indian Tribal Governments		http://www.em.doe.gov/pdfs/MEMO%20Tribal%20Consultation%20and%20Executive%20Order%2013175.pdf or http://tinyurl.com/4mgxrhq

Washington State Laws

Archaeological Sites and Resources	27.53 RCW	http://apps.leg.wa.gov/RCW/default.aspx?cite=27.53
Executive Order 05-05		http://www.governor.wa.gov/execorders/eo_05-05.pdf
Notice of Forest Practices to Affected Indian Tribes	WAC 222-20-120	http://apps.leg.wa.gov/WAC/default.aspx?cite=222-20-120

Oregon State Laws

Indian Graves and Protection Objects	ORS 97.740-S 97.760	http://www.leg.state.or.us/ors/097.html
Archaeological Objects and Sites	ORS 358.905 - 358.955	http://www.leg.state.or.us/ors/358.html

COWLITZ INDIAN TRIBE
INADVERTENT DISCOVERY LANGUAGE

In the event any archaeological or historic materials are encountered during project activity, work in the immediate area (initially allowing for a 100' buffer; this number may vary by circumstance) must stop and the following actions taken:

1. Implement reasonable measures to protect the discovery site, including any appropriate stabilization or covering; and
2. Take reasonable steps to ensure the confidentiality of the discovery site; and,
3. Take reasonable steps to restrict access to the site of discovery.

The project proponent will notify the concerned Tribes and all appropriate county, state, and federal agencies, including the Department of Archaeology and Historic Preservation. The agencies and Tribe(s) will discuss possible measures to remove or avoid cultural material, and will reach an agreement with the project proponent regarding actions to be taken and disposition of material.

If human remains are uncovered, appropriate law enforcement agencies shall be notified first, and the above steps followed. If the remains are determined to be Native, consultation with the affected Tribes will take place in order to mitigate the final disposition of said remains.

See the Revised Code of Washington, Chapter 27.53, "Archaeological Sites and Resources," for applicable state laws and statutes. See also Washington State Executive Order 05-05, "Archaeological and Cultural Resources." Additional state and federal law(s) may also apply.

It is strongly encouraged copies of inadvertent discovery language/plan are retained on-site while project activity is underway.

Contact information:

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Revised 19 September 2017

CULTURAL RESOURCE PROTECTION LAWS

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Executive Order 13175— Consultation and Coordination With Indian Tribal Governments		http://www.em.doe.gov/pdfs/MEMO%20Tribal%20Consultation%20and%20Executive%20Order%2013175.pdf or http://tinyurl.com/4mgxrhq

Washington State Laws

Archaeological Sites and Resources	27.53 RCW	http://apps.leg.wa.gov/RCW/default.aspx?cite=27.53
Executive Order 05-05		http://www.governor.wa.gov/execorders/eo_05-05.pdf
Notice of Forest Practices to Affected Indian Tribes	WAC 222-20-120	http://apps.leg.wa.gov/WAC/default.aspx?cite=222-20-120

Oregon State Laws

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360-575-6226 Office
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nreynolds@cowlitz.org

Revised 19 September 2017



Nisqually Indian Tribe
4820 She-Nah-Num Dr. S.E.
Olympia, WA 98513
(360) 456-5221

September 25, 2019

Oliver Orjiako, Director
Clark County Community Planning
1300 Franklin Street; 3rd Floor
Vancouver, WA 98666

Dear Mr. Orjiako,

The Nisqually Indian Tribe thanks you for the opportunity to comment on:

Re: CPZ2019-00033 Columbia River Gorge National Scenic Area Code Update

The Nisqually Indian Tribe has reviewed the report you provided for the above-named project. The Nisqually Indian Tribe has no further information or concerns at this time. Please keep us informed if there are any Inadvertent Discoveries of Archaeological Resources/Human Burials.

Sincerely,

Brad Beach
THPO Department
360-528-0680
360-456-5221 ext 1277
beach.brad@nisqually-nsn.gov

Annette "Nettsie" Bullchild
THPO Department
360-456-5221 ext 1106
bullchild.annette@nisqually-nsn.gov

Jeremy "Badoldman" Perkuhn
THPO Department
360-456-5221 ext 1274
badoldman.jp@nisqually-nsn.gov

REEVES, KAHN, HENNESSY & ELKINS

H. PHILIP EDER (1927-2004)
TIFFANY A. ELKINS*
J. MICHAEL HARRIS
PEGGY HENNESSY*
GARY K. KAHN*
MARTIN W. REEVES*

ATTORNEYS · AT · LAW

P.O. Box 86100
PORTLAND, OREGON 97286-0100

Please Reply To P.O. Box

TELEPHONE (503) 777-5473
FAX (503) 777-8566

direct e-mail:
gkahn@rke-law.com

*Also Admitted in Washington

October 17, 2019

VIA EMAIL ONLY (Sharon.Lumbantobing@clark.wa.gov)

Clark County Planning Commission
c/o Sharon Lumbantobing, Planner II
Clark County Community Planning
P.O. Box 9810
Vancouver, WA 98666-9810

Re: CPZ2019-00033 - Columbia River Gorge National Scenic Area Code Update

Dear Planning Commissioners:

This letter is sent on behalf of Clark County citizens and landowners Jody Akers, Paul Akers, Danny Gaudren, Kathee Gaudren, Rachel Grice, Zachary Grice, Greg Misarti, Edmond Murrell, Kimberly Murrell, Richard J. Ross, Karen Streeter, Sean Streeter, and Eleanor Warren. We have reviewed and fully support the proposed code update to Clark County's National Scenic Area ordinance. We also fully support and join in the comments of Friends of the Columbia Gorge on this topic.

The objections raised by attorneys for Judith Zimmerly, Jerry Nutter, and the Nutter Corporation have no merit, and are yet another attempt to confuse and delay Clark County's proceedings for bringing the numerous violations on the Zimmerly property into compliance with the Columbia River Gorge National Scenic Area Act and implementing rules. Zimmerly and Nutter have been operating illegally on the Zimmerly property since October 2017 without the required land use permits, and are continuing to do so even today, despite being repeatedly told by Clark County and Columbia River Gorge Commission officials that their actions are unlawful and must stop. They have repeatedly lost in their legal challenges, first in appeals to the Clark County Hearing Examiner regarding the illegal rock crushing on the property, then at the Clark County Superior Court regarding the other mining activities, and most recently at the Columbia River Gorge Commission. Please reject their efforts to further delay the County's processes.

In conclusion, the County should adopt the proposed correction to the scrivener's error in the Clark County National Scenic Area ordinance, without any further delay. Thank you very much for the opportunity to comment.

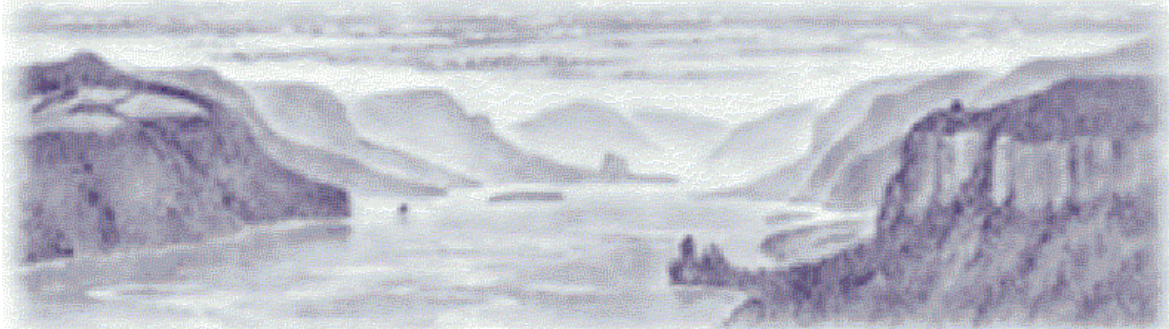
Sincerely,

REEVES, KAHN, HENNESSY & ELKINS


Gary K. Kahn

GKK:blb

cc: Steve McCoy, Friends of the Columbia Gorge (steve@gorgefriends.org),
Nathan Baker, Friends of the Columbia Gorge (nathan@gorgefriends.org)
Bill Richardson, Clark County Prosecuting Attorney's Office (bill.richardson@clark.wa.gov)
Taylor Hallvik, Clark County Prosecuting Attorney's Office (taylor.hallvik@clark.wa.gov)
Sonja Wiser, Program Assistant, Clark County (sonja.wiser@clark.wa.gov)
Clients



FRIENDS OF THE COLUMBIA GORGE

Via email

October 17, 2019

Clark County Planning Commission
C/O Sharon Lumbantobing, Planner II
Clark County Community Planning
PO Box 9810
Vancouver, WA 98666-9810
E-mail: Sharon.Lumbantobing@clark.wa.gov

**Re: CPZ2019-00033 Clark County Unified Development Code (Title 40.240.440)
Amendments to Columbia River Gorge National Scenic Area Districts**

Dear Planning Commission:

Friends of the Columbia Gorge has reviewed and submits these comments on the above-referenced proposed ordinance. Friends is a non-profit organization with approximately 6,500 members dedicated to protecting and enhancing the resources of the Columbia River Gorge through the effective implementation of the Columbia River Gorge National Scenic Area Act. Our membership includes hundreds of citizens who reside within the Columbia River Gorge National Scenic Area.

Friends supports the changes proposed to be made permanent in Clark County Code (“CCC” or “the code”) § 40.240.440.H to correct a clear scrivener’s error. The error was temporarily corrected by the County Council on September 25, 2019 in Interim Ordinance No. 2019-09-13 and is currently in effect. The Planning Commission’s actions on the current proposal will merely make the current state of affairs permanent.

The scrivener’s error was introduced in June of 2003 when changes were made to the CCC due to a restructuring of parts of the code. The change from a Type III (quasi-judicial) review process to a Type IV (legislative) review process for “development and production of mineral and geothermal resources” was not indicated as a change to the code through strikeouts and underlining as the other changes were. *See* Exhibit 2 to Interim Ordinance No. 2019-09-13. In addition, the County sent a letter to the Gorge Commission assuring them that “[t]here was

nothing of substance changed or added except where current practice was codified” and that the “public review draft” of the changes “shows (in highlight and ~~strikeout~~) what changes were made.” See Exhibit 3 to Interim Ordinance No. 2019-09-13. Clearly a mistake was made when the review type was changed from Type III to Type IV in 2003.

In addition, in the “summary of procedures and processes” in the CCC, applications in the National Scenic Area (referred to as the Columbia River Gorge in the Table) are to be reviewed as Type II or Type III permits and not as Type IV permits. CCC § 40.500.010 (Table 40.500.010-1). This further illustrates that the change was inadvertent. The County should make the temporary correction permanent.

Under CCC § 40.240.030.A, corrections to “[s]crivener errors” in the CCC sections pertaining to the National Scenic Area “may be undertaken administratively by staff.” As this is a clear scrivener’s error, the Planning Commission should take this opportunity to memorialize its support for the changes that staff is taking to permanently fix the error. For the changes to be made permanent, there is no need under the code to wait until the comp plan annual review is completed in February of 2020.

Thank you for this opportunity to comment.

Sincerely,



Steven D. McCoy
Staff Attorney

cc: Bill Richardson, Clark County Prosecuting Attorney’s Office
Taylor Hallvik, Clark County Prosecuting Attorney’s Office
Sonja Wiser, Program Assistant, Clark County
Gary Kahn, Reeves, Kahn, Hennessy & Elkins
Peggy Hennessy, Reeves, Kahn, Hennessy & Elkins
Nathan Baker, Senior Staff Attorney, Friends of the Columbia Gorge



Nisqually Indian Tribe
4820 She-Nah-Num Dr. S.E.
Olympia, WA 98513
(360) 456-5221

September 25, 2019

Oliver Orjiako, Director
Clark County Community Planning
1300 Franklin Street; 3rd Floor
Vancouver, WA 98666

Dear Mr. Orjiako,

The Nisqually Indian Tribe thanks you for the opportunity to comment on:

Re: CPZ2019-00033 Columbia River Gorge National Scenic Area Code Update

The Nisqually Indian Tribe has reviewed the report you provided for the above-named project. The Nisqually Indian Tribe has no further information or concerns at this time. Please keep us informed if there are any Inadvertent Discoveries of Archaeological Resources/Human Burials.

Sincerely,

Brad Beach
THPO Department
360-528-0680
360-456-5221 ext 1277
beach.brad@nisqually-nsn.gov

Annette "Nettsie" Bullchild
THPO Department
360-456-5221 ext 1106
bullchild.annette@nisqually-nsn.gov

Jeremy "Badoldman" Perkuhn
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Jamie D. Howsley
Admitted in Oregon and Washington
jamie.howsley@jordanramis.com
Direct Dial: (360) 567-3913

October 16, 2019

VIA EMAIL ONLY

Clark County Planning Commission
ATTN: Sonja Wiser, Program Assistant
Clark County Community Planning
PO Box 9810
Vancouver, WA 98666-9810
E-mail: Sonja.wiser@clark.wa.gov

Re: **CPZ2019-00033 Clark County Unified Development Code (Title 40.240.440)**
Amendments - Columbia River Gorge National Scenic Area

Dear Planning Commission:

Our office represents Judith Zimmerly, property owner of the Washougal Pit, and we are submitting the following comments regarding Clark County's ("County") proposed amendments to the Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H) to correct a "scrivener's error." Staff has proposed an amendment to CCC 40.240.440(H) to amend the review procedure for the development and production of mineral and geothermal resources to a Type III (quasi-judicial) process. Currently, the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process.

As the property owner of the Washougal Pit, Judith Zimmerly is currently involved in appeal proceedings related to Amended N&O# CDE2017-Z-1069(A), and it is our client's belief that this proposed amendment to CCC 40.240.440(H) is a function of the work that has been done on-site. In addition, although this proposed amendment has been described as a mere attempt to amend a "scrivener's error," the underlying effect of such an amendment to CCC 40.240.440(H) will have a profound impact on our client's current application for a National Scenic Area Permit. Certainly, it is uncanny timing that staff has undertaken this proposed action at the same time as our client is in the process of applying for a National Scenic Area Permit.

The 2003 Amendment made in CCC 40.240.240(G) by Ord. 2003-11-01 Requiring Type IV Process for the Development and Production of Mineral and Geothermal Resources was Intentional and Not the Result of a Scrivener's Error

Foremost, it is not clear that the requirement that the development and production of mineral and geothermal resources must follow a Type IV review process was the result of a scrivener's error. See CCC 40.240.440(H). In 1996, Clark County implemented the National Scenic Area Act ("NSA") by adopting a local land use ordinance consistent with the Columbia River Gorge Commission's management plan (hereinafter "Management Plan"). See Ord. 1996-04-30 (May 6, 1996). In this ordinance, CCC 18.334A.200(g) states that the development and production of mineral and geothermal resources in the Columbia River Gorge National Scenic Area ("CRGNSA") will be

reviewed under a Type III process. *Id.* Importantly, no amendments to section 18.334A.200(g) were found between the adoption of Ordinance 1996-04-30 and its repeal by Ordinance 2003-11-01.

On November 4, 2003, Clark County adopted Ordinance 2003-11-01 which repealed Title 18, replacing Chapter 18.334A with Chapter 40.240 (the County's current scenic area ordinance). Within Ordinance 2003-11-01, an amendment was made to CCC 40.240.240(G) [subsequently renumbered to 40.240.440(H)] which established that development and production of mineral and geothermal resources in the Gorge would no longer be reviewed under a Type III process, instead requiring a Type IV legislative process.

Staff maintains this was the result of a scrivener's error, as this amendment was not indicated using an underline and strikethrough process. However, history reflects there was a significant amount of interest shown by Clark County elected officials in regulating surface mining activity in Clark County, including within the NSA. Therefore, it stands to reason that this change to CCC 40.240.240(G) was the result of the County board ensuring they retained greater control over the surface mining permitting process. Most importantly, if this was a simple scrivener's error—as maintained by County staff—why has it remained on the books for the past sixteen years?¹

The Proposed Amendment to CCC 40.240.440(H) is Directed at the Washougal Pit

During the Clark County Council meeting on September 25, 2019, it was revealed that staff had met individually and off the record with each Councilor prior to voting to approve Interim Ordinance No. 2019-09-13. This process is highly irregular for an action to correct a mere "scrivener's error." Our client believes this proposed amendment is the product of the ongoing litigation involving the Washougal Pit, discussed fully below, and not merely a coincidence in timing.

Importantly, our client is in the process of applying for a National Scenic Area Permit for the development and production of mineral and geothermal resources. The Washougal Pit is the only surface mine currently applying for a National Scenic Area Permit. To change the procedure for review of such an application at the exact time our client is submitting for such a permit clearly shows that this proposed amendment is targeted specifically at the Washougal Pit and our client. In addition to being highly inappropriate if directed at the Washougal Pit, this proposed action will further delay the permitting process, as our client will be forced to wait to submit further application documents until the final ordinance is voted on in February of 2020.

The Purported Inconsistency within CCC 40.240.440(H) is Emblematic of a Larger Theme of Inconsistency in Clark County's Scenic Area Ordinance

As evidenced by our client's ongoing litigation involving Clark County and the Columbia River Gorge Commission, this alleged "scrivener's error" is representative of a broader regulatory scheme of inconsistencies under Clark County's Scenic Area Ordinance. The Planning Commission should have full context of this proposed correction of an alleged "scrivener's error," which is so clearly directed to and initiated because of our own client's proposed permit process and ongoing litigation defending the County's own Code.

¹ No amendments to section 40.240.440(H) [other than its renumbering from 40.240.240(G)] have been found in the seventeen years between its adoption and this proposed amendment.

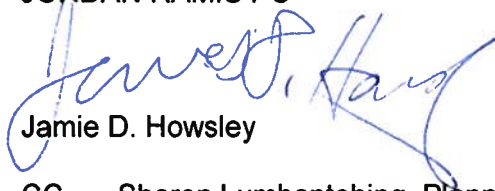
As the Planning Commission may or may not be aware, our client, along with other parties interested in the Washougal Pit, have been in extensive, and still ongoing, litigation regarding the lawful application of the County's Code, specifically with respect to the jurisdiction of the Columbia River Gorge Commission in the context of the County's code enforcement and land use review processes.² Our client is actively fighting for the lawful application of County Code provisions, specifically CCC 32.08.050(2), which provides that any final order on a Hearing Examiner's decision under a code enforcement appeal goes to superior court, and CCC 40.240.050(I), which provides that appeals under the Scenic Area Ordinance chapter proceed to the Hearing Examiner, and then again, superior court.

Yet, despite this clear, unambiguous language, an appeal of our client's matter has been brought to the Columbia River Gorge Commission. Our client and other interested parties have fought within that tribunal—and superior court—to dismiss the case for lack of jurisdiction, and we continue to do so to this date. Clark County's staff and counsel have been silent and provided no direction or argument in support of its own Code. Our client and others are leading the charge to defend the County's own Code, as drafted and applied to all citizens and property owners in Clark County.

Generally, the County should be reviewing and correcting the myriad inconsistencies and discrepancies in its own Code. Rather than approach amendments to the Code in piecemeal fashion, like this very alleged "scrivener's error" that is initiated as a reaction to our own client's property and permitting process, the Planning Commission should consider a recommendation to direct staff to take a comprehensive look at their Code. And a recommendation should not be to just enforce the Code as it is clearly written, but revise the Code as a whole under a single legislative process to allow for all parties harmed and involved to properly voice their deep concerns about this piecemeal "scrivener's error" amendment that is nothing short than pointed, reactive action directed at our client.

Very truly yours,

JORDAN RAMIS PC



Jamie D. Howsley

CC Sharon Lumbantobing, Planner II

² See Clark County Superior Court, Case No. 19-2-01896-06.

**NOTICE OF PUBLIC HEARING
CLARK COUNTY PLANNING COMMISSION**

NOTICE IS HEREBY GIVEN that the Clark County Planning Commission will conduct a public hearing on **October 17, 2019, at 6:30 p.m.**, at the Public Services Center, 1300 Franklin Street, Hearing Room, 6th Floor, Vancouver, Washington to consider the following:

CPZ2019-00033 Clark County Unified Development Code (Title 40) Amendments:

No.	Title/Chapter/Section	Description
1	40.240.440(H)	Proposal to amend Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H) to correct a scrivener's error. CCC 40.240.440(H) currently states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedure should be a Type III (quasi-judicial) process.

Staff Contact: Sharon Lumbantobing at sharon.lumbantobing@clark.wa.gov or (564) 397-4909


The staff report, related materials, and hearing agenda will be available 15 days prior to the hearing date on the county's web page at <https://www.clark.wa.gov/community-planning/planning-commission-hearings-and-meeting-notes>

Copies of materials are also available at Clark County Community Planning, 1300 Franklin Street, 3rd Floor, Vancouver, Washington. For other formats, contact the Clark County ADA Office at ADA@clark.wa.gov, voice 564-397-2322, Relay 711 or 800-833-6388, Fax 564-397-6165.

Anyone wishing to attend this hearing should appear at the time and place stated above. Spoken testimony regarding this matter may be given there. Written testimony can be provided to the Clark County Planning Commission by e-mailing the clerk of the commission at Sonja.Wiser@clark.wa.gov or via US Postal Service to the Clark County Planning Commission, c/o Sonja Wiser, PO Box 9810, Vancouver, WA 98666-9810. Written testimony may also be submitted for the record during the hearing. Please ensure that testimony is received at least two (2) business days before the hearing if you would like staff to forward it to the Planning Commission before the hearing.

Approved as to Form only:

Anthony Golik
Prosecuting Attorney

By: 
Taylor Hallvik
Deputy Prosecuting Attorney

PLEASE PUBLISH:
Please Bill:

Wednesday, October 2, 2019
Clark County Community Planning
Attn: Sonja Wiser, Program Assistant
P. O. Box 9810
Vancouver, WA 98666-9810
Columbian Account 70914

From: [PLANVIEW Mail](#)
To: [Lumbantobing, Sharon](#)
Subject: [Contains External Hyperlinks] Clark County - Expedited Review Request Granted for Submittal ID: 2019-S-698
Date: Tuesday, October 08, 2019 6:21:04 AM

CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Lumbantobing,

Your request for an Expedited Review has been granted for: Proposed amendment to Clark County Unified Development Code, Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H) to correct a scrivener's error. CCC 40.240.440(H) currently states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedure should be a Type III (quasi-judicial) process.

As of receipt of this email, you have met the Growth Management notice to state agency requirements in RCW 36.70A.106 for this submittal. Please keep this email as confirmation.

If you have any questions, please contact Ike Nwankwo at (360) 725-2950 or by email at ike.nwankwo@commerce.wa.gov.

~~~ ONLINE TRACKING SYSTEM AVAILABLE ~~~~

Log into our new PlanView system at <https://secureaccess.wa.gov/com/planview> where you can keep up with this submittal status, reprint communications and update your contact information.

Don't have a user account? Reply to this email to request one and attach a completed PlanView User Request Form.

Have questions about using PlanView? Use the PlanView User Manual for assistance at <https://www.commerce.wa.gov/serving-communities/growth-management/washington-department-of-commerce-growth-management-submitting-materials/>.

Sincerely,

Review Team  
Growth Management Services



STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE  
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000  
[www.commerce.wa.gov](http://www.commerce.wa.gov)

09/24/2019

Ms. Sharon Lumbantobing  
Planner II  
Clark County  
1300 Franklins Street  
Post Office Box 9810  
Vancouver, WA 98666-9810

Sent Via Electronic Mail

Re: Clark County--2019-S-698--Request for Expedited Review / Notice of Intent to Adopt Amendment

Dear Ms. Lumbantobing:

Thank you for sending the Washington State Department of Commerce (Commerce) the Request for Expedited Review / Notice of Intent to Adopt Amendment as required under [RCW 36.70A.106](#). We received your submittal with the following description.

**Proposed amendment to Clark County Unified Development Code, Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H) to correct a scrivener's error. CCC 40.240.440(H) currently states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedure should be a Type III (quasi-judicial) process.**

We received your submittal on 09/24/2019 and processed it with the Submittal ID 2019-S-698. Please keep this letter as documentation that you have met this procedural requirement. Your 60-day notice period ends on 11/23/2019.

You requested expedited review under [RCW 36.70A.106\(3\)\(b\)](#). We have forwarded a copy of this notice to other state agencies for expedited review and comment. If one or more state agencies indicate that they will be commenting, then Commerce will deny expedited review and the standard 60-day review period (from date received) will apply. Commerce will notify you by e-mail regarding of approval or denial of your expedited review request. If approved for expedited review, then final adoption may occur no earlier than fifteen calendar days after the original date of receipt by Commerce.

If you have any questions, please contact Growth Management Services at [reviewteam@commerce.wa.gov](mailto:reviewteam@commerce.wa.gov), or call Ike Nwankwo, (360) 725-2950.

Sincerely,

Page: 1 of 2





STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE  
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000  
[www.commerce.wa.gov](http://www.commerce.wa.gov)

11/14/2019

Ms. Sharon Lumbantobing  
Planner II  
Clark County  
1300 Franklins Street  
Post Office Box 9810  
Vancouver, WA 98666-9810

Sent Via Electronic Mail

Re: Clark County--2019-S-913--Notice of Final Adoption

Dear Ms. Lumbantobing:

Thank you for sending the Washington State Department of Commerce the Notice of Final Adoption as required under [RCW 36.70A.106](#). We received your submittal with the following description.

**Adopted Interim Ordinance 2019-11-07 amending a portion of the Clark County Code related to the Columbia River Gorge National Scenic Area Districts to correct a scrivener's error in CCC 40.240.440(H) regarding the review procedures for development and production of mineral and geothermal resources.**

We received your submittal on 11/14/2019 and processed it with the Submittal ID 2019-S-913. Please keep this letter as documentation that you have met this procedural requirement.

If you have any questions, please contact Growth Management Services at [reviewteam@commerce.wa.gov](mailto:reviewteam@commerce.wa.gov), or call Ike Nwankwo, (360) 725-2950.

Sincerely,

Review Team  
Growth Management Services

## NOTICE OF DETERMINATION OF NON SIGNIFICANCE (DNS)

**NOTICE IS HEREBY GIVEN** that the following proposal has been determined to have no probable significant adverse impact on the environment, and that an environmental impact statement is not required under RCW 43.21C.030(2)(c). Written comments on the following proposal, or DNS, may be submitted to the Responsible Official by October 16, 2019.

**DESCRIPTION:** *Clark County Unified Development Code (Title 40.240.440) Amendments (CPZ2019-00033 Columbia River Gorge National Scenic Area Code update)* – The proposal is to amend the Clark County Code pertaining to the Columbia River Gorge National Scenic Area to correct a scrivener’s error to CCC 40.240.440(H), which states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedures should be a Type III (quasi-judicial) process as they are elsewhere in code.

**ACTION REQUESTED:** It is requested that the County Council amend the text of the Columbia River Gorge National Scenic Area (CCC Chapter 40.240.440(H) to correct a scrivener’s error to change the review procedures from a Type IV (legislative) process to a Type III (quasi-judicial) process.

**RESPONSIBLE OFFICIAL:**

Oliver Orjiako, Director Community Planning  
PO Box 9810  
Vancouver WA 98666-9810  
[oliver.orjiako@clark.wa.gov](mailto:oliver.orjiako@clark.wa.gov)

---

**BILL TO:**

Sonja Wiser, Program Assistant  
Clark County Community Planning  
PO Box 9810  
Vancouver, WA 98666-  
9810 (360) 397-2280 ext.  
4558  
[Sonja.wiser@clark.wa.gov](mailto:Sonja.wiser@clark.wa.gov)

**PUBLICATION DATE:**           **October 2, 2019**

**PLEASE E-MAIL OR CALL TO CONFIRM RECEIPT AND PUBLICATION DATE**



**DETERMINATION OF NON-SIGNIFICANCE**

**Description of Proposal:** **Clark County Unified Development Code (Title 40.240) Amendments (CPZ2019-00033 Columbia River Gorge National Scenic Area Code update)** – The proposal is to amend the Clark County Code pertaining to the Columbia River Gorge National Scenic Area to correct a scrivener’s error to CCC 40.240.44(H), which states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedures should be a Type III (quasi-judicial) process as they are elsewhere in code.

**Proponent:** Clark County

**Location of proposal, including street address, if any:** Clark County, Washington

**Lead Agency:** Clark County, Washington

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below.

Comments must be submitted by: October 16, 2019

**Responsible Official:** Oliver Orjiako  
**Position/title:** Director  
**Address:** **RE: SEPA Comments**  
Clark County Community Planning  
1300 Franklin Street; 3<sup>rd</sup> Floor  
P.O. Box 9810  
Vancouver, WA 98666-9810

**Date:** 9-24-19      **Signature:** Oliver Orjiako

The staff contact person and telephone number for any questions on this review is Sharon Lumbantobing, Planner II, (360) 397-2280 ext. 4909.



**Clark County SEPA Environmental Checklist  
Washington Administrative Code (WAC) 197-11-960**

---

**A. BACKGROUND**

- 1. Name of proposed project, if applicable:** Clark County Unified Development Code (Title 40 40.240) Amendments (CPZ2019-00033) Columbia River Gorge National Scenic Area Code Amendment
- 2. Name of applicant:**  
*Clark County, Washington*
- 3. Address and phone number of applicant and contact person.**  
*Oliver Orjiako, Director  
Clark County Community Planning  
P.O. Box 9810  
Vancouver, WA 98666-9810  
(360) 397-2280 extension 4112*
- 4. Date checklist prepared:**  
*September 19, 2019*
- 5. Agency requesting checklist:**  
*Clark County, WA*
- 6. Proposed timing or schedule (including phasing, if applicable):**  
*If approved by the Clark County Councilors, the code amendments would become effective in November 2019.*
- 7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.**  
*No, this is a non-project action.*
- 8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.**  
*None, this is a non-project action.*

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

*None, this is a non-project action.*

10. List any government approvals or permits that will be needed for your proposal, if known.

*None, this is a non-project action.*

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page.

*This SEPA review is for a non-project action. The proposed amendment to the Clark County Unified Development Code (Title 40.240.440.H) is intended to correct a scrivener's error to change the review process from a Type IV (legislative) process to a Type III (quasi-judicial) process as they are elsewhere in code.*

12. Location of the proposal.

*None. This is a non-project action.*

## B. ENVIRONMENTAL ELEMENTS

### 1. Earth

- a. General description of the site: Flat, rolling, hilly, steep slopes, mountainous, other.

*Not applicable.*

- b. What is the steepest slope on the site (approximate percent slope)?

*Not applicable.*

- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.

*Not applicable. This is a non-project action.*

- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

*Not applicable.*

- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.

*Not applicable. This is a non-project action.*

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

*No. This is a non-project action.*



- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?**  
*None. This is a non-project action.*
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:**  
*None. This is a non-project action.*

## **2. Air**

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.**  
*None, this is a non-project action.*
- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.**  
*Not applicable. None, this is a non-project action.*
- c. Proposed measures to reduce or control emissions or other impacts to air, if any:**  
*Not applicable. This is a non-project action.*

## **3. Water**

- a. Surface:**
  - 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.**  
*Not applicable.*
  - 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described water? If yes, please describe and attach available plans.**  
*No.*
  - 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.**  
*None.*
  - 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.**  
*No.*
  - 5) Does the proposal lie within a 100-year flood plain? If so, note location on the site plan.**  
*No.*
  - 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.**  
*No.*

**b. Ground Water:**

- 1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.**

*No.*

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals . . .; agricultural; etc). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.**

*None. This is a non-project action.*

**c. Water Runoff (including storm water):**

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.**

*Not applicable as this is a non-project action.*

- 2) Could waste materials enter ground or surface waters? If so, generally describe.**

*Not applicable.*

- 3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.**

*Not applicable as this is a non-project action.*

**d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:**

*No mitigation is proposed as part of this is non-project action.*

**4. Plants**

**a. Check or circle types of vegetation found on the site.**

Not applicable.

deciduous tree: alder, maple, aspen, other

evergreen tree: fir, cedar, pine, other

shrubs

grass

pasture

crop or grain

orchards, vineyards or other permanent crops.

- \_\_\_ wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- \_\_\_ water plants: water lily, eelgrass, milfoil, other
- \_\_\_ other types of vegetation

**b. What kind and amount of vegetation will be removed or altered?**

*None. This is a non-project action.*

**c. List threatened or endangered species known to be on or near the site.**

*None. This is a non-project action.*

**d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:**

*None. This is a non-project action.*

**e. List all noxious weeds and invasive species known to be on or near the site.**

*None. This is a non-project action.*

**5. Animals**

**a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:**

birds: hawk, heron, eagle, songbirds, other:

mammals: deer, bear, elk, beaver, other:

fish: bass, salmon, trout, herring, shellfish, other:

*None. This is a non-project action.*

**b. List any threatened or endangered species known to be on or near the site.**

*None.*

**c. Is the site part of a migration route? If so, explain.**

*No.*

**d. Proposed measures to preserve or enhance wildlife, if any:**

*None as this is a non-project action.*

**e. List any invasive animal species known to be on or near the site.**

*None.*

**6. Energy and Natural Resources**

- a. **What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.**

*None.*

- b. **Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.**

*No.*

- c. **What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:**

*None.*

**7. Environmental Health**

- a. **Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, describe.**

*None.*

- 1) Describe special emergency services that might be required.**

*Not applicable.*

- 2) Proposed measures to reduce or control environmental health hazards, if any:**

*None.*

- 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.**

*Not applicable.*

- 4) Describe special emergency services that might be required.**

*Not applicable.*

- 5) Proposed measures to reduce or control environmental health hazards, if any:**

*Not applicable.*

**b. Noise**

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?**

*Not applicable.*

- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.**

*Not applicable.*

**3) Proposed measures to reduce or control noise impacts, if any:**

*Not applicable.*

**8. Land and Shoreline Use**

**a. What is the current use of the site and adjacent properties?**

*Not applicable. This is a non-project action.*

**b. Has the site been used for agriculture? If so, describe.**

*Not applicable. This is a non-project action.*

**c. Describe any structures on the site.**

*None.*

**d. Will any structures be demolished? If so, what?**

*No.*

**e. What is the current zoning classification of the site?**

*Not applicable. This is a non-project action.*

**f. What is the current comprehensive plan designation of the site?**

*Not applicable. This is a non-project action.*

**g. If applicable, what is the current shoreline master program designation of the site?**

*Not applicable.*

**h. Has any part of the site been classified as a critical area by the city or county? If so, specify.**

*No.*

**i. Approximately how many people would reside or work in the completed project?**

*None. This is a non-project action.*

**j. Approximately how many people would the completed project displace?**

*None.*

**k. Proposed measures to avoid or reduce displacement impacts, if any:**

*No measures are necessary as this is a non-project action.*

**l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:**

*No measures are necessary as this is a non-project action.*

**m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:**

*No measures are necessary as this is a non-project action.*

## 9. Housing

- a. **Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.**

*None as this is a non-project action.*

- b. **Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.**

*None.*

- c. **Proposed measures to reduce or control housing impacts, if any:**

*None.*

## 10. Aesthetics

- a. **What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?**

*Not applicable.*

- b. **What views in the immediate vicinity would be altered or obstructed?**

*Not applicable.*

- c. **Proposed measures to reduce or control aesthetic impacts, if any:**

*No measures are necessary as this is a non-project action.*

## 11. Light and Glare

- a. **What type of light or glare will the proposal produce? What time of day would it mainly occur?**

*None, this is a non-project action.*

- b. **Could light or glare from the finished project be a safety hazard or interfere with views?**

*No.*

- c. **What existing off-site sources of light or glare may affect your proposal?**

*Not applicable.*

- d. **Proposed measures to reduce or control light and glare impacts, if any:**

*None are proposed for this is a non-project action.*

## 12. Recreation

- a. **What designated and informal recreational opportunities are in the immediate vicinity?**

*None.*

- b. **Would the proposed project displace any existing recreational uses? If so, describe.**

*No.*

- c. **Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:**

*None are proposed for this is a non-project action.*

### **13. Historic and Cultural Preservation**

- a. **Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.**  
*Not applicable. This is a non-project action.*
- b. **Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.**  
*Not applicable. This is a non-project action.*
- c. **Proposed measures to reduce or control impacts, if any:**  
*None, this is a non-project action.*
- d. **Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.**  
*None, this is a non-project action.*

### **14. Transportation**

- a. **Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.**  
*None.*
- b. **Is the site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?**  
*No.*
- c. **How many parking spaces would the completed project have? How many would the project eliminate?**  
*None.*
- d. **Will the proposals require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).**  
*Not applicable. This is a non-project action.*
- e. **Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.**  
*No.*
- f. **How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.**  
*None. This is not applicable for this non-project action.*
- g. **Proposed measures to reduce or control transportation impacts, if any:**  
*None proposed as part of this non-project action.*
- h. **Proposed measures to reduce or control transportation impacts, if any:**  
*None proposed as part of this non-project action.*

**15. Public Services**

- a. **Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? if so, generally describe.**  
*No.*
- b. **Proposed measures to reduce or control direct impacts on public services, if any.**  
*None proposed as part of this non-project action.*

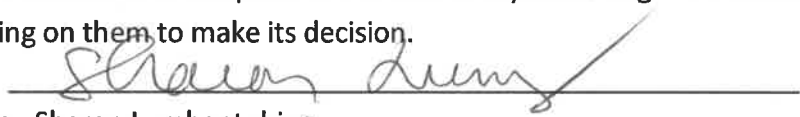
**16. Utilities**

- a. **Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.**  
*Not applicable.*
- b. **Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.**  
*None.*

**C. SIGNATURE**

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: \_\_\_\_\_



Name of signee: Sharon Lumbantobing

Position and Agency/Organization Planner II, Clark County Community Planning

Date Submitted: September 17, 2019

**D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS**

Respond briefly and in general terms.

- 1. **How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?**  
*No development is proposed as a part of this code amendment. The proposed code amendment corrects a scrivener's error and is not related to site-specific development. The proposal would not increase any of the impacts listed above.*
- 2. **How would the proposal be likely to affect plants, animals, fish or marine life?**  
*No development is proposed as a part of this code amendment. The proposal would correct a scrivener's error.*
- 3. **How would the proposal be likely to deplete energy or natural resources?**  
*No development is proposed as a part of this code amendment. The proposal would correct a scrivener's error.*
- 4. **How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection: such as parks, wilderness,**



**wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?**

*No development is proposed as a part of this code amendment.*

- 5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?**

*No development is proposed as a part of this code amendment.*

- 6. How would the proposal be likely to increase demands on transportation or public services and utilities?**

*No development is proposed as a part of this code amendment.*

- 7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.**

*The proposal would not conflict with local, state or federal laws.*

