

# MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK  
SUITE 1510, PORTLAND BUILDING  
1120 S.W. FIFTH AVENUE  
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS		
GLADYS McCOY •	CHAIR	• 248-3308
DAN SALTZMAN •	DISTRICT 1	• 248-5220
GARY HANSEN •	DISTRICT 2	• 248-5219
TANYA COLLIER •	DISTRICT 3	• 248-5217
SHARRON KELLEY •	DISTRICT 4	• 248-5213
CLERK'S OFFICE •	248-3277	• 248-5222

## AGENDA

### MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

#### FOR THE WEEK OF

May 10- 14, 1993

- Tuesday, May 11, 1993 - 9:30 AM - Planning Items . . . . . Page 2
- Tuesday, May 11, 1993 - 1:30 PM - Board Briefings. . . . . Page 2
- Tuesday, May 11, 1993 - 2:30 PM - Agenda Review. . . . . Page 2
- Tuesday, May 11, 1993 - 6:00 PM - Joint Meeting. . . . . Page 2
- Thursday, May 13, 1993 - 9:30 AM - Regular Meeting . . . . . Page 3

Thursday Meetings of the Multnomah County Board of Commissioners are taped and can be seen at the following times:

- Thursday, 10:00 PM, Channel 11 for East and West side subscribers
- Thursday, 10:00 PM, Channel 49 for Columbia Cable (Vancouver) subscribers
- Friday, 6:00 PM, Channel 22 for Paragon Cable (Multnomah East) subscribers
- Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

**INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222 OR MULTNOMAH COUNTY TDD PHONE 248-5040 FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.**

Tuesday, May 11, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

- P-1 Discuss existing appeal procedures and identify possible alternative appeal models. Presented by R. Scott Pemble and Larry Kressel. 30 MINUTES REQUESTED.
- P-2 Review the Land Conservation and Development Commission's (LCDC) Periodic Review Order and identify issues, work program impacts, and alternative response strategies. Presented by R. Scott Pemble and Larry Kressel. 20 MINUTES REQUESTED.
- P-3 First Reading of a Proposed ORDINANCE Amending those Sections of Multnomah County Code Chapter 11.15 Regulating Land Uses within the Columbia River Gorge National Scenic Area. Presented by Bob Hall. 20 MINUTES REQUESTED.
- 

Tuesday, May 11, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

BOARD BRIEFINGS

- B-1 Review of Seismic Information and FY 1992-93 Structural Studies. Presented by Jim Emerson, Jean Miley, and Ian Madin (Oregon Dept. of Geology & Mineral Industries). 60 MINUTES REQUESTED.
- 

Tuesday, May 11, 1993 - 2:30 PM

Multnomah County Courthouse, Room 602

AGENDA REVIEW

- B-2 Review of Agenda for Regular Meeting of May 13, 1993
- 

Tuesday, May 11, 1993 - 6:00 - 7:00 PM

Mead Building  
421 SW Fifth, Second Floor Conference Room 204

JOINT MEETING

COMMUNITY CHILDREN and YOUTH SERVICES COMMISSION/  
MULTNOMAH COUNTY COMMISSION

- B-3 Joint Board of County Commissioners and Community Children and Youth Services Commission Meeting to Discuss Concerns, Priorities and Specific Issues for Multnomah County's Children and Youth, Including Children's Care Team Proposals.

REGULAR MEETING

CONSENT CALENDAR

DEPARTMENT OF SOCIAL SERVICES

- C-1 RESOLUTION in the Matter of Authorizing Designees of the Mental health Program Director to Direct a Peace Office to Take an Allegedly Mentally Ill Person into Custody
- C-2 Ratification of an Intergovernmental Revenue Agreement, Contract #104443, between Multnomah County Mental Health, Youth, and Family Services Division and the Children's Services Division to Pay for One Half the Costs of the Kaleidoscope, Inc. Services up to \$2,052.89, for the Period April 15, 1993 through June 30, 1993
- C-3 Ratification of Amendment No. 5 to Intergovernmental Agreement, Contract #100183, between Multnomah County Mental Health, Youth, and Family Services Divisions Mental and Emotional Disabilities Program and the Oregon Health Sciences University to Decrease Non-Residential Adult Services by \$27,294 due to Additional State Assessment for 92 Medicaid Match Effective July 1, 1992 through June 30, 1993

DEPARTMENT OF HEALTH

- C-4 Ratification of Amendment #1 to Intergovernmental Agreement, Contract #103661, between Multnomah County and the Oregon Health Sciences University, School of Medicine to Add the Department of Family medicine to the List of Administrative Units Providing Students to Work in County Clinics per the Affiliation Agreement, for the Period July 1, 1993 through June 30, 1994
- C-5 Ratification of Amendment #1 to Intergovernmental Agreement, Contract #201003, between Multnomah County and Tillamook County Public Health Department to Extend Agreement through June 30, 1993 and Continue Provision of HIV Case Management Services for Persons with Disabling HIV Disease
- C-6 Ratification of Amendment #1 to Intergovernmental Agreement, Contract #200803, between Multnomah County and Clackamas County Public Health Division to Extend Agreement through June 30, 1993 and Continue Provision of HIV Case Management Services for Persons with Disabling HIV Disease
- C-7 Ratification of Amendment #1 to Intergovernmental Agreement, Contract #201013 3between Multnomah County and Clatsop County Public Health Department to Extend Agreement through June 30, 1993 and Continue Provision of HIV Case Management Services for Persons with Disabling HIV Disease

C-8 Ratification of an Intergovernmental Agreement, Contract #200074, between Multnomah County and the Oregon Health Sciences University to Continue to provide Medical Consultation Services at the TB Clinic, for the Period July 1, 1993 through June 30, 1994

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-9 FINAL ORDER, DENYING CU 22-92, In the Matter of Review of the Hearings Officer Decision Which Denied Conditional Use Approval of a Non-Resource Related Dwelling in the MUF District
- C-10 ORDER in the Matter of Contract 15742 for the Sale of Certain Real Property to ANIL LAL
- C-11 ORDER in the Matter of the Execution of Deed D930875 for Certain Tax Acquired Property to SHRIL D. LOMAX & DAVID J. LOMAX
- C-12 ORDER in the Matter of the Execution of Deed D930871 for Certain Tax Acquired Property to RUBEN J. MENASHE & ELIZABETH L. MENASHE
- C-13 ORDER in the Matter of the Execution of Deed D930869 for Certain Tax Acquired Property to WESTERN SPECIALTY PRODUCTS, INC.
- C-14 ORDER in the Matter of the Execution of Deed D930873 for Certain Tax Acquired Property to CHRISTOPHER W. COLES
- C-15 ORDER in the Matter of the Execution of Deed D930870 for Certain Tax Acquired Property to DAN GARNES
- C-16 ORDER in the Matter of the Execution of Deed D930885 Upon Complete Performance of Contract to JOHN PAUL BLISS and JORETTA BLISS
- C-17 ORDER in the Matter of Contract 15735 for the Sale of Certain Real Property to JEFFREY PAUL FISH
- C-18 ORDER in the Matter of Contract 15727 for the Sale of Certain Real Property to ROBERT HAHN & SHAROLYN McCALLUM
- C-19 ORDER in the Matter of Contract 15734 for the Sale of Certain Real Property to JEFFREY PAUL FISH
- C-20 ORDER in the Matter of Contract 15755 for the Sale of Certain Real Property to GARY L. MARTIN & GINA M. MARTIN
- C-21 ORDER in the Matter of Contract 15733 for the Sale of Certain Real Property to JEFFREY PAUL FISH
- C-22 ORDER in the Matter of the Execution of Deed D930874 for Certain Tax Acquired Property to CRAIG ANDERSON
- C-23 ORDER in the Matter of the Execution of Deed D930876 for Certain Tax Acquired Property to HOMER G. BAINBRIDGE & ANITA B. BAINBRIDGE

- C-24 ORDER in the Matter of the Execution of Deed D930877 for Certain Tax Acquired Property to RHYNE, KREIG & KEITH, a PARTNERSHIP
- C-25 ORDER in the Matter of the Execution of Deed D930878 for Certain Tax Acquired Property to RENALDO GRANT
- C-26 ORDER in the Matter of the Execution of Deed D930872 for Certain Tax Acquired Property to CHARLES WILLIAMS & LESLEE WILLIAMS

REGULAR AGENDA

JUSTICE SERVICES

SHERIFF'S OFFICE

- R-1 In the Matter of a Request for Exemptions from the Hiring Restriction Policy for Civilian Workers to Hire One Civilian Equipment Manager, Two Warehouse Workers, and One Civilian Property/Commissary/Laundry Manager (Continued from Thursday, May 6, 1993)

NON-DEPARTMENTAL

MANAGEMENT SUPPORT

- R-2 First Reading of a Proposed ORDINANCE Amending Ordinance 660 as Amended by Ordinance 722, the Multnomah County Audit Committee (MCAC) Ordinance by providing for Staggered Terms of the Three Citizen Member of MCAC

DEPARTMENT OF SOCIAL SERVICES

- R-3 Budget Modification DSS #54 Requesting Authorization to Increase Aging Services Long Term Care Budget by Using County General Funds Used for Increased Indirect Charges, which are Already in the ASD Budget, to match Title XIX Funds
- R-4 Budget Modification DSS #55 Requesting Authorization to Reduce \$23,774 in Older American Act Federal Funds from the Aging Services Division Budget, and \$2,758 in County General Funds for Indirect Costs, due to Reductions in State of Oregon Allocations
- R-5 Budget Modification DSS #56 Requesting Authorization to Reduce a net of \$32,816 in Oregon Project Independence State Funds from the Aging Services Division Budget, Shifts \$14,259 in OPI Funds to Org. 1900, Adds \$5,000 in OPI CEP Client Fees, and Adds Net \$1,324 in County General Funds for Indirect Costs, Due to Reductions in State of Oregon Allocations
- R-6 Budget Modification DSS #57 Requesting Authorization to Provide \$14,325 Title XIX Match to County General Funds Allocated to the Public Guardian for COLA Increases; \$755 in County General Funds are Shifted to Org. 1706 to Provide Match Funds for Title XIX Paid Indirect; and Org. 1706 Serves as the Service Reimbursement Mechanism for Title XIX Funds

R-7 Budget Modification DSS #58 Requesting Authorization to provide \$17,970 Title XIX Match to County General Funds allocated to the Adult Care Home Program for COLA Increases; \$947 in County General Funds are Shifted to Org. 1706 to Provide Match Funds for Title XIX Paid Indirect; Org. 1706 Serves as the Service Reimbursement Mechanism for Title XIX Funds

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-8 PROCLAMATION for the Purpose of Recognizing National Public Works Week, May 16 - 22, 1993

R-9 RESOLUTION in the Matter of Designation of Newspaper for Publication of Notice of Foreclosure of Tax Liens as Shown on the Multnomah County 1993 Foreclosure List

R-10 First Reading of a Proposed ORDINANCE in the Matter of Increasing Cemetery Rates for County Cemeteries, Amending Multnomah County Code 5.10.250

R-11 First Reading of a Proposed ORDINANCE Amending Multnomah County Code Chapter 10.15.110, Park Fees

R-12 RESOLUTION in the Matter of Accepting the Plan for the 1993 Multnomah County Fair

NON-DEPARTMENTAL

R-13 Ratification of Amendment #1 to Intergovernmental Agreement, Contract #4503487, between the Governments of Multnomah and Washington Counties and the City of Portland Expanding The Private Industry Council Board Membership to Increase Representation of Community Based Organizations and/or Organized Labor to Reach a Combined Level of 15% of the Board Membership

R-14 RESOLUTION in the Matter of Approving The Private Industry Council Job Training Plan

R-15 First Reading of a Proposed ORDINANCE Freezing Salaries of Exempt Employees Earning \$60,000 or More Per Year, and Amending Ordinance 742

PUBLIC COMMENT

R-16 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

0265C/43-48  
cap



Meeting Date: MAY 11 1993

Agenda No.: P-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: Procedures for Board on Land Use appeals: Possible Changes  
Planning Agenda  
~~XXXXXXXXXXXX~~ May 11, 1993 BCC Formal \_\_\_\_\_  
(date) (date)  
DEPARTMENT D.E.S. DIVISION Planning & Development  
CONTACT R. Scott Pemble TELEPHONE 248-3182  
PERSON(S) MAKING PRESENTATION Pemble, Kressel

ACTION REQUESTED:

INFORMATIONAL ONLY       POLICY DIRECTION       APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 30 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: \_\_\_\_\_

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

Discuss existing appeal procedures and identify possible alternative appeal models.

MULTNOMAH COUNTY  
OREGON  
1993 MAY - 4 AM 9:55  
BOARD OF COUNTY COMMISSIONERS

(If space is inadequate, please use other side)

SIGNATURES:

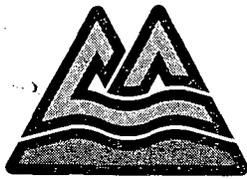
ELECTED OFFICIAL \_\_\_\_\_

Or

DEPARTMENT MANAGER Maria Rojas de Steffey for BCC

(All accompanying documents must have required signatures)





# MULTNOMAH COUNTY OREGON

*Planning*  
*5-11-93*  
*P-2*

DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF PLANNING  
AND DEVELOPMENT  
2115 S.E. MORRISON STREET  
PORTLAND, OREGON 97214  
(503) 248-3043

BOARD OF COUNTY COMMISSIONERS  
GLADYS McCOY • CHAIR OF THE BOARD  
DAN SALTZMAN • DISTRICT 1 COMMISSIONER  
GARY HANSEN • DISTRICT 2 COMMISSIONER  
TANYA COLLIER • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

Date: May 5, 1993

**TO:** Hank Miggins, *Acting Chair*  
Members of the Board

**FROM:** R. Scott Pemble, *Planning Director*

**SUBJECT:** LCDC Periodic Review Order

## PERIODIC REVIEW PROCESS

Periodic Review is the process by which the Land Conservation and Development Commission (LCDC) evaluates all city and county Comprehensive Plans and land use regulations to determine whether they remain:

- 1) consistent with Statewide Planning Goals; and,
- 2) current with changes in the community (*e.g.*, changes in sewer policy in the Balch Creek drainage).

Periodic Review, as the name implies, occurs periodically, within four to ten years after Acknowledgement<sup>1</sup> or a previous Periodic Review. In general, the Periodic Review process entails: LCDC Periodic Review notification, Department of Land Conservation and Development (DLDC) review of Comprehensive Plan and land use ordinances, DLDC report to the LCDC, comment period (ten days), and Periodic Review hearing before the LCDC.

## PERIODIC REVIEW HISTORY

In 1987, Multnomah County began what is now a five year Periodic Review process, and it is still not concluded. The LCDC sent a "Notice of Periodic Review" in August 1987. The notice identified several issues requiring some changes to the County's Comprehensive Framework Plan and land use regulations. During Fall of 1987, Multnomah County staff, Planning Commission and Board began work to resolve issues identified in the review notice.

The initial Periodic Review work was completed within two years, in 1989. A proposed order prepared by the staff and approved by the Planning Commission and Board was sent to the DLDC in February 1989. The intent of the proposed order was to solicit review comments from DLDC staff prior to the Board adopting a final order. In June 1989, the DLDC staff completed their review and sent two letters listing additional issues which needed to be resolved to complete Periodic Review (primarily Goal 5 inventory and land use regulation work).

In February 1990, the Multnomah County Board adopted final orders for all known Goal 5 resources, with the exception of the ESEE analysis for the Angell Brothers and Howard Canyon sites. Two months later, April 1990, the Board completed the remaining ESEE work on both the Howard Canyon and Angell Brothers sites.

In May 1990, the DLDC confirmed that **all Periodic Review Materials had been submitted and materials were complete**. As of May 1990 the ESEE analysis had been completed for the Howard Canyon site, designated (3B). Also, approximately 113 acres of the Angell Brothers site had been designated (3C). The remainder of the Angell Brothers site (283 acres) was held at step 2 of the OAR ESEE flow chart<sup>2</sup>. A schedule for the completion of the remaining Angell Brothers ESEE tasks was included in Multnomah County's Periodic Review final order material, sent to the DLDC in April 1990.

### LCDC DECISION

As of May 1990, the County's staff was under the impression a Periodic Review Hearing would be scheduled in the near future. Three years later, April 1993, the LCDC held its hearing and is requiring the County to complete more Goal 5 work on mineral/aggregate sites (*i.e.*, Angell Brothers, Howard Canyon, and Sites 2 and 5) and policy/regulations. Wildlife and scenic view issues are the primary issues on the Angell Brothers site and wildlife, noise and transportation issues are the primary issues needing further work at the Howard Canyon site. The LCDC decision also requires some house-keeping type work concerning the mapping of Class I streams. (See Exhibit A - April LCDC correspondence, Remand Order 93-RA-876, pages 3 thru 5, conditions 4 thru 8 for specific requirements.)

### HOWARD CANYON AND ANGELL BROTHERS CASE HISTORY

Both sites have a long land use history with the County, and some of this history predates Goal 5 rules. These are not sites that are unfamiliar to several generations of Multnomah County decision-makers.

The land use permit history of the Howard Canyon site started in 1968 with the filing of a zone change application. Six hearings were held and 172 people participated in the hearings. Subsequently, five other applications have been filed requesting mineral/aggregate uses of the site: another zone change, two conditional uses, one temporary permit, and a quasi-judicial comprehensive plan amendment. In total, 31 public hearings have been held, involving approximately 1100 public. The record for the combined hearings is estimated to be approximately one (1) foot thick.

The Angell Brothers site was first considered for mineral/aggregate use via a conditional use process in 1980. Subsequently, five more conditional use applications have been filed, plus a quasi-judicial comprehensive plan amendment has been deliberated. The most recent request, the comprehensive plan amendment, required five hearings, four before the Planning Commission and one before the Board of County Commissioners. In total, over 18 hours of hearing have occurred with over 150 public involved. The record for the Angell Brothers site is approximately three (3) feet thick.

Considerable information has been collected for both sites, numerous public debates have been conducted, and consistently the same decision has been concluded.

### GENERAL PERIODIC REVIEW ISSUES

In general, the LCDC decided the County has not properly completed the Goal 5 process for four mineral aggregate sites (Angell Brothers, Howard Canyon, and Sites 2 and 5 found in the County's mineral/aggregate inventory). Also, the LCDC took exception to County's mineral/aggregate policy and ordinance language found in Multnomah County Comprehensive Framework Plan and zoning ordinance. This is confusing to staff and a number of reviewers because LCDC did not raise any objections concerning the other eleven categories of resources identified under Goal 5. (See Exhibit B for discussion of the Goal 5.) All Goal 5 work was completed at the same time, using similar procedures. Mineral/aggregate issues have been singled out.

Consequently, staff was seeking clarification concerning Goal 5 interpretations and process at the LCDC hearing. Three basic issues were raised by Multnomah County staff and county proponents: significance test, impact area designation, and identification of conflicting uses. Listed immediately below is a general discussion of each of these issues. In the next section is a general overview of the Goal 5 process.

- 1. Significant Goal 5 Resources must be determined by considering Location, Quantity and Quality.**  
**LCDC contention: Multnomah County has not considered relative Quality and Quantity measures.**  
In the County's Comprehensive Framework Plan, Policy 16B(c), the word "important" is used. The County interprets "important" to mean "quality". The County identified the location of sites with sufficient quantity (more than 25,000 cubic yards of resource) of "important" (quality) mineral/aggregate resource by using the state's Department of Geology and Mineral Industry (DOGAMI) inventory. On the front of the map are designated locations of known mineral/aggregate sites. On the back of the map are descriptions of the type of resource found at each site. This inventory was the basis for identifying the nine mineral/aggregate sites listed on the County's inventory of significant mineral/aggregate sites. If this source of information is not valid, what should the county use for secondary data source. (The DOGAMI inventory only included those sites which had either been mined or were being mined, no new sites were identified. One assertion that has been made during the Angell Brothers site review was the potential of the entire Tualitin hills having comparable mineral/aggregate resource. This would suggest according to the DLDC staff argument, "significant" mineral/aggregate sites, possibly the entire Tualitin hills range, irrespective of need or demand, would require protection for future generations)
- 2 When beginning the ESEE analysis, an impact area must be designated, either described or mapped.**  
**LCDC contention: Multnomah County did not map nor clearly describe an impact area for either the Howard Canyon or Angell Brothers sites.** The Howard Canyon ESEE analysis, initially considered a 200 foot impact area. During the ESEE analysis some debate ensued concerning the distance, 1000 feet surrounding the site to an area encompassing the length of the access road to the site, approximately a mile long. The impact area for the Angell Brothers ESEE analysis was expanded from an initial 1000 feet to include Multnomah Channel wetlands, Forest Park and Tualitin Mountains. Both impact areas are described and can be mapped, however, OAR does not require mapping. The descriptions are sufficient.
- 3. All Conflicting Uses must be identified within the impact area.** **LCDC contention: Multnomah County improperly identified "Conflicting Uses" when preparing both the Angell Brothers and Howard Canyon ESEE analysis.** The County identified open space, natural area, wildlife habitat, and scenic views as conflicting uses prior to completing the ESEE analysis for the Angell Brothers site. Staff

contends the LCDC interpretation of conflicting uses is too restrictive. Conflicting uses include not only other Goal 5 inventoried resources (*i.e.*, significant resources), also zoning allowed uses and conflicts with other Statewide Planning Goals. (If a local government has an "acknowledge" comprehensive plan, it is presumed other policies which may represent conflicts should also be considered in the ESEE analysis.) It is arguable that wildlife habitat as a listed use within the designated zoning district for the Angell Brothers site and surrounding area is a valid conflicting use. It is a valid conflicting use irrespective of a Goal 5 significant resource designation status. Also, it is arguable that not yet listed significant Goal 5 resources can be considered prior to listing them as significant resources (*i.e.*, placing on a Goal 5 inventory).

#### OVERVIEW GOAL 5 PROCESS (ESEE)

The Goal 5 process involves six basic steps. The precise requirement of each step, however, continues to be interpreted through Periodic Reviews (DLDC and LCDC interpretation) court cases and technical bulletins<sup>3</sup>.

**Step 1.** Determine significance of each of the twelve known Goal 5 resources within the local jurisdictions plan area. Location, quality and quantity of each resource must be analyzed and conclusion reached concerning the significance of the known resource. If the resources is deemed significant, it must be listed on the plan inventory and the ESEE analysis must be completed.

**Step 2.** Identify an impact area around the inventoried Goal 5 resource. This impact area may be described or mapped. No specific formula is referenced in the Statue or OAR for defining the impact area.

**Step 3.** Identify uses that conflict with the inventoried resources. Conflicting uses consist of zoning allowed uses, other significant Goal 5 resources (inventoried resources based on location, quantity, and quality analysis), and conflicts with other Statewide Land Use Goals.

**Step 4.** Analyze the Environmental, Social, Economic, and Energy (ESEE) consequences of each use compared to the significant resource.

**Step 5.** Conclude whether all, none, or some of the resource should be protected. The local jurisdictions must designate either a 3A (all), 3B (none), or 3C (some) for each significant resource identified in their plan.

**Step 6.** All 3A and 3C resource sites must have programs to protect the resource. Typically, land use regulations are imposed to protect the resource.

#### ALTERNATIVE COURSES OF ACTION

1. Appeal to the Court of Appeals
- 2 Comply with the LCDC Order and request time extension.

#### CONSEQUENCES

1. **Appeal.** An appeal will result in little direct benefit to the County. The most that might be gained by an

appeal is the establishment of some precedents pertaining to Goal 5 significance test (location, quality, and quantity) and clarifying conflicting uses and impact areas. These legal interpretations may allow the County to complete LCDC required ESEE analysis in different ways, however, additional ESEE analysis will still need to be completed for the mineral/aggregate sites identified in "Remand Order."

This conclusion is based on the organization of the staff report prepared by DLDC staff and adopted by the LCDC as part of their final order. The DLDC staff report discusses a number of OAR procedural issues. The relationship between the discussion of issues and the conclusions and requirements are not directly tied. An appeal would require the County staff to link the issues with specific requirements while arguing the appropriate interpretation of the Statutes and OAR's. This would be difficult to do, and in the end, some clarification of the statewide land use laws may be accomplished, however, the County would still be required to redo Goal 5 work for the designated mineral/aggregate sites.

- 2. Comply with LCDC order and request extension.** The Goal 5 work will require some modification to the work program for the West Hills Rural Area Plan program. The discussion of the wildlife habitat issue will need to be concluded first, independent of other Statewide Planning Goal issues. Even an approved extension to the "Remand Order" schedule will probably require staff to prepare a report on "significance" of wildlife habitat in the West Hills for both Planning Commission and Board hearings in July/August. If the West Hills is deemed a significant wildlife habitat, then the planning staff will need to identify an impact area (all of rural county in the West Hills) and conflicting uses (other Goal 5 inventoried uses, zoning allowed uses, and other statewide planning goals -acknowledge plan policy), complete the ESEE analysis, and possibly (if designated 3A or 3C) adopt a protection program (e.g., amendments to the zoning code), probably by December 1993. Part of this work was envisioned in the initial West Hills Rural Area Plan, however, some was not. The bottom line, this work will need to be completed as part of the Rural Area Planning program, however, some new tasks have been added, and the sequence of events has been reordered by the LCDC Remand Order.

- 1. "Acknowledgment" is the process established by state land use laws whereby the Land Conservation and Development Commission first certifies a jurisdiction's comprehensive plan and land use regulations are consistent with the Statewide Land Use Planning Goals.*
- 2. A meeting was held with the AG's office to discuss the two step process - and the AG agreed it was consistent with their interpretation of the rule. Susan Brody, Lorna Stickle (former Multnomah County Planning Director) and Gary Clifford and Bob Hall attended this meeting.*
- 3. Currently, there is a Hood River county case which is challenging the DLDC use of technical bulletins as a way to further interpret OAR's. The general argument is OAR's are intended to interpret the state Statutes, not technical bulletins.*

*encl.* Exhibit A - April 30, 1992 LCDC Transmittal  
Exhibit B - Goal 5

April 30, 1993

DEPARTMENT OF  
LAND  
CONSERVATION  
AND  
DEVELOPMENT

The Honorable Hank Miggins  
Multnomah County Board of Commissioners  
County Courthouse  
1021 Southwest Fourth  
Portland, Oregon 97204

Dear Chair Miggins:

On April 23, 1993, the Land Conservation and Development Commission (LCDC) acted on Multnomah County's periodic review order. The Commission sustained the majority of the county's order. It postponed portions of the order pending LCDC action resolving rural development issues. Finally, it directed the county to make additional amendments to its comprehensive plan for Goal 5 resources.

Enclosed are the three Commission orders for its actions on April 23.

The Commission identified tasks that the county must undertake to comply with the Statewide Planning Goals and periodic review factors. It set October 29, 1993 as the date the county must submit the work to the department for review. Interim dates were established for portions of the Goal 5 planning process. The Commission directed the department staff to help the county complete the required tasks.

In sustaining the majority of the county's order, the Commission recognized the work that Multnomah County completed in this periodic review cycle. The department is committed to helping the county finish the remaining tasks in this periodic review.

Please call Jim Sitzman at 731-4065 or 378-4919 if you have questions.

Sincerely,



Richard P. Benner  
Director

RB:SO  
<rocks>Multnomah.orders.ltr

enclosures

cc: R. Scott Pemble, Planning Director  
Larry Kressel, County Counsel  
Commenters and Objectors  
DLCD Files (JS, SO, DW, DRW, Ptd, Libr(2)

RECEIVED

MAY - 4 1993

Multnomah County  
Zoning Division

Barbara Roberts  
Governor



1175 Court Street NE  
Salem, OR 97310-0500  
(503) 373-0050  
FAX (503) 362-6705

**BEFORE THE  
LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON**

<b>IN THE MATTER OF</b>	)	
<b>THE PERIODIC REVIEW</b>	)	
<b>OF THE COMPREHENSIVE PLAN</b>	)	<b>SUSTAIN ORDER</b>
<b>AND LAND USE REGULATIONS</b>	)	<b>93-SUSTAIN-874</b>
<b>FOR MULTNOMAH COUNTY</b>	)	

This matter came before the Land Conservation and Development Commission on April 23, 1993, as a final periodic review order pursuant to ORS 197.644, Oregon Laws 1991, Chapter 612, Section 8(1) and OAR 660, Division 19. The Commission, having fully considered Multnomah County's periodic review order, comprehensive plan and land use regulations, comments and objections of interested parties, the written reports of the Director of the Department of Land Conservation and Development and oral objections, now enters its:

Findings of Fact

1. On October 30, 1980, the Land Conservation and Development Commission acknowledged Multnomah County's comprehensive plan and land use regulations to be in compliance with the Statewide Planning Goals (Exhibit A).
2. On August 27, 1987, the department notified the county of the requirements under periodic review and initiated the periodic review process (Exhibit B).
3. On February 22, 1989, Multnomah County submitted its proposed periodic review order to the department (Exhibit C). The department commented on the submittal in letters dated June 9 and June 27, 1990 (Exhibits D and E).
4. Multnomah County adopted its final periodic review order on February 20, 1990. On April 17 and 24, 1990, the county adopted decisions for two Goal 5 aggregate sites, and added these decisions to its local periodic review order (Exhibit F).
5. On July 20, 1990, the Director issued Order 90-PR/POST-670 postponing action on the county's final periodic review order (Exhibit G). The department postponed

review of the county's final order until the county amended its comprehensive plan for Goal 5 mineral and aggregate resource site #4.

6. On May 15, 1992, the Commission adopted order 92-PR/SCHEd-824 continuing consideration of Multnomah County's periodic review under the previous periodic review process (Exhibit H).

7. On April 23, 1993, the Commission reviewed Multnomah County's final periodic review order. Based on its review of the final review order, comments and objections to the county's final order, the Director's reports, written exceptions to the Director's reports, and oral arguments (Exhibits F, I, J, K, L, M and N), the Commission found that:

(a) Amendments are required to the county's land use regulations in order to comply with the Statewide Planning Goals and the periodic review factors (93-RA-876);

(b) Review of portions of the county's order relating to rural development issues stemming from the Supreme Court's decision in *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986) should be postponed (93-PR/POST-875); and

(c) Portions of the periodic review order for Multnomah County adequately address the applicable periodic review factors.

#### Conclusion

Based on the foregoing findings and the Director's report, the Commission concludes that Multnomah County's periodic review order and comprehensive plan and land use regulations meet statutory and administrative rule requirements for periodic review and can be sustained, pursuant to OAR 660-19-090(5)(a), except for the portions of the county's order that are subject to the Commission's required amendments order (93-RA-876) and postponed pending LCDC action resolving rural development issues (93-PR/POST-875).

#### **THEREFORE, IT IS ORDERED THAT:**

1. The Director's report of April 2, 1993 (Exhibit J) is amended as recommended in reports from the Director on April 15 and 23, 1993 (Exhibits L and M) and is adopted by the Commission; and

2. Multnomah County's periodic review order is sustained, except for the portions of the county's order that are subject to the Commission's required amendments order (93-RA-876) and those portions postponed (93-PR/POST-875).

DATED THIS 30TH DAY OF APRIL 1993.



Richard P. Benner, Director  
Department of Land Conservation  
and Development

**NOTE:** You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final order. Judicial review is pursuant to the provisions of ORS 183.482 and 197.650. Copies of all exhibits listed in Attachment A to Commission Orders 93-SUSTAIN-874, 93-RA-876 and 93-PR/POST-875 are available for review at the Department's office in Salem.

## ATTACHMENT A

### Exhibits

#### Land Conservation and Development Commission Orders Multnomah County Periodic Review

93-SUSTAIN-874

93-RA-876

93-PR/POST-875

#### Exhibit

- A. Multnomah County comprehensive plan and land use regulations acknowledged by the Land Conservation and Development Commission (LCDC) October 30, 1980.
- B. The Department of Land Conservation and Development (DLCD) notice to Multnomah County advising the county of periodic review process.
- C. Multnomah County periodic review proposed order.
- D. DLCD comments on Multnomah County proposed order.
- E. DLCD comments on Multnomah County proposed order.
- F. Multnomah County periodic review final order.
- G. DLCD order 90-PR/POST-670.
- H. LCDC order 92-PR/SCHED-824.
- I. Comments and objections to Multnomah County's final periodic review order.
- J. April 2, 1993 Director's report.
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- L. April 15, 1993 supplemental Director's report.
- M. April 23, 1993 supplemental Director's report.
- N. Written testimony presented to LCDC April 23, 1993.



THEREFORE, additional time is necessary for the county to satisfy its obligations under periodic review, and for the Director to complete the review of the county's final periodic review order.

DATED THIS 30TH DAY OF APRIL 1993.



Richard P. Benner, Director  
Department of Land Conservation  
and Development

**NOTE:** You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final order. Judicial review is pursuant to the provisions of ORS 183.482 and 197.650. Copies of all exhibits listed in Attachment A to Commission Orders 93-SUSTAIN-874, 93-RA-876 and 93-PR/POST-875 are available for review at the Department's office in Salem.

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## ATTACHMENT A

### Exhibits

#### Land Conservation and Development Commission Orders Multnomah County Periodic Review

93-SUSTAIN-874

93-RA-876

93-PR/POST-875

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- N. Written testimony presented to LCDC April 23, 1993.

**BEFORE THE  
LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON**

**IN THE MATTER OF )  
THE PERIODIC REVIEW )  
OF THE COMPREHENSIVE PLAN )  
AND LAND USE REGULATIONS )  
FOR MULTNOMAH COUNTY )**

**REQUIRED AMENDMENTS  
REMAND ORDER  
93-RA-876**

This matter came before the Land Conservation and Development Commission on April 23, 1993, as a final periodic review order pursuant to ORS 197.644, Oregon Laws 1991, Chapter 612, Section 8(1) and OAR Chapter 660, Division 19. The Commission, having fully considered Multnomah County's periodic review order, comprehensive plan and land use regulations, comments and objections of interested parties, the written reports of the Director of the Department of Land Conservation and Development and oral arguments, now enters its:

Findings of Fact

1. On October 30, 1980, the Land Conservation and Development Commission acknowledged Multnomah County's comprehensive plan and land use regulations to be in compliance with the Statewide Planning Goals (Exhibit A).
2. On August 27, 1987, the department notified the county of the requirements under periodic review and initiated the periodic review process (Exhibit B).
3. On February 22, 1989, Multnomah County submitted its proposed periodic review order to the department (Exhibit C). The department commented on the submittal in letters dated June 9 and June 27, 1990 (Exhibits D and E).
4. Multnomah County adopted its final periodic review order on February 20, 1990. On April 17 and 24, 1990, the county adopted decisions for two Goal 5 aggregate sites, and added these decisions to its local periodic review order (Exhibit F).
5. On July 20, 1990, the Director issued Order 90-PR/POST-670 postponing action on the county's final periodic review order (Exhibit G). The department postponed

review of the county's final order until the county amended its comprehensive plan for Goal 5 mineral and aggregate resource site #4.

6. On May 15, 1992, the Commission adopted order 92-PR/SCHED-824 continuing consideration of Multnomah County's periodic review under the previous periodic review process (Exhibit H).

7. On April 23, 1993, the Commission reviewed Multnomah County's final periodic review order. Based on its review of the final review order, comments and objections to the county's final order, the Director's reports, written exceptions to the Director's report, and oral arguments (Exhibits F, I, J, K, L, M and N), the Commission found that:

(a) Portions of the periodic review order for Multnomah County adequately address the applicable periodic review factors (93-SUSTAIN-874);

(b) Review of portions of the county's order relating to rural development issues stemming from the Supreme Court's decision in *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986) should be postponed (93-PR/POST-875); and

(c) Amendments are required to the county's land use regulations in order to comply with the Statewide Planning Goals and the periodic review factors for the reasons stated in the Director's reports, as amended.

#### Conclusion

Based on the foregoing findings and the Director's reports, the Commission concludes that Multnomah County's periodic review order and comprehensive plan and land use regulations require amendments as described in this order to meet statutory and administrative rule requirements for periodic review.

#### THEREFORE, IT IS ORDERED THAT:

1. The Director's report of April 2, 1993 (Exhibit J) is amended as recommended in reports from the Director on April 15 and 23, 1993 (Exhibits L and M) and as amended by the Commission, and is adopted by the Commission; and

2. Issues raised by 1000 Friends of Oregon regarding the Supreme Court's *Curry County* decision shall be considered by the county and the Commission pursuant to LCDC's resolution of these issues (93-PR/POST-875); and

3. Multnomah County's periodic review order is sustained, except for work set forth in items 4 through 8, below, determined to be necessary to meet statutory and administrative rule requirements for periodic review; and

4. The county shall determine a study area in the West Hills, and
  - a. Not later than May 30, 1993, the county shall identify the location, quality and quantity of possible Goal 5 resources in the West Hills area. The county shall specifically determine whether the wildlife habitat and scenic resources are significant in accordance with OAR 660-16-000.
  - b. Not later than June 30, 1993, the county shall determine the impact area and conflicting uses for the Angell Bros. aggregate site and any resources determined to be significant as a result of 4.a., above. In doing so, the county shall:
    - 1) Designate the impact area(s) with a legal description or a map, showing with certainty land included in the impact area for all significant resources.
    - 2) Identify conflicts with each significant resource and provide reasons why the identified uses or natural resources conflict with the significant resource.
  - c. Not later than September 15, 1993, the county shall analyze the ESEE consequences of conflicts within the impact areas identified in 4.b., above, for the Angell Bros. aggregate resource and significant resources identified in 4.a., above.
  - d. Not later than October 22, 1993, the county shall designate the level of protection for the Angell Bros. aggregate resource and significant resources identified in 4.a., above. The county shall develop an appropriate program, or programs, to protect the resource, or resources, to resolve consequences identified in 4.c., above.
5. The county shall reevaluate the Goal 5 analysis for the Howard Canyon site consistent with OAR 660, Division 16. Specifically, the county shall: 1) describe or map the impact area surrounding the site; 2) identify conflicting uses, if any, to the resource site and give reasons how the uses conflict with the resource; 3) analyze the ESEE consequences of identified conflicts based on factual information presented to the county; 4) designate the level of resource protection to be given the resource, and state the reasons that support the decision; and 5) develop and implement a program consistent with the decision reached following analysis of ESEE consequences.
6. The county shall: 1) amend the comprehensive plan for mineral and aggregate resource sites 2 and 5 to clarify the decision for each site. 2) If insufficient information exists about the resource, include the site on the 1-B inventory and identify when the Goal 5 process will be completed for the site. 3) If the resource is determined to be

significant, identify the impact area and conflicting uses, analyze the ESEE consequences of conflicting uses, and develop and implement a program to achieve the Goal.

7. The county shall: 1) revise the program to achieve Goal 5 for mineral and aggregate resources to be consistent with ESEE analyses for individual sites. 2) amend, as necessary, in accordance with Goal 5 and the Goal 5 rule the following provisions:

a. Comprehensive plan provisions to ensure planning and permit coordination with DOGAMI in accordance with OAR 660-16-030.

b. The provisions to protect aggregate resources from conflicting uses including, but not limited to, MCC 11.15.2016(F), .2096(K), .2138(F), .2218(F), .2360(H), .2480(I), .2692(K), .2834(J), .2844(J), .2854(J), .2864(J), .2874(J), .2884(J), .2894(J);

c. MCC 11.15.7325(C) requiring protection of fish and wildlife habitat without supporting justification in a site-specific ESEE analysis;

d. MCC 11.15.7325(F) requiring applicant for mining permits to obtain state agency permits before county issuance of conditional use permits;

e. MCC 11.15.7330 establishing a 10-year limit on mineral extraction conditional use permits.

8. The county shall amend the comprehensive plan to map or identify the significant streams that are subject to the Significant Environmental Concern (SEC) provisions. Amend MCC 11.15.6404(C) to reference this plan inventory of significant streams rather than the FPA definition.

9. The county shall report the progress of work on items 4 through 8, above, to the Land Conservation and Development Commission at its July 22-23, 1993 meeting.

10. Multnomah County shall resubmit work specified in tasks 4 through 8, above, to the Director pursuant to OAR 660-19-075 through OAR 660-19-090, at the Department of Land Conservation and Development's Salem office no later than October 29, 1993.

11. The Department of Land Conservation and Development shall provide assistance to the Multnomah County planning staff and planning commission, as appropriate and agreed upon, to complete the above-referenced tasks.

DATED THIS 30TH DAY OF APRIL 1993.



Richard P. Benner, Director  
Department of Land Conservation  
and Development

**NOTE:** You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final order. Judicial review is pursuant to the provisions of ORS 183.482 and 197.650.

Copies of all exhibits listed in Attachment A to Commission Orders 93-SUSTAIN-874, 93-RA-876 and 93-PR/POST-875 are available for review at the Department's office in Salem.

## ATTACHMENT A

### Exhibits

#### Land Conservation and Development Commission Orders Multnomah County Periodic Review

93-SUSTAIN-874  
93-RA-876  
93-PR/POST-875

#### Exhibit

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DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

PERIODIC REVIEW

Multnomah County

FINAL ORDER RECEIVED:  
May 14, 1990 and  
February 17, 1993

DATE OF REPORT:  
April 2, 1993

**I. ACTION OF THE COMMISSION [DIRECTOR]**

~~[Referral of Multnomah County's final periodic review submittal to the Land Conservation and Development Commission.]~~

Recommended Action:

1. Sustain portions of the Multnomah County Periodic Review Order for lands outside the Metro UGB and outside the Columbia River Gorge National Scenic Area and find that these parts of the order adequately address the applicable periodic review factors.
2. Require Multnomah County to amend portions of its acknowledged comprehensive plan and land use regulations in order to respond to the findings of this report under the periodic review factors and to remain in compliance with the goals and coordinated with state agency plans and programs; and
3. Postpone the review for portions of the county's order pending LCDC action resolving rural development issues (i.e., Supreme Court's *Curry County* decision).

FIELD REPRESENTATIVE:  
Jim Sitzman  
Phone: 731-4065 or 378-4919

REVIEWERS:  
Doug White  
Phone: 373-0083

Steve Oulman (aggregate resources)  
Phone: 378-5144

COUNTY CONTACTS:  
Gary Clifford/Bob Hall  
Phone: 248-3043



## II. BACKGROUND

Multnomah County's comprehensive plan was acknowledged by the Land Conservation and Development Commission on October 30, 1980. The department issued Multnomah County's periodic review notice on August 28, 1987.

On February 22, 1989, the department received a proposed periodic review order and proposed amendments to the plan for land outside the Metro Urban Growth Boundary and outside the Columbia River Gorge National Scenic Area. The department's review of this material was mailed to the county on June 9 and June 27, 1990.

At the time of the county's next periodic review, the unincorporated areas inside the METRO Urban Growth Boundary will be dealt with either by the Cities of Portland, Gresham, Fairview, Wood Village and Troutdale under contract or agreement with the county or, in the absence of a framework for timely annexation, by the county (Order, p. 3). The date established for completing periodic review for the unincorporated areas inside the Metro UGB must be no sooner than four years and no later than 10 years from the date this current periodic review is approved by the Commission (ORS 197.633(2)).

As authorized under former ORS 197.640(9), Multnomah County postponed periodic review for land within the Columbia River Gorge National Scenic Area until the county's land use ordinances are approved pursuant to the Gorge Act, 16 USC §544(a)-(p).

Multnomah County adopted their final periodic review order on February 20, 1990. However, the Goal 5 analysis for two aggregate sites was continued. On April 17 and 24, 1990, the county completed the approval of the final periodic review order for the two sites.

The department received the county's final periodic review order on May 14, 1990. The department notified interested parties about receipt of this order, and received the following objections:

- The Forest Park Neighborhood Association, Friends of Forest Park, Friends of Balch Creek, and two landowners in the Balch Creek area.
- Raymond Smith, represented by Paul Hribernick.
- 1000 Friends of Oregon.

**On July 20, 1990 the Director issued Order 90-PR/POST-670 postponing action on the final periodic review order. The department delayed review of the final order until the county made its final decision on the Angell Bros. aggregate site. The findings of this report are based on review of the 1990 final order and the 1992 amendments resulting from the Angell Bros. aggregate resource decision.**

~~[Further review of the county's periodic review order was postponed to permit the county additional time to consider the issues raised by the objectors and work with the department to address certain issues. The county adopted the following ordinances subsequent to their submittal of the final order.]~~

**After submitting its final periodic review order, the county adopted the following post-acknowledgment plan amendments related to periodic review issues:**

1. Ord. No. 691, July 9, 1991, regulates grading and land disturbing activities inside the Balch Creek drainage basin.
2. Ord. Nos. 743, 744 and 745, December 8, 1992, revisions to the Forest Lands Plan Policies, Maps and implementing ordinance bringing the county into compliance with the current Goal 4 and administrative rule (OAR 660, Division 6) provisions, including those amendments adopted by the Commission on December 3, 1992.
3. Ord. No. 748, January 7, 1993, amending the comprehensive plan and land use regulations to implement the Columbia River Gorge National Scenic Area plan.

As allowed by Oregon Laws 1991, Chapter 612, Section 8, the county chose to complete periodic review under the "old process." On May 15, 1992, the Commission adopted Order 92-PR/SCHED-824 affirming the county's choice.

On December 29, 1992, Multnomah County adopted a revised final periodic review order concerning a Goal 5 ESEE analysis and decision for a 283 acre aggregate resource site (Final Order, PR 7-92). The department notified interested parties of this action and received two objections:

- Angell Bros., represented by Frank Parisi.
- Oregon Concrete & Aggregate Producers Association, Inc. (OCAPA).

### III. FINDINGS

Multnomah County held hearings and adopted a final periodic review order addressing the four periodic review factors under OAR 660-19-055 for land outside the Metro UGB and the Columbia River Gorge National Scenic Area.

**The findings in this report are divided into two sections.**

1. **Section A, "Unresolved Issues Under Goal 5," discusses the Goal 5 issues that require resolution by Multnomah County and responds to the filed objections.**
2. **Section B, "Balance of the Staff Report," contains the balance of the staff report and identifies those sections of the county's final order that satisfy the periodic review factors. Issues raised by 1000 Friends of Oregon regarding the Supreme Court's *Curry County* decision are also discussed in Section B of this report.**

#### A. UNRESOLVED ISSUES UNDER GOAL 5

##### 1. MINERAL AND AGGREGATE RESOURCES

The Multnomah County comprehensive plan makes the following statements about aggregate resources:

*"These resources are a basic component related to all types of construction and constitute an important element of the local economy. . . . In general, aggregate supplies are limited and the values are escalating with diminishing supply. The trend is expected to continue, as almost all available local resources have been developed. . . . As the resources diminish, more distant or less productive sites must be utilized. This increases the cost of the resource and causes the cost of housing and construction to escalate."*  
(Comprehensive Framework Plan, 1989 Supplemental Findings, pp. 21-22).

### Comprehensive Plan Inventory

Multnomah County identified nine mineral and aggregate resource sites within its planning jurisdiction:

Site 1	ODOT	Potential Site (1-B)
Site 2	Krueger	Potential Site (1-B)
Site 3	Hidden Valley	Not Significant (1-A)
Site 4	Angell Bros.	Significant / Allow Conflicting Uses Fully (3-B)
Site 5	Multnomah County	Significant / Limit Conflicting Uses (3-C)
Site 6	Reeder Beach	Not Significant (1-A)
Site 7	Chappel Clay	Potential Site (1-B)
Site 8	Howard Canyon	Significant / Allow Conflicting Uses Fully (3-B)
Site 9	Updegrave	Not Significant (1-A)

For the sites determined to be significant, the county identified conflicting uses and analyzed the economic, social, environmental and energy (ESEE) consequences of the conflicts.

The county designated one site, Site 5 - Multnomah County, for protection from conflicting uses.

### Objections

Angell Bros. objects to the county's decision for Site 4.

Raymond Smith objects to the county's decision for Site 8.

Both objectors cite the county's failure to adhere to the Goal 5 process and the Goal 5 rule, and criticize the county's ESEE analysis of the respective sites. Both objections contain detailed comments about the county's ESEE analyses.

### Response

~~[These objections are sustained.]~~ **The Commission agrees, in principle with the objectors.** The county has failed to comply with Goal 5 for mineral and aggregate resources. See Conclusion - 1. Mineral and Aggregate Resources, below. Since the ~~[department's recommended]~~ **Commission's** action is to return the decisions for sites 4

and 8 to the county to correct broad goal compliance issues, the detailed allegations of error cited by the objectors are not addressed here. Angell Bros. and Raymond Smith raised their objections at the local level. These issues can be resolved in future county proceedings.

#### Program to Achieve the Goal

Plan policies recite the county's intent to protect mineral and aggregate resources from conflicting uses. The county relies on information provided by the Department of Geology and Mineral Industries (DOGAMI) and landowners to develop and maintain the inventory. Only those sites designated for protection are eligible for a permit to mine. Resource protection is envisioned through case-by-case consideration of conflicting uses.

The county implements its policy to protect mineral and aggregate resources in two ways. First, all ~~[requests for]~~ conditional use permit[s] **requests for uses that may conflict with mineral extraction activities** must show compatibility with natural resources. Noise sensitive uses must be set back from mining operations. Second, the county requires conditional use permits for surface mining activities. Mineral extraction and processing must take steps to ensure compatibility with surrounding land uses.

#### Objections

Raymond Smith, Angell Bros., and OCAPA object to the county's program to protect mineral and aggregate resources. They maintain that the county has no program to protect mineral and aggregate resources. They also maintain that to the extent that the land use regulations are designed to limit conflicts to aggregate resources, the regulations do not relate to site-specific ESEE analyses, are inconsistent with the ESEE analyses for other natural resources, and are not clear and objective. Objectors Smith and Angell Bros. submitted detailed comments about the county's conditional use permit criteria for surface mining.

#### Response

~~[These objections are sustained.]~~ **The Commission agrees, in principle, with the objectors.** See Conclusion - 1. Mineral and Aggregate Resources, below. Because the county did not properly complete the Goal 5 process for individual sites, development of a program to achieve the Goal is premature. Since the ~~[department recommends]~~ **Commission concludes** that the county broadly reevaluate its Goal 5 decisions, the specific comments submitted by the objectors are not addressed here. The specific issues raised by objectors Smith and Angell Bros. were raised at the local level. These issues can be resolved in future county proceedings.

#### Conclusion - 1. Mineral and Aggregate Resources

The county's treatment of mineral and aggregate resources does not comply with Goal 5. The county needs to reevaluate the comprehensive plan inventory decisions, and revise its program to achieve the Goal to be consistent with Goal 5.

**Comprehensive Plan Inventory.** OAR 660-16-000 requires that comprehensive plan inventories be based on location, quality and quantity information. A determination of

significance for individual sites must take into account the resource's *relative* quality and quantity (OAR 660-16-000(3)). Multnomah County policies do not require consideration of quality or relative quantity when determining the significance of a resource. The county needs to address OAR 660-16-000(3).

The county's decisions for sites 1, 3, 6, 7, and 9 comply with Goal 5. Sites 3 and 6 have been mined and reclaimed. Site 9 is a very small resource that was never developed. Sites 1 and 7 have been mined in the past. Specific information about remaining reserves was not available to the county.

The decisions for sites 2 and 5 require clarification by the county. The county concluded that not enough information was available about site 2 to determine its significance. It proceeded to conduct an ESEE analysis, but did not develop a program to achieve Goal 5.

For site 5, the county designated the site as significant and determined that conflicting uses should be limited. It did not identify the program to limit conflicts. The county needs to clarify its decisions for sites 2 and 5 and specify the Goal 5 designations.

For sites 4 and 8, the county made similar decisions to not protect the resource from conflicting uses. The following analysis of these two decisions identifies specific county errors in conducting the Goal 5 analyses. The issues cited in the respective discussions are not necessarily unique to the individual site, but are illustrative of important errors made in the county's analysis of each site.

**Site 4, Angell Bros.** The decision for this site comprises two parts. In 1990, the county declared the entire site a significant Goal 5 resource and designated 114 acres for protection by limiting conflicting uses. As a result of a negotiated agreement, the county postponed the Goal 5 analysis for the balance of the site. In 1992, using the results of additional study, planning staff completed the Goal 5 analysis and recommended protection of the remaining 283 acres of the site. The county subsequently adopted a decision to not protect the additional area from conflicting uses. Based on the analysis of issues below, the 1992 decision does not comply with Goal 5.

*ISSUE #1 - Impact Area/Identification of Conflicting Uses.* For site-specific resources, local governments are responsible for identifying the resource's location, including an impact area. The determination must include a map or description (OAR 660-16-000(2)). The impact area is that area in which conflicting uses could have a direct effect on the resource. Conflicting uses are uses which, if allowed, could adversely affect a Goal 5 resource site (OAR 660-16-005).

The county did not adequately identify the impact area around the Angell Bros. site. It referred to the impact area as "property adjoining the site," a "peninsula of land between Portland's Forest Park and the forests of Oregon's coast range," "downstream areas," houseboats on the Multnomah Channel and Sauvie Island. It prepared no map.

Failure to accurately describe the impact area is more than a technical error. Specific identification of the resource site and the impact area is essential to properly determine conflicting uses. Unless the resource (including the impact area) and conflicting uses are identified, the ESEE analysis cannot begin. See *Columbia Steel Castings v. City of Portland*, 314 Or 424, 431 (1992).

Within the impact area described, the county listed these "conflicting uses":

- future production and harvesting of timber;
- *de facto* open space, natural area, and wildlife habitat as defined by Goal 5;
- wildlife habitat (if the site is preserved in its present use);
- streams (if the site is preserved in its present use);
- conservation of soils (if the site is preserved in its present use);
- open space (if the site is preserved in its present use);
- dwellings;
- wetlands;
- scenic views from Sauvie Island (if the site is preserved in its present use).

The county correctly identified dwellings as a conflicting use. Houses are noise-sensitive uses which could adversely affect protection and use of the aggregate resource. However, the county did not identify the area in which dwellings would interfere with the resource.

The county erroneously considered open space, natural area, wildlife habitat, and scenic views as conflicting uses. While these features *could be* considered "uses allowed in broad zoning districts established by the jurisdiction" (OAR 660-16-005) they are, in fact, resources as defined in Goal 5. Treatment of these other resources must be in accordance with Goal 5.

Other Goal 5 resources may be considered as conflicts to be addressed in the ESEE analysis for an aggregate resource site. However, "*de facto*" resources are not Goal 5 resources until they have been fully assessed through the Goal 5 process.

To consider another resource as a conflict to a significant aggregate resource, one of two conditions must exist. One, the other resource must be included on a Goal 5 inventory as significant, with surface mining identified as a conflict within the impact area. Two, potential Goal 5 resources must be analyzed at the same time as the aggregate resource with a resource protection program adopted at the time the aggregate decision is made. Neither of these conditions is met for the conflicting resources identified by the county.

Until a potential resource is identified and protected, interim protection measures are not appropriate (OAR 660-16-000(5)(b)). Without a determination of significance or program to achieve the goal, the presence of the potential resource cannot rise to the level of a conflict to a significant aggregate resource in the ESEE analysis.

Finally, the county purports to preserve the aggregate site and an impact area in its present use, e.g., "Preserving and continuing the present use of the site as open space necessarily would preclude its use as a quarry," p. 7, Periodic Review Final Order 7-92. Use of such a scenario to create conflicts with the aggregate resource is unsupported by the record. The record shows that past activities have **not** preserved the site or its impact area as open space. Aside from the existing quarry, the area was recently clear cut and is being developed with [acreage] homesites approved as forest management dwellings.

*ISSUE #2 - ESEE Analysis.* OAR 660-16-005(2) requires jurisdictions to determine the economic, social, environmental and energy consequences of conflicts

to a significant resource. Both the impacts on the resource site and on the conflicting uses must be considered. The analysis is adequate if it enables a jurisdiction to explain why decisions are made for specific sites.

The ESEE analysis adopted by Multnomah County makes no reference to impacts on the aggregate resource. The entire analysis is based on perceived adverse effects that surface mining may have on surrounding land uses and other natural resources. The county did not explain why it ignored information in the record showing adverse ESEE consequences if the aggregate resource is not protected. For example, the record shows that the estimated value of the mineral resource is \$42 million, plus an estimated \$1 million annual payroll created by the mining activity. Yet, the county only cited the consequence of losing an estimated \$6 million if the site was not managed for timber production. It also failed to explain, despite the plan's recognition of aggregate scarcity, why its decision for this site would not perpetuate the escalation of housing and construction costs in Multnomah County.

*ISSUE #3 - Treatment of Other Goal 5 Resources in the ESEE Analysis.* The ESEE must address other goals, including Goal 5. Possible or "*de facto*" resources are not conflicts unless addressed through the Goal 5 process. See Issue #1, above. In the ESEE analysis, a local government cannot claim protection of values left external to the comprehensive plan in order to deny protection of a significant aggregate site. Conflicting resource values must be resolved through an ESEE analysis. See *Panner v. Deschutes County*, 14 Or LUBA 1, 9-10, notes 8 & 9 (1985). An ESEE analysis and program to achieve the goal must, at some point, exist for all resources claimed to conflict with surface mining. Based on the record, the following resources used by the county are not Goal 5 resources, or do not conflict with the Angell Bros. aggregate site.

**Open Space** - Open space cannot yet be considered a Goal 5 resource because location, quality, and quantity information has not been presented to the county showing that the site is land needed or desirable for open space.

**Natural Area** - No information has been presented to the county indicating the presence of a "natural area" as defined by Goal 5. The record shows that neither the aggregate site nor its impact area has been substantially retained in its natural character. The site and area in question is an operating rock quarry, has been clear cut, and is being developed as homesites **approved as forest management dwellings**.

**Wildlife Habitat** - Wildlife Habitat and Travel Corridor (West Hills) is identified as a 1-B resource in the county's plan. See discussion, **2. Fish and Wildlife Habitat**, below. OAR 660-16-000(5(b)) states that interim protection programs are not appropriate for 1-B resources. Unless the county declares the resource as significant, identifies the impact area and conflicting uses, performs an ESEE analysis of the conflicts and implements a program to protect the resource, the wildlife "resource" cannot be given Goal 5 protection and used against protection of the significant aggregate resource.

**Streams** - Streams on the site cannot be considered Goal 5 resources because no location, quality or quantity information has been provided to the county showing that they are significant.

Rafton-Burlington Bottoms - This resource is listed in the comprehensive plan as a protected Goal 5 resource. The record shows that the Angell Bros. aggregate site is not within an impact area for this resource, nor is surface mining identified as a conflicting use (Final Order, Water Areas & Wetlands ESEEs). Therefore, protection of this resource cannot now be used against protecting the significant aggregate site.

Scenic - Scenic Views, West Hills are identified as a 1-B resource. See discussion, 3. Scenic Views and Sites, below. As with the wildlife habitat, until the county specifically identifies the resource as significant and adopts a resource protection program, it has no basis for assigning a conflict to protection of the aggregate resource.

*ISSUE #4 - Treatment of Other Goal Requirements in the ESEE Analysis.* The county is required to consider the requirements of other goals in the ESEE analysis (OAR 660-16-005(2)). The Goal 5 process is a planning process. The county incorrectly assumed that this periodic review action required finding that all future permit standards were met. It concluded that the quarry operator had not shown compliance with Goals 6 and 7 as if these goals were independent approval standards.

The county presumed that Angell Bros. bore the burden of proving its assertions about ESEE consequences. Local governments are responsible for preparing, adopting and revising comprehensive plans in compliance with the goals (ORS 197.175) OAR Chapter 660, Division 16 clearly requires local governments to develop inventories, identify conflicts, and develop programs to achieve the Goal. Landowner involvement in the Goal 5 process is deemed by the rule to be a necessary part of the Goal 5 process, not something to be overcome:

*"As the Goal 5 process progresses. . . notice and involvement of affected parties will become more meaningful. Such notice and landowner involvement. . . is in the opinion of the Commission, imperative."*  
OAR 660-16-020(2)

In making its conclusion about Goal 6, the county found that Angell Bros.' assertions of compliance with Department of Environmental Quality (DEQ) regulations were unpersuasive. Contrary to an existing water quality permit for the quarry and DEQ's requirement that only clean water be discharged, the county independently found that protecting the aggregate resource for future mining would cause violations of state environmental standards. This is speculation on the part of the county, and a matter of DEQ jurisdiction.

In making its conclusion about Goal 7, the county found that Angell Bros. did not prove compliance with DOGAMI reclamation standards for slope stability. The county did not explain how this was a relevant issue to the Goal 5 analysis during periodic review. How a mine is developed and reclaimed is under the jurisdiction of DOGAMI. The county plan recognizes DOGAMI's role: "Extraction and reclamation is regulated by [DOGAMI] under ORS 517.750 to 517.990" (Comprehensive Framework Plan, 1989 Supplemental Findings, p. 19).

Goals 6 and 7 do not set performance standards by which to judge surface mining or any other development proposal. These goals, in particular, necessitate local governments' reliance on state agency programs and permits to resolve complex, technical issues. The information necessary to resolve the technical issues raised is not in the local record, nor can these issues be resolved solely by the county. The county has not provided sufficient reasons to support its conclusion that a significant aggregate site should not be protected under Goal 5 because either DEQ's or DOGAMI's regulatory program could fail.

**Site 8, Howard Canyon.** The county's decision for the Howard Canyon site is similar to the decision for the Angell Bros. site. Its analysis determined that conflicting uses should be allowed fully, and the resource could not be mined. Based on the analysis of issues presented below, the county's decision does not comply with Goal 5.

*ISSUE #1 - "Need" for the Resource.* In the economic prong of the ESEE analysis, the county maintained that protection of the Howard Canyon resource is unnecessary because other sites can provide rock to the Multnomah County market. It failed to reconcile the comprehensive plan's declaration that aggregate is a scarce resource in the county and is necessary for the local economy. Furthermore, its reliance on lack of "need" for the Howard Canyon resource is not supported by the record.

The county concluded that existing sites within a 25 mile radius of the Howard Canyon site were sufficient to meet the market needs of the county for the planning period. This conclusion is flawed. First, the county has not analyzed the region's market for aggregate material. Second, Goal 5 requires protection for future generations, not simply a planning time frame between periodic reviews. Finally, the sites referenced by the county are outside its jurisdiction; nothing in the record shows that these sites are protected for future use.

*ISSUE #2 - Lack of Reasons to Support Decisions.* OAR 660-16-005(2) provides that ESEE analyses are adequate if they provide reasons supporting decisions for individual sites. OAR 660-16-010 requires that reasons supporting resource decisions must be present in the comprehensive plan. The county's analysis is replete with unsupported conclusions. As explained above, the county determined that sites outside the county could provide aggregate material to the east Multnomah County area. No evidence in the record supports this conclusion. The county also concluded that developing the site would lessen surrounding property values, but provided no evidence to support this conclusion.

The county concluded that violations of DEQ noise standards are likely despite technical evidence to the contrary. It also concluded that mineral extraction at the site would create unresolvable conflicts with surrounding farm uses, forest uses, and big game habitat (see discussion of Issue #3, below). The record, and the reasons given by the county, do not support these conclusions.

*ISSUE #3 - No Impact Test.* OAR 660-16-010 requires local governments to "resolve" conflicts at specific sites. Resolution of conflicts involves balancing competing values. The Goal 5 process is a conflict resolution tool. Neither the Goal nor the rule predetermines outcomes in advance of the ESEE analysis.

Throughout the ESEE analysis, the county maintained that the ultimate decision to allow conflicting uses fully was preferable because operation of the quarry could not demonstrate "no impact" on surrounding land uses or natural resources. This approach violates Goal 5. OAR 660-16-010 requires that decisions be based on the ESEE analysis, not that the ESEE analysis be used to justify a predetermined outcome.

*ISSUE #4 - Potential Transportation Effects.* OAR 660-16-005(2) requires that the applicability and requirements of other goals be considered in the ESEE analysis. In its analysis, the county used the language of Goal 12 ("To provide and encourage a safe, convenient and economic transportation system") to conclude that protection of the aggregate resource was not warranted. Goal 12 requires development of transportation plans to serve land uses. The Goal 12 is not an independent standard used to deny protection of a significant aggregate resource. The county has not shown how the use of area roads is a conflict to protecting the aggregate resource. If a conflict does exist, Goal 5 requires resolution of the conflict.

Because the county failed to define the impact area surrounding the aggregate resource site, it has no basis to analyze traffic conflicts resulting from the resource's use. In its analysis, the county maintained that truck traffic was a safety hazard, but did not explain why auto traffic on the same roads was not a hazard. It also treated gravel trucks as a unique class requiring specific regulation without evidence showing that gravel trucks were the sole cause of alleged problems. The county code provides that developers can commit to finance improvements to local roads. The county failed to explain why improvements would not mitigate the alleged conflicts.

**Program to Achieve the Goal.** OAR 660-16-030 requires local governments to establish procedures to coordinate planning and permitting activities with DOGAMI. The plan does not identify how the county meets this requirement.

OAR 660-16-010 requires that plan and zone designations be consistent with decisions for individual sites. County strategies F.5. and F.6. call for protection of natural resources and regulation of "noise sensitive" uses. These strategies do not relate to findings from site-specific ESEE analyses. Thus, the zoning regulations must be amended to reflect the level of protection determined by the ESEE analyses.

Because the county failed to properly identify resource site, identify conflicting uses and analyze the ESEE consequences, it is premature in developing a program to achieve goal pursuant to OAR 660-16-010. See *League of Women Voters v. Klamath County*, 16 Or LUBA 909 (1988).

The county has provided no basis to show how its setback and compatibility requirements resolve conflicts or protect significant mineral and aggregate resource sites. The code does not define what constitutes a conflict to mineral and aggregate resources. The program, therefore, is not clear and objective as required by OAR 660-16-010(3). There is no relation between the regulations imposed and the findings of the ESEE analysis. The effect of the county's regulations is to place the preponderance of mitigation responsibility on the surface mining activity.

Conditional use approval criteria purport to protect significant natural resources. Criteria applicable to all conditional uses and to mineral extraction activities require

demonstration of no adverse effect on natural resources. These criteria are not clear and objective, and are not related to the ESEE analysis. The criteria also creates the case by case resolution of resource conflicts before completion of the Goal 5 process. This approach violates Goal 5. See *Ramsey v. City of Portland*, 115 Or App 20 (1992).

The county's regulations for surface mining contain miscellaneous procedural or substantive errors in violation of Goal 5. Examples include:

- a. MCC 11.15.7325(C)(6)(a) requires fish and wildlife habitat be "protected to the maximum extent possible." This requirement is not related to the findings of an ESEE analysis and is not clear and objective.
- b. MCC 11.15.7325(F) requires that applicants for mineral extraction permits obtain conditional or preliminary approval for all phases of the operation from all agencies having jurisdiction over the activity. This requirement is at odds with state agency coordination requirements and is an onerous burden on applicants. State agencies generally do not give conditional or preliminary approvals. Development of a reclamation plan for DOGAMI review would be virtually impossible under the county's process. An applicant to DOGAMI must know where mining can take place before demonstrating how a surface mine will be reclaimed.
- c. MCC 11.15.7330 establishes a 10-year limit on mineral extraction conditional use permits. The county has not demonstrated the need for this restriction in its ESEE analyses.

The county must reevaluate its Goal 5 decisions for sites 2, 4, 5, and 8. Its decisions for sites 4 and 8 do not comply with Goal 5. In reevaluating its decisions for these sites, the county must ensure that the decisions are consistent with determinations made for other Goal 5 resources and similar conflicting uses. Based on revised decisions for individual sites, the county must amend its program to achieve Goal 5 to be consistent with ESEE analyses.

## 2. FISH AND WILDLIFE HABITAT

Multnomah County's inventory of wildlife habitat consists of eight big game habitat areas, five waterfowl areas, a Bald Eagle roosting site, an Osprey nesting area, and a wildlife habitat and corridor (West Hills). Each of these sites are discussed under Section B of this report. The wildlife habitat and corridor (West Hills) is discussed below.

Multnomah County designated the "Wildlife Habitat and Travel Corridor (West Hills)" as a 1-B site (delay completion of Goal 5 due to insufficient information). The county adopted the following description of this potential Goal 5 resource:

*"Recent studies suggest that the wide variety of wildlife found in Forest Park may be directly attributable to the opportunity for species interaction with the Coast Range ecosystem. . . . If this is the situation, the location of the "corridor" should be located and recognized for its role in maintaining the species diversity of Forest Park." (Final Order, Fish & Wildlife ESEE's).*

According to the final order:

- a. The initial research (Phase 1) of the West Hills Study was to be completed April 1990;
- b. The field survey work and application of the research and field evaluation results to specific land use recommendations (Phase 2) was to be completed by early 1991; and
- c. The ESEE analysis of conflicting uses and development of a program to achieve Goal 5 was to be completed by the end of 1991.

The county has not yet completed the above-described work.

Phase 1 was published on April 4, 1990. The report is a review of literature on what is presently known on landscape linkages and habitat fragmentation.

Phase 2 was published in March of 1992. The study: (1) identifies existing levels of habitat; (2) provides limited base line information on existing wildlife; (3) predicts probable impacts of ongoing development over time; and (4) recommends ways to reduce the risk of species loss and biotic diversity (West Hills Study, p. iii).

Information presented in the Phase 2 Study is unclear regarding the boundaries of the study area and the identified "impact area" required under Goal 5. The Phase 2 Study identifies the "study area" as the entire Tualatin Ridge, which is the land lying between the county line on the north and west, the south end of Forest Park in Portland on the south, and Highway 30 to the east (West Hills Study, p. 2). This would include the ridge line along Skyline Blvd., forested areas in the City of Portland, and the Balch Creek watershed. However, the "main recommendation" for the study is focused on a much smaller geographic area (i.e., "area lying between Newberry and Cornelius Pass Roads and extending eastward from the ridgeline to Highway 30", West Hills Study, pp. iii and iv). The "impact area" for any significant wildlife habitat area needs to be clearly identified by the county in the plan inventory and ESEE analysis.

### Objection

The Forest Park Neighborhood Association, Friends of Forest Park, Friends of Balch Creek, and two landowners in Balch Creek area object to the county's Goal 5 treatment of the wildlife habitat in the Balch Creek watershed. These groups also object that the county failed to map West Hills streams under Goal 5.

### Response

The objection is sustained regarding the Goal 5 process not being completed for certain lands within the Balch Creek drainage basin. The Balch Creek drainage basin is included in the West Hills "study area." Field data from the Balch Creek drainage basin appears to have been collected and analyzed (see West Hills Study, Figure 3). Information on wildlife habitat in the Balch Creek area is also available from other sources (e.g., City of Portland's "Balch Creek Watershed Protection Plan," December 19, 1990). The county has information about the resource but has not completed the Goal 5 process for wildlife habitat within the Balch Creek Drainage basin.

The objection is also sustained regarding the county's failure to map or identify streams in the West Hills. The county has not adopted zoning maps or an inventory showing those "Class I streams, as defined by the Oregon Forest Practices Rules" that are subject to the Significant Environmental Concern (SEC) provisions. A reference in the ordinance to the FPA definition is not an adequate inventory of the "location" of Goal 5 resource and of those properties subject to the SEC provisions.

### Conclusion - 2. Fish and Wildlife Habitat

As stated above, the ESEE analysis and Goal 5 program for the Wildlife Habitat and Travel Corridor (West Hills) was to be completed by 1991. The county has not completed this work as required by the comprehensive plan. Information to complete Goal 5 is also available for the Balch Creek drainage basin.

The county must complete the evaluation of the inventory information and determine whether the resource is significant or not significant. If determined to be significant, the county must identify conflicting uses, evaluate the economic, social, environmental and energy consequences of conflicting uses and develop a program to achieve Goal 5.

The county has not adopted an inventory or map of those streams that are subject to the Significant Environmental Concern (SEC) provisions. The reference to the FPA definition of Class I streams in MCC 11.15.6404(C) is not an adequate "inventory" of the Goal 5 resource (OAR 660-16-000(2)).

The county must adopt, as part of the comprehensive plan, a map or description of those streams identified as significant Goal 5 resources that are subject to the SEC provisions. MCC 11.15.6404(C) of the SEC Zone must also be revised to reference this inventory of significant streams rather than the FPA definition.

### 3. SCENIC VIEWS AND SITES

Scenic resources in Multnomah County are identified as the Columbia River Gorge National Scenic Area and the Sandy River Gorge. Scenic resources are also generally found in rural areas of the county, including Sauvie Island and the Northwest Hills.

The county designated "Scenic Views West Hills" as a "1-B" (delay Goal 5) resource and indicated that resource identification and a protection program would be completed by early 1991. The county has not completed this work.

### Conclusion - 3. Scenic Views and Sites

As stated above, the county was to complete the Goal 5 process for "Scenic Views West Hills" within the time frame established in the plan.

The county must determine the extent of the visual resources and what conflicts exist that would affect retention the scenic qualities of the West Hills. Based on this determination, the county must evaluate the ESEE consequences of conflicting uses and develop a program to achieve Goal 5.

**OVERALL CONCLUSION [AND RECOMMENDATION] - UNRESOLVED ISSUES**

For the reasons stated above, Multnomah County's comprehensive plan and land use regulations for mineral and aggregate resources, fish and wildlife habitat and scenic views and site do not comply with Goal 5 and OAR 660, Division 16. A variety of Goal 5 issues are unresolved for the West Hills area, including, but not limited to, wildlife, mineral and aggregate and scenic resources.

To comply with Periodic Review Factor Two and Goal 5, Multnomah County must:

1. Within the West Hills Area, as determined by the county:
  - a. Not later than May 30, 1993, identify the location, quality and quantity of possible Goal 5 resources in the West Hills area. Specifically determine whether the wildlife habitat and scenic resources are significant in accordance with OAR 660-16-000.
  - b. Not later than June 30, 1993, determine the impact area and conflicting uses for the Angell Bros. aggregate site and any resources determined to be significant as a result of 1.a., above.
    - 1) Designate the impact area(s) with a legal description ~~and~~ or a map, showing with certainty land included in the impact area for all significant resources.
    - 2) Identify conflicts with each significant resource and provide reasons why the identified uses or natural resources conflict with the significant resource.
  - c. Not later than September 15, 1993, analyze the ESEE consequences of conflicts within the impact areas identified in 1.b., above, for the Angell Bros. aggregate resource and significant resources identified in 1.a., above.
  - d. Not later than October 22, 1993, designate the level of protection for the Angell Bros. aggregate resource and significant resources identified in 1.a., above. Develop an appropriate program, or programs, to protect the resource, or resources, to resolve consequences identified in 1.c., above.
2. Reevaluate the Goal 5 analysis for the Howard Canyon site consistent with OAR 660, Division 16:
  - 1) describe ~~and~~ or map the impact area surrounding the site;
  - 2) identify conflicting uses to the resource site and give reasons how the uses conflict with the resource;
  - 3) analyze the ESEE consequences of identified conflicts based on factual information presented to the county;
  - 4) designate the level of resource protection to be given the resource, and state the reasons that support the decision;
  - and 5) develop and implement a program consistent with the decision reached following analysis of ESEE consequences.
3. Amend the comprehensive plan for mineral and aggregate resource sites 2 and 5 to clarify the decision for each site. If insufficient information exists about the resource, include the site on the 1-B inventory and identify when the Goal 5 process will be

completed for the site. If the resource is determined to be significant, identify the impact area and conflicting uses, analyze the ESEE consequences of conflicting uses, and develop and implement a program to achieve the Goal.

4. Revise the program to achieve Goal 5 for mineral and aggregate resources to be consistent with ESEE analyses for individual sites. Amend, as necessary, in accordance with Goal 5 and the Goal 5 rule the following provisions:
  - a. Comprehensive plan provisions to ensure planning and permit coordination with DOGAMI in accordance with OAR 660-16-030.
  - b. The provisions to protect aggregate resources from conflicting uses including, but not limited to, MCC 11.15.2016(F), .2096(K), .2138(F), .2218(F), .2360(H), .2480(I), .2692(K), .2834(J), .2844(J), .2854(J), .2864(J), .2874(J), .2884(J), .2894(J);
  - c. MCC 11.15.7325(C) requiring protection of fish and wildlife habitat without supporting justification in a site-specific ESEE analysis;
  - d. MCC 11.15.7325(F) requiring applicant for mining permits to obtain state agency permits before county issuance of conditional use permits;
  - e. MCC 11.15.7330 establishing a 10-year limit on mineral extraction conditional use permits.
5. Amend the comprehensive plan to map or identify the significant streams that are subject to the SEC provisions. Amend MCC 11.15.6404(C) to reference this plan inventory of significant streams rather than the FPA definition.
6. Report the progress of work on items 1 through 5, above, to the Land Conservation and Development Commission at its July meeting.

The ~~[department]~~ Commission believes that the tasks can be completed within the time frames established above and ~~[recommends that the Commission]~~ establishes October 29, 1993, as the date for submittal of tasks 1 through 5, above.

The ~~[department also recommends that the]~~ Commission instructs the department to provide technical assistance to Multnomah County planning staff to complete the above-referenced tasks.

**B. BALANCE OF THE STAFF REPORT****FACTOR ONE****Substantial Change in Circumstances  
(OAR 660-19-055(2)(a))**

Substantial change in circumstances are defined in OAR 660-19-055(2)(a) and (3)(a) through (d) as follows:

- A. Major developments or events which have occurred that the acknowledged plan did not assume or anticipate or major developments or events which have not occurred that the acknowledged plan did assume or anticipate;
- B. Cumulative effects, resulting from amendments to and implementation of the acknowledged plan's factual base, map designations, and policies;
- C. Either an oversight or a decision by the local government to delay or not carry out plan policies which implement a statewide goal requirement; or
- D. New inventory material, which affects a statewide goal issue, made available to the jurisdiction after acknowledgment;
- E. Consistency of the plan and land use regulations with new or amended statutes.

In addition to the five Subfactors listed above, OAR 660-19-055(4) requires consideration of:

- F. "other issues or objections involving the 'substantial change in circumstances' factor..."

**Subfactor A: Major Unanticipated Development or Events  
(OAR 660-19-055(3)(a))****Requirement**

The county must address major developments or events which were not anticipated by the acknowledged plan, and events which the plan did expect but which did not occur.

**Response**

Multnomah County considered two circumstances which have changed such that the plan does not now comply with the goals. First is the need to review the plan and land use regulations for consistency with LUBA and Court decision regarding farm and forest zones. Second was an assessment of the plan in relation to the Columbia River Gorge National Scenic Area Act and related Oregon legislation (Order, pp. 6-9).

The county has chosen under ORS 197.640 to exclude the Columbia River Gorge National Scenic Area from its periodic review. The county found that its plan is not in conformance with some aspects of court decisions.

Compliance with the *Goracke* and *Matteo* decisions are discussed under Factor Two, Goal 3 of this report.

In response to *Lamb v. Lane County* and *1000 Friends of Oregon v. LCDC (Lane County)*, Multnomah County amended the CFU and MUF zoning districts deleting the provisions allowing for an additional dwelling for the "housing of help required to carry out a primary use" as a use subject to conditions. The county also deleted "Rural Planned Developments" from the MUF Zone. The remaining issues raised in these court decisions were addressed by the county when they amended the plan and land use regulations to comply with the new Goal 4 and related administrative rules (OAR 660, Division 6).

### Conclusion

Unanticipated events under Subfactor A have been adequately addressed in the Multnomah County Periodic Review Order. No objections have been raised contradicting the county's findings under this subfactor or declaring other circumstances that should have been considered.

### **Subfactor B: Cumulative Effects of Plan Amendments and Implementation Actions (OAR 660-19-055(3)(b))**

#### Requirement

Multnomah County must address cumulative effects resulting from plan and land use regulation amendments and implementing actions.

#### Response

The final order includes the following cumulative effects analyses (Order, pp. 10-29):

- (1) Plan and land use regulation amendments and goal exceptions;
- (2) Implementation actions resulting in the conversion of agricultural and forest lands to nonresource uses;
- (3) Implementation actions on the protection of the Willamette Greenway and Goal 5 resources;
- (4) Increases in densities in rural residential exception areas;
- (5) Review of land use decisions to determine adequacy of county code in achieving the intent of the plan:
  - Dwelling Permit Activity
  - Land Divisions and Lots of Exception
  - Rural Planned Development; and
- (6) Effects of houseboat moorages on water-related and water-dependent uses.

The county finds that the cumulative effects listed above have not resulted in the need to create major changes to the plan and land use regulations.

Conclusion

Cumulative effects under Subfactor B have been adequately addressed in the Multnomah County Periodic Review Order. No objections have been raised contradicting the county's findings under this subfactor or declaring other cumulative effects that should have been considered.

**Subfactor C: Plan Policies Related to Goal Requirements Which Have Not Yet Been Carried Out (OAR 660-19-055(3)(c))**Requirement

The county must address any "oversight or decision to delay or not carry out plan policies which relate to a statewide planning goal requirement."

Response

The county has not identified any rural area plan policies which have not been carried out, nor were any identified in the department's periodic review notice (Order, p. 30).

Conclusion

Subfactor C does not apply.

**Subfactor D: Availability of New Inventory Information (OAR 660-19-055(3)(d))**Requirement

The county must address inventory information made available since acknowledgment.

Response

The county's periodic review order addresses the following new inventories which have become available since acknowledgment (Order, pp. 31-36):

- Mt. Hood Parkway (A concept for a new primary connector between I-84 and U.S. 26);
- Six Year Highway Improvement Program (1984-1994);
- Oregon Aviation System Plan;
- Statewide Comprehensive Outdoor Recreation Plan (SCORP, 1983);
- Atlas Of Oregon lakes;
- Air Quality Reports;
- Water Quality Assessment;
- Sensitive Aquifers Map;
- Hazardous and Solid Waste Report;
- Willamette Basin Plan;
- State and National Trends Report;

- 1987 Population Estimates, PSU; and
- National Wetlands Inventory.

In the review of the proposed periodic review order, the department asked that the county provide additional information regarding the Mt. Hood Parkway project. The county and the department agreed that as long as the county has not placed the Parkway on a project list nor identified a route, the need for a more precise statement indicating when the statewide planning goals will be addressed is not a requirement of periodic review. According to the county, this situation has not changed from that stated on pages 31 and 32 of the 1990 final order.

### Conclusion

New information under Subfactor D has been adequately addressed in the Multnomah County Periodic Review Order. No objections have been raised contradicting the county's findings under this subfactor or declaring other new information that should have been considered.

### **Subfactor E: Consistency with New or Revised Statutes (OAR 660-19-055(3)(e))**

#### Requirement

The county must determine whether the plan and land use regulations are consistent with new or amended statutes enacted since acknowledgment. The department's notice to the county was issued August 29, 1987, and therefore did not list statutory changes enacted subsequently. However, because these are statutes rather than goals or rules, their requirements generally apply to the county regardless of acknowledgment or periodic review status. The department examined the plan for consistency with statutes applicable at the time of the final hearing.

NOTE: Acknowledgment provides certification that state goals and rules are met by a local plan. An acknowledged plan may not be challenged as inconsistent with statewide planning goals or rules outside of periodic review. However, a declaration by the Director or the Commission (i.e., a conclusion in this report) that a local plan meets state law may not shield the plan from later appeals by parties charging inconsistency with these statutes.

#### Response

The county addressed statutory changes under "other issues involving a substantial change in circumstances" using the old periodic review rule (Order, pp. 37-51). However, this report evaluates the county's response under Subfactor E, since the periodic review rule currently lists statutory changes under this subfactor.

The [department] Commission finds that the county complies with statutory changes. In the review of the proposed periodic review order, the department noted that the county omitted the statutory requirement that a proposed dwelling be "customarily provided" in conjunction with farm use. The county's amended zoning ordinance includes this statutory language (MCC 11.15.2010(A)).

Conclusion

New or amended statutes under Subfactor E have been adequately addressed in the Multnomah County Periodic Review Order. No objections have been raised contradicting the county's findings under this subfactor or declaring other new or amended statutes that should have been considered.

**Subfactor F: Other Issues Involving a Substantial Change in Circumstances (OAR 660-19-055(4))**

On March 24, 1987, the county amended the zoning ordinance to comply with all federal regulations governing the National Flood Insurance Program (Order, p. 37).

The county adopted a plan policy to comply with METRO's Regional Solid Waste Management Plan by providing appropriate clear and objective zoning code provisions for all solid waste facilities (Order, pp. 51-52).

Objection

1000 Friends of Oregon states that the final order does not address the substantial change in circumstances arising from the *Curry County* decision.

Response to Objection

The [~~department recommends~~] Commission concludes that this issue be segmented from the county's periodic review until such time as LCDC adopts rules addressing this court decision and the county has time to address these new regulations.

Conclusion

Subfactor F has been adequately addressed.

The [~~department recommends~~] Commission concludes that the issues raised by 1000 Friends of Oregon regarding the Supreme Court's *Curry County* decision be segmented from the county's periodic review until such time as LCDC adopts rules addressing this court decision and the county has time to address these new regulations.

**CONCLUSION -- FACTOR ONE**

Multnomah County's Periodic Review Order meets the requirements of Periodic Review Factor One.

**FACTOR TWO****NEW OR AMENDED GOALS AND RULES  
ADOPTED SINCE THE DATE OF ACKNOWLEDGMENT  
(OAR 660-19-055(2)(b))**

Under this factor, the county must address the following statewide planning goals and administrative rules which were amended after the county's acknowledgment:

GOALSEFFECTIVE DATE

Goal 2 Land Use Planning Rule 660-04-000	12/30/83 through 11/10/87
Goal 3 Agricultural Lands Rule 660-05-000	07/21/82 & 05/07/86
Goal 4 Forest Lands Rule 660-06-000	09/01/82
Goal 5 Natural Resources Rule 660-16-000	06/29/81
Goal 14 Incorporation Rule 660-14-000	12/30/83

Goal 2 and Administrative Rule (OAR 660, Division 4)

Multnomah County amended its standards for plan amendments to include a reference to statutory and rule requirements for a goal exception (MCC 11.05.180 and .290). No new exception areas are included in the periodic review submittal.

Conclusion - Goal 2

The county complies with Goal 2.

Goal 3 and Administrative Rule (OAR 660, Division 5)

The county responded to each provision of the rule as follows:

Inventory: The county's inventory has been acknowledged. No changes in areas designated agricultural lands are proposed.

Minimum Lot Size Standards: The county deleted its variable lot standards (MCC 11.15.2010(C)(2)) which allowed the creation of new parcels between 38 and 76 acres on Sauvie Island and between 19 and 38 acres elsewhere in the EFU District. The county now has a "fixed" 76 acre minimum lot size on Sauvie Island and a "fixed" 38 acre minimum lot size elsewhere in the EFU District.

Application of the Minimum lot Size Standards to the Creation of New Lots: Lot sizes less than 76 acres on Sauvie Island and less than 38 acres elsewhere in the EFU District are only allowed for selected nonfarm land divisions (e.g., schools and churches) under MCC 11.15.2020. Since the county does not have a variable lot size, the standards of *Goracke v. Benton County* do not apply.

Application of the Minimum Lot Size Standard to Pre-Existing Lots: The approval of farm dwellings on existing lot greater than 76 acres on Sauvie Island and 38 acres elsewhere in the EFU District have been allowed outright, while those on lots of between 38 and 76 acres on Sauvie Island and 19 and 38 acres elsewhere in the EFU Districts have been allowed upon approval of farm management plans.

Dwellings Customarily Provided in Conjunction with Farm Use: The county amended MCC 11.15.2010(A) to include the *Matteo* and *Doughton* tests for farm dwellings on lots of all sizes.

Dwellings Not Customarily Provided in Conjunction with Farm Use: Nonfarm dwellings must be evaluated at a public hearing by the planning commission under the standards of MCC 11.15.2012(B)(3). These standards are identical to the standards in

ORS 215.283(3). The county does not allow for land divisions for nonfarm dwellings as provided by ORS 215.263(4).

### Conclusion - Goal 3

The county complies with Goal 3.

The new administrative rules for farm land do not apply to Multnomah County until August 7, 1993, for the important farm land and October 31, 1995, for the high value farmland (OAR 660, Division 33).

### Goal 4 and Administrative Rule (OAR 660, Division 6)

The Goal 4 rule adopted on September 1, 1982, requires: (1) an inventory of land suitable for forest uses and a determination and mapping of the productivity of those lands for commercial use; (2) designation of inventoried lands on the comprehensive plan map as forest lands; and (3) retention of forest uses on designated forest lands.

### Response

The county completed a map of forest lands by cubic foot site of Douglas Fir in September, 1981. The inventoried forest lands are designated as either Commercial Forest (CFU) or Multiple Use Forest (MUF) on the comprehensive plan map.

On January 7, 1993, Multnomah County adopted revisions to the Forest Lands Plan Policies, Maps and implementing ordinance bringing the county into compliance with the current Goal 4 and administrative rule (OAR 660, Division 6) provisions, including those amendments adopted by the Commission on December 3, 1992.

### Conclusion - Goal 4

The county complies with Goal 4.

### Goal 5 and Administrative Rule (OAR 660, Division 16)

The county must comply with the Goal 5 rule which was adopted since the county's acknowledgment. OAR 660, Division 16 requires a detailed inventory of Goal 5 resources, and requires the county to consider the specific consequences of allowing conflicting uses to take precedence over identified Goal 5 resources.

The Goal 5 rule requires the following for open space, scenic and historic areas and natural resources in the planning area:

1. An inventory of the quality, quantity, and location of the resources, if available;
2. A determination of potential uses of the resource property or surrounding properties which may conflict with the resource;
3. An analysis of the environmental, social, economic, and energy consequences of allowing conflicting uses;

4. Decisions, including plan policies, which describe the city's action regarding the resources and potential conflicting uses; and
5. Implementing ordinances, including zoning, which carry out these decisions and resolve conflicts.

The plan must address the following resources where they appear in the county:

- Land needed or desirable for open space
- Mineral and aggregate resources;
- Energy sources;
- Fish and wildlife areas and habitats;
- Ecologically and scientifically significant natural areas, including desert areas;
- Outstanding scenic views and sites;
- Water areas, wetlands, watersheds and groundwater resources;
- Wilderness areas;
- Historic areas, sites, structures and objects;
- Cultural areas;
- Potential and approved Oregon recreation trails;
- Potential and approved federal wild and scenic waterways and state scenic waterways.

#### Response

All twelve Goal 5 resources occur in the county. Multnomah County adopted extensive revisions to the comprehensive plan and land use regulations under Goal 5.

**Section A., Unresolved Issues Under Goal 5, above, discusses those sections of the county's submittal that require resolution by the county. The rest of the county's Goal 5 submittal is discussed below.**

Open Space: The county amended its plan to resolve inconsistency between the findings, plan maps and plan policies. This includes new findings describing where open space resources occur and methods to protect these resources. The county finds that open space resources are adequately protected as follows:

1. The county's EFU, CFU and MUF zones conserve agricultural and forest lands and thereby conserve the scenic and natural values associated with those uses.
2. The county's overlay districts restrict development along rivers and other features in the county.
3. Since acknowledgment, no additional lands have been identified that need designation and protection as farm or forest lands.
4. Uses conditionally allowed in farm and forest zones must be reviewed against applicable plan policies and acknowledged design review and/or conditional use processes.
5. Planned development provisions also provide a tool to protect open space on sites with development constraints or significant natural features.

Mineral and Aggregate Resources: Mineral and aggregate resources are discussed above under Section A. of this report.

Energy Sources: The county's final order discusses information provided by DOGAMI on oil, gas and geothermal potential in the county. The final order states that hydroelectric energy is the only site specific resource able to be mapped under Goal 5. The county designated the four hydroelectric facilities in the county "2-A" (no conflicts-protect) under Goal 5 because possible conflicting uses are addressed at the time a license is issued.

Fish and Wildlife Habitat: The final order states that the county's plan outlines habitat requirements for fish, big game, furbearers, upland game birds, waterfowl, and non-game animals. ~~[The final order states that]~~ Updated maps from ODFW regarding big game, raptor nesting sites, special waterfowl areas, and occurrences of habitat for certain non-game species ~~[will be noted in the revised findings]~~ **were adopted as part of the plan as supplemental findings (Comprehensive Framework Plan, 1989 Supplemental Findings, Resolution C1-88, February 18, 1989).** The county adopted the following Goal 5 designations for wildlife habitats:

Wildlife (Site) / Designation / Program (status)

- Big Game (West Hills) / 3-C / Large lot zoning; CUP criteria "no impact" to wildlife resources.
- Big Game (Gordon Creek) / 3-C / Large lot zoning; CUP criteria "no impact" to wildlife resources.
- Bald Eagle Roost / 1-B / (rely on FPA).
- Osprey Nest (Columbia River) / 1-B / within Columbia River Gorge National Scenic Area (CRGNSA); periodic review delayed.
- Big Game (Bull Run) / 2-A / Bull Run Watershed Management Unit.
- Big Game (Latourell-Bridal Veil Creek) / 1-B / within CRGNSA; periodic review delayed.
- Big Game (Multnomah Creek) / 1-B / within CRGNSA; periodic review delayed.
- Big Game (Horsetail Creek) / 1-B / within CRGNSA; periodic review delayed.
- Big Game (McCord Creek) / 1-B / within CRGNSA; periodic review delayed.
- Big Game (Tanner Creek) / 1-B / within CRGNSA; periodic review delayed.
- Waterfowl Area (Sauvie Island) / 2-A / State owned wildlife habitat preserve.
- Waterfowl Area (Sandy Delta) / 1-B / within CRGNSA; periodic review delayed.
- Waterfowl Area (Rooster Rock) / 1-B / within CRGNSA; periodic review delayed.

- Waterfowl Area (Sand Island) / 1-B / within CRGNSA; periodic review delayed.
- Waterfowl Area (Horsetail Creek) / 1-B / within CRGNSA; periodic review delayed.
- Wildlife habitat and Travel Corridor (Northwest County) / 1-B / Final Order states that Goal 5 evaluation will be completed by the end of 1991.

The final order states that habitat protection is listed as a criterion in the following sections of the zoning ordinance: Willamette River Greenway; Significant Environmental Concern; Community Service; Conditional Use; and Design Review.

On July 9, 1991, Multnomah County adopted Ordinance No. 691 which amended regulations applicable to grading and land disturbing activities within the Balch Creek watershed.

See Section A., above, for discussion of the county's "1-B" designation for the "Wildlife Habitat and Travel Corridor (West Hills)."

**Natural Areas:** The county's plan addresses natural areas identified in the Oregon Natural Heritage Program's (ONHP) 1977 report "Oregon Natural Areas Data Summary." The county has also reassessed the 1977 Data Summary in the context of ONHP's revised data base information. Due to the postponement of periodic review for the Columbia River Gorge National Scenic Area, the natural area inventory is limited to six sites. A Goal 5 worksheet has been completed for each site resulting in the following designations:

<u>Site</u>	<u>Goal 5 Designation</u>	<u>Programs</u>
Sandy River Gorge	2-A	Nature Conservancy, BLM and County owned/managed; Wild and Scenic River; State Scenic Waterway
Rafton Tract	3-C	Willamette River Greenway Zone
Sand Island	3-C	Significant Envir. Concern Zone
McGuire Island	3-C	Significant Envir. Concern Zone
Virginia Lakes	3-C	Willamette River Greenway Zone
Sauvie Island Wildlife Area	2-A	ODFW owned/managed

The county adopted an ESEE consequence analysis for each of the four 3-C sites listed above.

**Scenic Views and Sites:** The county's plan identifies the Columbia River Gorge National Scenic Area and the Sandy River Gorge as scenic resources. The final order states that scenic resources in the rural areas of the county are generally found in all agricultural and forested areas, including Sauvie Island and the West Hills. The final order also states that scenic views and sites are adequately protected as follows:

1. Resource zoning (CFU, EFU and MUF);
2. Several scenic areas are further protected through overlay zones. The SEC, WRG, FW and FF overlays restrict development along rivers, wetlands and other low-lying

areas near rivers and streams. These provisions also protect scenic values along Multnomah Channel, the Sandy River, in the Columbia River Gorge and on Sauvie Island.

3. Conditional uses allowed in farm and forest zones must be reviewed against plan policies and criteria that protect scenic resources in rural areas.
4. Planned Development (PD) provisions protect scenic resources on nonresource designated lands.
5. The federal Wild and Scenic Rivers Act protect scenic values within a quarter-mile of the Sandy River (upstream from the Stark Street Bridge).
6. The Columbia River Gorge National Scenic Area Act includes interim guidelines to protect scenic values.

See Section A., Scenic Views and Sites, above, for discussion of the "1-B" decision (delay Goal 5) for "Scenic Views West Hills."

Water Areas and Wetlands: The final order states that an expert wetlands consultant evaluated each wetland. A point system was established essentially to determine the "significance" of each wetland. The county used the "Wildlife Habitat Assessment" (WHA) rating system as a guideline.

The county identifies 14 wetlands. The county indicates that Sandy River Gorge (Site 1), Sturgeon Island (Site 4), Government Island (Site 6) and McGuire Island (Site 9) are already part of the list of "area of significant environmental concern." Sites 1, 6 and 9 are already recognized as "natural areas."

The county indicates that Virginia Lakes (Site 2), Rafton/Burlington Bottoms (Site 3), Multnomah Channel (Site 5), Sand Lake (Site 10), Howell Lake (Site 11), Small Unnamed Lake/Slough west of Wagon Wheel Hole Lake (Site 12) and Wagon Wheel Hole Lake (Site 14) has been added to the list of significant environmental concern. Since the same wetland protection measures are included in the Willamette River Greenway (WRG) overlay zone, and Sites 2, 3, 5 and 11 are all within the Willamette River Greenway overlay zone, these sites do not need to be zoned under the Significant Environmental Concern (SEC) overlay zone on top of the WRG Zone.

Northwest Hills Streams (Site 7), Dairy Creek, Gilbert River, and Misc. Drainageways on Sauvie Island (Site 8), Agricultural Ditches and Sloughs on Sauvie Island (Site 13) and "similar stream wetland and riparian situations" are protected by MCC 11.15.6404(C), which requires the SEC development review process for any new building, structure, or physical improvement within 25 feet of the normal high water level of a Class 1 stream as defined by the Forest Practices Act. See Section A., Fish and Wildlife Habitat, above, for discussion of the county's SEC provisions.

A Goal 5 ESEE consequences analysis and discussion of each wetland area is provided.

Additional wetland protection adopted by the county include the following:

1. Adding definition of "wetland" used by U.S. Corp. of Engineers and DSL.
2. Boundaries of Significant wetlands are shown on 1"=200' aerial photographs.
3. A new "Significant" wetlands section has been added to the SEC overlay zone and WRG overlay zone. Some of the provisions include criteria requiring that to allow the disturbance of a "significant" wetland the proposed development must:

Be water dependent, and  
Demonstrate that the purpose of the project cannot be reasonably accomplished on another site, and  
Will result in as few adverse impacts as is practical to the wetland's functional characteristics, and  
Will provide a buffer area, and  
Will provide replacement wetlands for any loss.

Wilderness Areas: The county amended the plan to include a discussion of the Eagle Creek Wilderness and to clarify the county's position on wilderness designations. The county designated the Eagle Creek Wilderness area a "2-A" (no conflicts) resource. The county adopted a plan policy indicating the county's support for Wilderness designations found to suitable under the definition, and that they "shall" coordinate with federal land management agencies regarding wilderness proposals.

Historic Resources: The final order discusses: (1) early efforts to inventory historic resources in the county; (2) the confusion in applying protection measures through zoning ordinance provisions; and (3) the redundant treatment of historic resources under previous plan policies. The county has amended the comprehensive plan policies to correct some of these problems.

The county has also begun on a program designed to fully comply with Goal 5 for historic resources. The process began with a computer-generated listing of all properties with structures older than 50 years. Each of these properties, totalling 900, was mapped using aerial photographs and a recently completed land use inventory.

In March 1988, the county hired historic preservation consultants to devise a program and conduct the research necessary to complete the inventory. The work plan consisted of two phases: Survey and Inventory. The survey process comprising phase I has been completed. This involved visiting each of the 900 "potential" sites and recording, photographing and drafting site plans for those sites "deemed most likely to be determined significant." The end product of Phase I is a set of reports for 68 sites. The final order states that further research and evaluation are necessary to determine the relative significance of these survey sites. As such, the county has designated these 68 sites "1-B" under Goal 5. Natural Resources Policy 16, Strategy A, states:

*"...Sites with minimal information will be designated "1-B", but when sufficient information is available, the County will conduct the necessary ESEE analysis." (Final Order, p. 183).*

Phase II entails assembling documentary source materials, conducting a literature search, formulating an Historic Context for the County, conducting research on individual

resources, and making determinations of significance. The final order states that when Phase II is completed, the county will have a valid inventory of historic resources, ready for the process of conflicting uses and ESEE analyses.

The county has completed a Goal 5 worksheet (ESEE analysis) for 14 historic resources. Eight sites were designated 2-A (no conflicts) and six sites were designated 3-C (limit conflicting uses).

The county's Heritage Preservation District (HP) sets forth procedures to establish an historic preservation subdistrict. The Heritage Preservation Subdistrict No. 1 (HP-1) establishes a process for reviewing development proposals within an historic preservation subdistrict. The review criteria for alterations and demolitions of an historic site are under "Permits and Certificates," Section 11.15.8720 of the zoning ordinance.

Cultural Areas: The final order states that the county has revised its findings document to discuss archeological resources in broad and very general terms, noting that further study by professionals is of the utmost importance for evaluating the significance of known sites as well as those which may yet be discovered. The county indicates that nearly all archeological sites are known only at the reconnaissance level. For purposes of Goal 5, the county placed them in a "1-B" classification.

The county adopted Plan Policy 16-J, which states:

*"It is the County's policy to protect cultural areas and archeological resources, and to prevent conflicting uses from disrupting the scientific value of known sites.*

Strategies

- A. *Maintain information on file regarding the location of known archaeological sites. Although not made available to the general public, this information will be used to insure the sites are not degraded through incompatible land use actions.*
- B. *Coordinate with the State Archaeologist in the State Historic Preservation Office regarding the identification and recognition of significant archaeological resources.*
- C. *Encourage landowners to notify state authorities upon discovering artifacts or other evidence of past cultures on their properties.*
- D. *Work with the LCDC Archeological Committee in devising equitable and effective methods of identifying and protecting archeological resources."*

The final order states that over the next year the county will work on a system of ensuring land development proposals do not adversely affect these sites. This may include:

- A. earmarking these sites on zoning maps available to staff only; and
- B. developing a matrix of high - moderate - low impact land uses relative to a geographic scale of high - moderate - low potential for discovering sites; and

- C. requiring an archeological survey as a condition for certain high impact land use proposals (Final Order, p. 73).

Recreation Trails: A Goal 5 worksheet has been completed for all Recreation Trails outside the UGB. This has resulted in a "1-B" designation for the Portland to Coast Trail, Sandy River Trail and Columbia River Trail. Plan policies directs the county to complete the Goal 5 process when the trail route becomes specifically identified, built, proposed, or designated. The Northwest Oregon Loop (bicycle route) has been identified in the plan. Plan policy assures "coordination with ODOT in the resolution of conflicts with these trail."

Wild and Scenic Waterways: The final order discusses the Sandy River which was designated a State Scenic Waterway in 1973. The final order also discusses the Sandy River being designated as a National Wild and Scenic River in 1988. Plan Policy 16-L states:

*"It is the County's policy to protect all state or federal designated scenic waterways from incompatible development and to prevent the establishment of conflicting uses within scenic waterways.*

Strategies

- A. *Coordinate with the Oregon State Parks and Recreation Division in the review and regulation of all development proposals or land management activities within the Sandy River State Scenic Waterway.*
- B. *Apply the SEC overlay zone to the Sandy River State Scenic Waterway to ensure proper recognition of the waterway and to further mitigate the impacts on uses allowed within the underlying resource zones.*
- C. *Coordinate with the U.S. Forest Service in the review and regulation of all development proposals or land management activities within the federal wild and scenic river segment of the Sandy River.*
- D. *Work with state and federal agencies or other interested parties in developing proposals for scenic waterway protection and other stream segments in the county."*

Multnomah County amended the SEC overlay zone improving the standards which protect natural vegetation and wetlands along rivers.

Conclusion - Goal 5

Except for the issues discussed above under Section A., Unresolved Issues Under Goal 5, Multnomah County's plan and land use regulations comply with the Goal 5 rule.

Goal 14 Incorporation Rule (OAR 660, Division 14)

The county amended the plan amendment process and adopted a plan policy to require that any action taken by the county regarding incorporation of a new city shall be done in accordance with OAR 660, Division 14.

Conclusion - Goal 14

The County complies with Goal 14.

CONCLUSION--FACTOR TWO

Except for the issues discussed above under Section A., Unresolved Issues Under Goal 5, Multnomah County's Periodic Review Order meets the requirements under Periodic Review Factor Two.

FACTOR THREE

**NEW OR AMENDED STATE AGENCY PLANS OR PROGRAMS  
ADOPTED SINCE THE DATE OF ACKNOWLEDGMENT  
(OAR 660-19-055(2)(c))**

New or amended state agency programs that apply to Multnomah County have been addressed on pages 76 through 79 of the final periodic review order. No objection to the county's response under Factor Three has been received.

Conclusion Factor Three

Multnomah County satisfies the requirements of Periodic Review Factor Three. The county has amended the comprehensive plan to be consistent with state agency plans and programs.

FACTOR FOUR

**ADDITIONAL PLANNING TASKS REQUIRED  
AT THE TIME OF ACKNOWLEDGMENT  
OR AGREED TO IN RECEIPT OF STATE GRANT FUNDS  
(OAR 660-19-055(2)(d))**

The county finds that there are no requirements under Factor Four applicable to the county. The department Commission agrees.

Conclusion - Factor Four

Factor Four does not apply to this periodic review.

OVERALL CONCLUSION

Except for the issues discussed above under Section A., Unresolved Issues Under Goal 5, Multnomah County's Periodic Review Order meets the requirements under Periodic Review.

Issues raised by 1000 Friends of Oregon regarding the Supreme Court's *Curry County* decision have also not been resolved. The [~~department recommends~~] Commission concludes that this issue be segmented from the county's periodic review until such time as LCDC adopts rules addressing this court decision and the county has time to address these new regulations.

(4) forest management dwellings that are necessary for, and accessory to, forest operations; and (5) other dwellings under prescribed conditions.

major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and

other land uses that are adjacent to these lands so that conflicts with forest harvest and management are avoided.

EXHIBIT B

# 5.

## OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

### GOAL

To conserve open space and protect natural and scenic resources.

Programs shall be provided that will

- (1) insure open space,
- (2) protect scenic and historic areas and natural resources for future generations, and
- (3) promote healthy and visually attractive environments in harmony with the natural landscape character. The location, quality and quantity of the following resources shall be inventoried:
  - a. Land needed or desirable for open space;
  - b. Mineral and aggregate resources;
  - c. Energy sources;
  - d. Fish and wildlife areas and habitats;
  - e. Ecologically and scientifically significant natural areas, including desert areas;
  - f. Outstanding scenic views and sites;
  - g. Water areas, wetlands, watersheds and groundwater resources;
  - h. Wilderness areas;
  - i. Historic areas, sites, structures and objects;
  - j. Cultural areas;
  - k. Potential and approved Oregon recreation trails;
  - l. Potential and approved federal wild and scenic waterways and state scenic waterways.

Where no conflicting uses for such resources have been identified, such resources shall be managed so as to preserve their original character. Where conflicting uses have been identi-

fied the economic, social, environmental and energy consequences of the conflicting uses shall be determined and programs developed to achieve the goal.

**Cultural Area** -- refers to an area characterized by evidence of an ethnic, religious or social group with distinctive traits, beliefs and social forms.

**Historic Areas** -- are lands with sites, structures and objects that have local, regional, statewide or national historical significance.

**Natural Area** -- includes land and water that has substantially retained its natural character and land and water that, although altered in character, is important as habitats for plant, animal or marine life, for the study of its natural historical, scientific or paleontological features, or for the appreciation of its natural features.

**Open Space** -- consists of lands used for agricultural or forest uses, and any land area that would, if preserved and continued in its present use:

- (a) Conserve and enhance natural or scenic resources;
- (b) Protect air or streams or water supply;
- (c) Promote conservation of soils, wetlands, beaches or tidal marshes;
- (d) Conserve landscaped areas, such as public or private golf courses, that reduce air pollution and enhance the value of abutting or neighboring property;

- (e) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space;
- (f) Enhance recreation opportunities;
- (g) Preserve historic sites;
- (h) Promote orderly urban development.

**Scenic Areas** -- are lands that are valued for their aesthetic appearance.

**Wilderness Areas** -- are areas where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. It is an area of undeveloped land retaining its primeval character and influence, without permanent improvement or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) may also contain ecological, geological, or other features or scientific, educational, scenic, or historic value.

### GUIDELINES

#### A. PLANNING

1. The need for open space in the planning area should be determined, and standards developed for the amount, distribution, and type of open space.

(Continued on next page)

# 5. OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES (Continued)

2. Criteria should be developed and utilized to determine what uses are consistent with open space values and to evaluate the effect of converting open space lands to inconsistent uses. The maintenance and development of open space in urban areas should be encouraged.
  3. Natural resources and required sites for the generation of energy (i.e. natural gas, oil, coal, hydro, geothermal, uranium, solar and others) should be conserved and protected; reservoir sites should be identified and protected against irreversible loss.
  4. Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.
  5. The National Register of Historic Places and the recommendations of the State Advisory Committee on Historic Preservation should be utilized in designating historic sites.
  6. In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected.
  7. As a general rule, plans should prohibit outdoor advertising signs except in commercial or industrial zones. Plans should not provide for the reclassification of land for the purpose of accommodating an outdoor advertising sign. The term "outdoor advertising sign" has the meaning set forth in ORS 377.710(24).
- ## B. IMPLEMENTATION
1. Development should be planned and directed so as to conserve the needed amount of open space.
  2. The conservation of both renewable and non-renewable natural resources and physical limitations of the land should be used as the basis for determining the quantity, quality, location, rate and type of growth in the planning area.
  3. The efficient consumption of energy should be considered when utilizing natural resources.
  4. Fish and wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans.
  5. Stream flow and water levels should be protected and managed at a level adequate for fish, wildlife, pollution abatement, recreation, aesthetics and agriculture.
  6. Significant natural areas that are historically, ecologically or scientifically unique, outstanding or important, including those identified by the State Natural Area Preserves Advisory Committee, should be inventoried and evaluated. Plans should provide for the preservation of natural areas consistent with an inventory of scientific, educational, ecological, and recreational needs for significant natural areas.
  7. Local, regional and state governments should be encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this goal.
  8. State and federal agencies should develop statewide natural resource, open space, scenic and historic area plans and provide technical assistance to local and regional agencies. State and federal plans should be reviewed and coordinated with local and regional plans.
  9. Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and "second use" utilization as well as for the primary use.

# 6.

## AIR, WATER AND LAND RESOURCES QUALITY





	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	
2. Community Issues						_____							
To be determined at the close of the community workshops													
TASK 3 -- PLAN ADOPTION													
A. Preparation of Final Staff Recommended Plan											_____		
B. Planning Commission Hearing & Recommendation											_____		
C. Board of Commissioners Hearing & Action												_____	

2. Community Issues

To be determined at the close of the community workshops

TASK 3 -- PLAN ADOPTION

A. Preparation of Final Staff Recommended Plan

B. Planning Commission Hearing & Recommendation

C. Board of Commissioners Hearing & Action

PERIODIC UPDATES

1  
COLLECT, DEVELOP DATA  
ON GOAL 5 RESOURCES

PLAN AMENDMENTS

ANALYZE, REFINE DATA; DETERMINE  
SUFFICIENCY, SIGNIFICANCE, ETC.

1A  
AVAILABLE INFORMATION ON  
LOCATION, QUALITY AND QUANTITY  
INDICATES RESOURCE SITE NOT  
IMPORTANT:

NOT INCLUDED ON PLAN  
INVENTORY; NO FURTHER  
ACTION REQUIRED OR  
APPROPRIATE FOR GOAL 5  
COMPLIANCE

1B  
SOME INFORMATION AVAILABLE  
BUT INADEQUATE TO IDENTIFY  
THE RESOURCE SITE

INCLUDE ON PLAN INVENTORY  
AS A SPECIAL CATEGORY

ADOPT PLAN STATEMENT  
ADDRESS THE RESOURCE SITE  
AND GOAL 5 PROCESS IN  
FUTURE, STATING TIME FRAME

1C  
INFORMATION AVAILABLE

PROVIDE INFORMATION ON  
LOCATION, QUALITY AND  
QUANTITY AND INCLUDE  
ON PLAN INVENTORY

NO SPECIAL RESTRICTING PLAN  
POLICIES, ZONING ORDINANCE  
PROVISIONS, OR INTERIM REVIEW  
MECHANISMS REQUIRED OR  
APPROPRIATE FOR GOAL 5  
COMPLIANCE

2  
IDENTIFY CONFLICTING USES

2A  
NO CONFLICTING USES  
IDENTIFIED

MANAGE RESOURCE SITE  
SO AS TO PRESERVE  
ORIGINAL CHARACTER

2B  
CONFLICTING USES IDENTIFIED

DETERMINE ECONOMIC, SOCIAL,  
ENVIRONMENTAL, ENERGY  
CONSEQUENCES OF  
CONFLICTING USES

3 DEVELOP A PROGRAM  
TO ACHIEVE THE GOAL

RESOLVE CONFLICTS BASED ON  
PRESENTLY AVAILABLE  
INFORMATION AND DETERMINATION  
OF ECONOMIC, SOCIAL, ENVIRON-  
MENTAL, ENERGY CONSEQUENCES

3A PRESERVE THE RESOURCE SITE  
3B ALLOW CONFLICTING USE; OR  
3C SPECIFICALLY LIMIT  
CONFLICTING USE

(Pre-Acknowledgement)

(Post Acknowledgment)

PERIODIC UPDATES  
THROUGH PLAN AMENDMENTS

ADDRESS AS STATED IN THE PLAN  
AS A PLAN AMENDMENT

Meeting Date: May 11, 1993

Agenda No.: P-3

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: C 6-92s Proposed Ordinance Amendments

BCC Informal \_\_\_\_\_ BCC Formal May 11, 1993  
(date) (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Bob Hall

ACTION REQUESTED:

INFORMATIONAL ONLY  POLICY DIRECTION  APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 20 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

C 6-92a Review of an Ordinance amending those Sections of Multnomah County Code Chapter 11.15 regulating land uses within the Columbia River National Scenic Area.

BOARD OF COUNTY COMMISSIONERS  
1993 MAY - 4 AM 9:56  
MULTNOMAH COUNTY  
OREGON

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL \_\_\_\_\_

Or

DEPARTMENT MANAGER BH William

(All accompanying documents must have required signatures)

ORDINANCE FACT SHEET

Ordinance Title: Columbia River Gorge National Scenic Area Zoning Code Amendment

Give a brief statement of the purpose of the ordinance (include the rationale for adoption of ordinance, description of persons benefited, other alternatives explored):

This technical ordinance amendment will bring the Multnomah County Zoning Code in compliance with the Columbia River Gorge National Scenic Area Management Plan as required by Public Law 99-663. The purposes of that law 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. The persons benefited will be the public in general.

What other local jurisdictions in the metropolitan area have enacted similar legislation?

No other jurisdiction has yet adopted implementing standards for the Columbia River Gorge National Scenic Area Management Plan.

What has been the experience in other areas with this type of legislation?

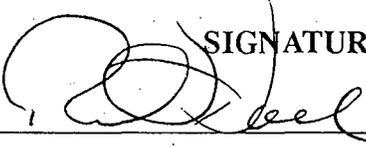
There has been no experience in other areas since Multnomah County would be the first jurisdiction to comply with the federal law.

What is the fiscal impact, if any?

This will neither create, nor consume revenue beyond that realized by the existing planning program for the area.

(If space is inadequate, please use other side)

SIGNATURES

Person Filling Out Form: 

Planning & Budget Division (if fiscal impact): \_\_\_\_\_

Department Manager/Elected Official: R Scott Remble for BW

1                   BEFORE THE BOARD OF COUNTY COMMISSIONERS

2                               FOR MULTNOMAH COUNTY, OREGON

3                                       ORDINANCE NO. \_\_\_\_\_

4  
5           An Ordinance amending those sections of Multnomah County Code Chapter 11.15 reg-  
6   ulating land uses within the Columbia River Gorge National Scenic Area.

7  
8           Multnomah County Ordains as follows:

9  
10   Section I. Findings.

11           (A). On January 7, 1993, Multnomah County adopted Ordinance No. 748 to enact the  
12   provisions of the Columbia River Gorge National Scenic Area Management ("CRGNSA" here-  
13   in) Plan.

14           (B). On March 30, 1993, the Columbia River Gorge Commission, based upon com-  
15   ments by the Gorge Commission staff and the staff of the U.S. Forest Service, determined the  
16   County must modify some provisions and add other provisions to the Zoning Code before it  
17   can be found consistent with the CRGNSA Management Plan.

18           (C). Public Law 99-663 gives the County 90 days in which to make the necessary  
19   modifications.

20           (D). The Planning Commission conducted public hearings on April 5, 1993 and April  
21   19, 1993 on the proposed amendments of the Zoning Code.

22           (E). The Planning Commission found that the proposed amendments include all revi-  
23   sions suggested by the Gorge Commission staff and the staff of the U.S. Forest Service.

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1 Section II. Amendments

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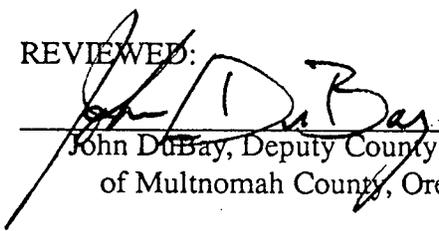
Multnomah County Code Chapter 11.15 is hereby amended as described in Attachment A.

ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 1993, being the date of its  
\_\_\_\_\_ reading before the Board of County Commissioners of Multnomah County.

(SEAL)

By \_\_\_\_\_  
H.C. Miggins, Acting Chair  
MULTNOMAH COUNTY, OREGON

REVIEWED:

  
\_\_\_\_\_  
John DuBay, Deputy County Counsel  
of Multnomah County, Oregon

## ATTACHMENT A

*Note:* With the exception of the replacement of entire sections (e.g., Section BB of this attachment), language added is underlined (language added) and language deleted is bracketed and struck through [~~language deleted~~].

A. MCC 11.15.3556 (Streams) is amended to read:

**Streams:** Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed does not have to contain water year-round. They do not 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 in such watercourses.

B. MCC 11.15.3556 is amended to add:

**Columbia River Gorge National Scenic Area Graphic Signing System:** Sign design standards developed for the Scenic Area for public signs in and adjacent to public road rights-of-way.

**Recreation Opportunity Spectrum (ROS):** A means of classifying areas in relation to the types of recreation opportunities and experiences they provide or are appropriate for. The spectrum ranges from primitive (wilderness areas) to urban (highly modified areas).

- *Primitive:* Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified.
- *Semiprimitive:* 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.

C. MCC 11.15.3562(D) through (F) are amended to read:

(D) In the Special Management Area, existing commercial and multi-family residential uses may expand as necessary for successful operation on the [~~Lot of Record~~] Dedicated Site, subject to MCC .3568[~~and .3570(C)~~]. Expansion beyond the Dedicated Site is prohibited.

(E) Existing industrial uses in the General Management Area may expand as necessary for successful operation on the [~~Lot of Record~~] Dedicated Site, subject to MCC .3568[~~and .3570(C)~~]. Expansion beyond the [~~Lot of Record~~] Dedicated Site is prohibited.

(F) In the General Management Area, existing industrial uses may convert to less intensive uses, subject to MCC .3568[~~and .3570(C)~~]. A less intensive use is a commercial, recreation or residential use with fewer adverse effects upon scenic, cultural, natural and recreation resources.

D. MCC 11.15.3566(A)(1) is amended by adding:

(c) Adjustment of the boundary between two or more contiguous parcels which does not result in the creation of an additional parcel may be allowed if none of the parcels larger than the minimum parcel size before the adjustment becomes smaller than the specified minimum parcel size after the adjustment.

E. MCC 11.15.3568 is amended to read:

(A) Any application for a Use Under Prescribed Conditions or a Conditional Use shall be accompanied by a site plan which includes the following information:

- (1) Project applicant's name and address.
- (2) Location of the proposed use, including township, range, section, county, and tax lot number.
- (3) A written description of the proposed use, including details on the height, exterior color(s), and construction materials of proposed structures.
- (4) A list of Key Viewing Areas from which the proposed use would be visible.
- (5) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the reviewing agency to determine the location and extent of the proposed use and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail. If a parcel is very large, the map does not have to show the entire parcel. Rather, it may show only those portions of the parcel affected by the proposed use. The map shall include the following elements:
  - (a) North arrow;
  - (b) Map scale;
  - (c) Boundaries, dimensions, and size of the subject parcel;
  - (d) Significant terrain features or landforms;
  - (e) Groupings and species of trees and other vegetation on the parcel;

- (f) Location and species of vegetation that would be removed or planted;
- (g) Bodies of water and watercourses;
- (h) Location and width of existing and proposed roads, driveways, and trails;
- (i) Location and size of existing and proposed structures;
- (j) Location of existing and proposed services, including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting; and
- (k) Location and depth of all proposed grading and ditching.
- (l) Proposed uses in streams, ponds, lakes, and their buffer zones shall include the exact boundary of the ordinary high water-mark or normal pool elevation and the prescribed buffer zone; and a description of actions that would alter or destroy the stream, pond, lake, or riparian area.
- (m) Proposed uses in wetlands or wetlands buffer zones shall include the exact boundary of the wetland and the wetlands buffer zone; and a description of actions that would alter or destroy the wetland.
- (n) Proposed uses on parcels contiguous to established recreation sites shall provide a buffer between the proposed use and recreation site sufficient to insure that the proposed use will not detract from the use or enjoyment of the recreation site.
- (o) New uses located in, or providing recreation river access to, the Columbia River or its fishbearing tributaries shall include the following supplemental information:
  - (i) The site plan shall show adjacent river areas at least 1/2 mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.
  - (ii) The site plan text shall include an assessment of the potential effects that new uses may have on Indian treaty rights. The assessment shall:
    - Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use (people, boats, and other uses) during peak-use periods.
    - List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.
    - List tribal ceremonial fishing seasons in the project vicinity.
    - Based on the above factors, assess the potential effects that the proposed uses may have on Indian treaty rights.

F. MCC 11.15.3570(B)(3) is amended to read:

- (3) Cluster development may create up to 25 percent more parcels (rounded to the ~~next largest~~ nearest whole number) than otherwise allowed by the minimum parcel size on lands designated GGR-5 or GGR-10 and up to 50 percent more parcels (rounded to the ~~next largest~~ nearest whole number) on lands designated GGA-20 or GGF-20.

G. MCC 11.15.3576(D)(4) is amended to read:

- (4) The proposed use is consistent with the goals, objectives and policies in ~~[this chapter]~~ the Management Plan.

H. MCC 11.15.3656(C)(6) is deleted.

I. MCC 11.15.3578 is amended to read:

A landowner who sells or otherwise transfers real property on lands designated GGA or GGF 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 MCC .3566. A second dwelling may be allowed subject to compliance with MCC .3800 to .3834, and upon findings that:

(A) The proposed dwelling is in conjunction with agricultural use as determined by MCC .3588(E)(3); or

(B) On lands designated GGF-20, one single-family dwelling on a legally created parcel upon enrollment in the state's forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of the dwelling shall comply with MCC .3584 and .3586. A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated GGF-80, GGF-20, GGA-40, or GGA-20.

(C) Upon termination of the life estate, either the original or second dwelling shall be removed.

J. MCC 11.15.3592 is added Indian Tribal Treaty Rights and Consultation

(A) If comment regarding tribal rights is received during the comment period provided in MCC .3810(B) from an Indian tribal government, the applicant shall offer to meet with the affected tribal government within 10 calendar days. The 10 day consultation period may be extended upon agreement between the project applicant and the tribal government.

- (1) Consultation meetings should provide an opportunity for the project applicant 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 govern-

ments 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. 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.

(3) The Planning Director shall submit all protection plans to the Indian tribal governments.

(a) Indian tribal governments shall have 30 calendar days from the date a protection plan is mailed to submit written comments to the Planning Director.

(b) If substantiated comment is received during the 30 day comment period from an Indian tribal government indicating that the protection plan is inadequate and the proposed use would affect or modify any treaty or other rights of the tribe, the Planning Director shall place the matter on the next available Hearings Officer agenda.

(i) The Hearings Officer shall determine whether the proposed uses would affect or modify any treaty or other rights of any Indian tribe.

(i) The decision of the Hearings Officer shall integrate findings of fact that address any substantive comments, recommendations, or concerns expressed by Indian tribal governments.

(ii) If the decision of the Hearings Officer contradicts the comments, recommendations, or concerns of Indian tribal governments, the Hearings Officer must justify how an opposing conclusion was reached.

(iv) Uses that would affect or modify tribal treaty rights shall be prohibited.

(B) The Planning Director shall deem the Treaty Rights Protection Plan process complete if no substantiated comment is received during the 30 day comment period and the Treaty Rights Protection Plan and/or site plan indicate that the proposed uses would not affect or modify treaty or other rights of any Indian tribe.

(a) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3818(B) within 25 days of the expiration of the 30 day comment period.

(b) The decision of the Planning Director regarding treaty or other rights of any Indian tribe shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290.

(c) A finding by the Planning Director that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as provided in this subsection, 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.

K. 11.15.3680(A)(10) is amended to read:

(10) Bed and breakfast inns in single family dwellings on lands designated GGR-5 or GGR-10, pursuant to .3570(D).

L. MCC 11.15.3582(B)(4)(d) is amended to read:

(d) Signs shall be unobtrusive and have low contrast with the setting and not result in sign clutter or other negative visual effect.

M. MCC 11.15.3608(B) is amended to read:

(B) The following uses may be allowed on lands designated GSA-40 pursuant to MCC .3564, provided that the use or development will be sited to minimize the loss of land suitable for the production of agricultural crops or livestock:

(1) Forest uses and practices as allowed in MCC .3634(B).

(2) A single-family dwelling on a parcel of 40 or more contiguous acres when necessary for and accessory to agricultural use as determined by MCC .3608(A)(5)(a) through (c).

(3) Accessory structures, greater than 60 square feet.

(4) Farm labor housing and agricultural buildings upon a showing that:

(a) The proposed housing or building is necessary and accessory to a current agricultural use and a showing that the operation is a commercial agricultural enterprise as determined by MCC .3608(A)(5)(c).

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

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

~~(5) Home occupations and cottage industries pursuant to MCC .3570(C). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.~~

~~(6) Bed and breakfast inns in structures that are included in, or eligible for inclusion in, the National Register of Historic Places approved under MCC .3570(D). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.]~~

~~(7)~~5) 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.

~~(8)~~6) Aquiculture.

~~(9)~~7) Temporary asphalt/batch plant operations related to public road projects, not to exceed six months.

~~(10)~~8) Road and railroad construction and reconstruction.

~~(11)~~9) Structures and vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.

N. MCC 11.15.3610(B) is amended to read:

The following conditional uses may be allowed on lands designated GSA, pursuant to the provisions of MCC .3568 and .3580.

(1) Exploration, development, and production of sand, gravel, and crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the Special Management Areas.

(2) 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.

(3) Community facilities and non-profit facilities related to agricultural resource management.

(4) 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.

(5) Recreation, interpretive and educational developments and uses consistent with MCC .3834.

(6) 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.

(7) Home occupations and cottage industries pursuant to MCC .3570(C). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(8) Bed and breakfast inns in structures that are included in, or eligible for inclusion in, the National Register of Historic Places approved under MCC .3570(D). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agri-

cultural practices from conflicting uses.

O. MCC 11.15.3634(B)(2)(a) is amended to read:

The following information, in addition to the site plan requirements of MCC .3564(AC), shall be included on the site plan:

P. MCC 11.15.3670(B) is amended to read:

(B) Within ten business days following receipt of an application for NSA Site Review, the Planning Director shall mail notice describing the nature of the proposed use, including a site plan, and requesting written comment on the application within 30 days of the mailing of the notice to:

- (1) The Gorge Commission;
- (2) The Forest Service;
- (3) The Indian tribal governments;
- (4) The State Historic Preservation Office;
- (5) The Cultural Advisory Committee; and
- (6) All owners of record of parcels within 500 feet of the subject parcel.

Q. MCC 11.15.3678(B) is amended to read:

(B) The following uses may be allowed on lands designated GSR, pursuant to MCC .3564:

- (1) One single-family dwelling per legally created lot or consolidated parcel, subject to the standards of MCC .3584.
- (2) Accessory structures over 60 square feet.
- ~~[(3) Home occupations and cottage industries pursuant to MCC .3570(C).~~
- ~~[(4) Bed and breakfast inns in structures that are included in, or eligible for inclusion in, the National Register of Historic Places, pursuant to .3570(D).]~~
- [(5) 3] Road and railroad construction and reconstruction.
- [(6) 4] Forest practices, pursuant to the provisions of MCC .3634(B).

R. MCC 11.15.3680(B) is amended to read:

(B) The following conditional uses may be allowed on lands designated GSR, pursuant to the provisions of MCC .3568 and .3580(C):

- (1) New utility facilities.
- (2) Fire stations.
- (3) Community parks and playgrounds.
- (4) Home occupations and cottage industries pursuant to MCC .3570(C).
- (5) Bed and breakfast inns in structures that are included in, or eligible for inclusion in, the National Register of Historic Places, pursuant to .3570(D).

S. MCC 11.15.3702(H) is amended to read:

(H) Rural service commercial and tourist commercial uses limited to 5,000 square feet of floor area per building or use.

- (1) Grocery stores
- (2) Variety and hardware stores
- (3) Shops, offices and repair shops
- (4) Personal services such as barber and beauty shops
- ~~(5) Travelers accommodations, bed and breakfast inns]~~
- (6) Restaurants
- ~~(7) Taverns and bars~~
- ~~(8) Gas stations~~
- (9) Gift shops

T. MCC 11.15.3702 is amended to read:

The following uses may be allowed on lands designated GGRC, pursuant to MCC .3564:

- (A) A single-family dwelling on a legally created parcel.
- (B) Buildings greater than 60 square feet in area and/or 18 feet in height as measured at the roof peak, which are accessory to a dwelling.
- (C) The temporary use of a mobile home in the case of a family hardship, pursuant to MCC .3566(B).
- (D) Duplexes

~~[(E) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to MCC .3566(D) ].~~

[(F) ]E) New cultivation, subject to compliance with MCC .3818, .3822, .3824, .3826 and .3828.

[(G) ]F) Land divisions.

[(H) ]G) Rural service commercial and tourist commercial uses limited to 5,000 square feet of floor area per building or use.

- (1) Grocery stores
- (2) Variety and hardware stores
- (3) Shops, offices and repair shops
- (4) Personal services such as barber and beauty shops
- (5) Travelers accommodations, bed and breakfast inns
- (6) Restaurants
- (7) Taverns and bars
- (8) Gas stations
- (9) Gift shops

~~[(I) Home occupations and cottage industries pursuant to MCC .3566(D).]~~

U. MCC 11.15.3704 is amended to read:

The following conditional uses may be allowed on lands designated GGRC, pursuant to the provisions of MCC .3568:

- (A) Fire stations
- (B) Libraries
- (C) Government buildings
- (D) Community centers and meeting halls
- (E) Schools
- (F) Accredited child care centers
- (G) Utility facilities and railroads

(H) Recreation development, subject MCC .3832.

(I) Places of worship

(J) Planned Developments pursuant to the provisions of MCC .6200 through .6226.

(K) Travelers accommodations, bed and breakfast inns pursuant to MCC .3566 (E).

(L) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to MCC .3566(D).

V. MCC 11.15. 3728 is amended to read:

Uses Under Prescribed Conditions

~~[The following uses may be allowed on lands designated GGC, pursuant to MCC .3564:]~~

~~[(A)] A single-family dwelling on a legally created parcel, pursuant to MCC .3564.~~

~~[(B) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to MCC .3566(D).]~~

W. MCC 11.15. 3730 is amended to read:

The following conditional uses may be allowed on lands designated GGC, pursuant to the provisions of MCC .3568 and .3580(D):

(A) Travelers accommodations, bed and breakfast inns

(B) Restaurants

(C) Gift shops

(D) Utility facilities and railroads.

(E) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to MCC .3566(D).

X. MCC 11.15. 3752(C) is amended to read:

The following uses are allowed on all lands designated GS-PR pursuant to MCC .3564:

(1) Forest uses and practices as allowed in MCC .3634(B).

(2) Public trails, consistent with MCC .3834.

(3) All dwellings and accessory structures larger than 60 square feet.

~~(4) Home occupations and cottage industries, pursuant to MCC .3566(D).~~

(54) Road and railroad construction and reconstruction.

(65) Structures or vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.

(76) Agricultural uses as allowed in MCC .3608(B).

Y. MCC 11.15.3754(B)(1) is amended to read:

(B) The following conditional uses may be allowed on lands designated GG-CR, pursuant to the provisions of MCC .3568, .3580(E) and .3832(E)(1) and (3) through (7):

(1) Commercially-owned, resource-based recreation uses consistent with MCC .3832.

Z. MCC 11.15.3754(C) is amended to read:

The following conditional uses may be allowed on lands designated GS-PR, pursuant to the provisions of MCC .3568 and .3834:

(1) Public natural resource-based recreational facilities, consistent with MCC .3834.

(2) Public non-profit group camps, retreats, conference or educational centers, and interpretive facilities.

(3) Utility facilities for public service upon a showing that:

(a) There is no alternative location with less adverse effect on Public Recreation land.

(b) The size is the minimum necessary to provide the service.

(4) A single family residence on a parcel 40 acres or larger, when found to be necessary for the management of:

(a) An agricultural use pursuant to MCC .3608(B)(2);

(b) A forest use pursuant to MCC .3634(B)(6); or

(c) A public recreation site.

(5) Home occupations and cottage industries, pursuant to MCC .3570(C).

AA. MCC 11.15.3816 is amended to read:

Coniferous Woodlands and Oak-Pine Woodland: Woodland areas [~~should~~] shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the over-

all visual character of the natural appearance of the Coniferous and Oak/Pine Woodland landscape.

BB. MCC 11.15.3818 is deleted and the following substituted:

11.15.3818 GMA Cultural Resource  
Review Process

(A) Cultural Resource Reconnaissance Surveys

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

- (a) The modification, expansion, replacement, or reconstruction of existing buildings and structures.
- (b) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.
- (c) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

The Gorge Commission will review all land use applications and determine if proposed uses would have a minor ground disturbance.

- (d) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land disturbing activities occurred in the project area. Land disturbing activities include grading and cultivation.
- (e) Proposed uses that would occur on sites that have been adequately surveyed in the past.
  - (i) The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception.
  - (ii) Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing.
  - (iii) The nature and extent of any cultural resources in the project area must be adequately documented.
- (f) Proposed uses occurring in areas that have a low probability of containing cultural

resources, except:

- (i) Residential development that involves two or more new dwellings for the same project applicant;
- (ii) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (iii) Public transportation facilities that are outside improved rights-of-way;
- (iv) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (v) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Areas that have a low probability of containing cultural resources will be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the U.S. Forest Service, public agencies, and private archaeologists.

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, will prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map will be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It will be refined and revised as additional reconnaissance surveys are conducted. Areas will be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

- (2) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those listed above in MCC .3818(A)(1)(a) through (f). The location of known cultural resources are shown in the cultural resource inventory.
  - (3) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or compromise features of the surrounding area that are important in defining the historic or architectural character of the buildings or structures that are 50 years old or older.
- (B) The cultural resource review criteria shall be deemed satisfied, except MCC .3818(L) and (M), if:
- (1) The project is exempted by MCC .3818(A)(1), no cultural resources are known to exist in the project area, and no substantiated comment is received during the comment period provided in MCC .3810(B).
  - (2) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this standard, a reasonable buffer zone must be established around the affected resources or properties; all ground disturbing activities shall be prohibited

within the buffer zone.

- (a) Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected.
  - (b) An Evaluation of Significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the Reconnaissance Survey and survey report shall be incorporated into the Evaluation of Significance.
- (3) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:
- (a) SHPO concludes that the historic buildings or structures are clearly not significant, as determined using the criteria in the *National Register Criteria for Evaluation* (36 CFR Part 60.4); or
  - (b) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).
    - (i) The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these standards. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.
    - (ii) The historic survey and report must demonstrate that these standards have been clearly and absolutely satisfied. If SHPO or the Planning Director question whether these standards have been satisfied, the project applicant shall conduct an Evaluation of Significance.
- (C) If comment is received during the comment period provided in MCC .3810(B), the applicant shall offer to meet with the interested persons within 10 calendar days. The 10 day consultation period may be extended upon agreement between the project applicant and the interested persons.
- (1) Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.
  - (2) All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such infor-

mation shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

- (3) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.
  - (4) All written comments, consultation meeting minutes and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.
- (D) Reconnaissance and historic surveys, evaluations, assessments and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in *36 Code of Federal Regulations (CFR) Part 61* and *Guidelines for Evaluating and Documenting Traditional Cultural Properties (Parker and King n.d.)*. A survey shall consist of the following:

(1) Reconnaissance Survey for Small-Scale Uses

Reconnaissance surveys for small scale uses shall consist of the following:

- (a) A surface survey of the project area, except for inundated areas and impenetrable thickets.
- (b) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes will be placed at intervals sufficient to determine the absence or presence of cultural resources.
- (c) A confidential report that includes:
  - (i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.
  - (ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.
  - (iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer area.
- (d) The Gorge Commission will conduct and pay for all reconnaissance or historic surveys, and for Evaluations of Significance and Mitigation Plans for cultural resources discovered during construction of small-scale uses.

## (2) Reconnaissance Survey for Large-Scale Uses

For the purposes of this section, large-scale uses include residential development involving two or more new dwellings; recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Reconnaissance surveys for Large-Scale Uses shall consist of the following:

- (a) A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.
- (b) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following standards:
  - (i) Archival research shall be performed prior to any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.
  - (ii) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.
  - (iii) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.
  - (iv) Archaeological site inventory forms shall be submitted to SHPO whenever cultural resources are discovered.
- (c) A confidential report that includes:
  - (i) A description of the proposed use, including drawings and maps.
  - (ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.
  - (iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.
  - (iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
  - (v) An inventory of the cultural resources that exist in the project area, including a written

description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.

(vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

(d) The applicant shall be responsible for reconnaissance surveys for large-scale uses.

(e) The Gorge Commission will conduct and pay for all Evaluations of Significance and Mitigation Plans for cultural resources discovered during construction of large-scale uses.

### (3) Historic Surveys

(a) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include:

(i) Original photographs;

(ii) Original maps; and

(iii) Archival research, blueprints, and drawings as necessary.

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

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

(E) The Planning Director shall submit a copy of all cultural resource survey reports to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC .3810(B). Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer area.

(1) All parties notified shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Planning Director. The Planning Director shall record and address all written comments in the Site Review analysis.

(2) The Planning Director shall require an Evaluation of Significance if the Reconnaissance or Historic Survey or substantiated comment received indicate that the proposed use might

affect any of the following:

- (a) Cultural resources
  - (b) Archaeological resources
  - (c) Traditional cultural properties
  - (d) Historic buildings or structures
- (3) The Planning Director shall deem the cultural resource review process complete if no substantiated comment is received during the 30 day comment period and the Reconnaissance or Historic Survey indicate that the proposed use would have no affect on the items listed in subsection (2)(a) through (d) above.
  - (4) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3818(E) within 10 days of the expiration of the 30 day comment period.
  - (5) The decision of the Planning Director on an application for cultural resource review shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290.

(F) Evaluations of Significance shall meet the following standards:

- (1) Evaluations of Significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, n.d.) and *Guidelines for the Evaluation and Documentation of Traditional Cultural Properties* (Parker and King, n.d.). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.
- (2) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analysis, and archival research may be required.
- (3) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.
- (4) The Evaluation of Significance shall follow the principles, guidelines, and report format recommended by Oregon SHPO (Oregon State Historic Preservation Office 1990). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.
- (5) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented.

All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the Evaluation of Significance.

(6) The applicant shall be responsible for Evaluations of Significance

(G) If the Evaluation of Significance demonstrates that the affected cultural resources are not significant, the Planning Director shall submit a copy of all cultural resource survey reports to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC .3818(E)(1).

(1) All parties notified shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Planning Director. The Planning Director shall record and address all written comments in the Site Review analysis.

(2) The Planning Director shall find the cultural resources significant and require an Assessment of Effect if the Evaluation of Significance or comments received indicate either of the following:

(a) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for use in evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4). Cultural resources are eligible for the National Register of Historic Places if they possess integrity of location, design, setting, materials, workmanship, feeling, and association. In addition, they must meet one or more of the following criteria:

(i) Association with events that have made a significant contribution to the broad patterns of the history of this region;

(ii) Association with the lives of persons significant in the past;

(iii) Embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or

(iv) Yield, or may be likely to yield, information important in prehistory or history.

(b) The cultural resources are determined to be culturally significant by a Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

(3) The Planning Director shall deem the cultural resource review process complete if no substantiated comment is received during the 30 day comment period and the the Evaluation of Significance indicates the effected cultural resources are not significant.

(4) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3818(G) within 10 days of the expiration of the 30 day comment period.

- (5) The decision of the Planning Director on an application for cultural resource review shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290.

(H) An Assessment of Effect shall meet the following standards:

- (1) The Assessment of Effect shall be based on the criteria published in *Protection of Historic Properties* (36 CFR Part 800.9) and shall incorporate the results of the Reconnaissance or Historic Survey and the Evaluation of Significance. All documentation shall follow the requirements listed in 36 CFR Part 800.8.
  - (a) Proposed uses have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR Part 800.9(a)] .
  - (b) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR Part 800.9(b)]. Adverse effects on cultural resources include, but are not limited to:
    - (i) Physical destruction, damage, or alteration of all or part of the cultural resource;
    - (ii) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant;
    - (iii) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting;
    - (iv) Neglect of a significant cultural resource resulting in its deterioration or destruction; or
    - (v) Transfer, lease, or sale of the cultural resource.
- (2) The Assessment of Effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.
- (3) The effects of a proposed use that would otherwise be determined to be adverse may be considered to not be adverse in the following instances:
  - (a) The cultural resources are of value only for their potential contribution to archaeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines;
  - (b) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Stan-*

*dards for Historic Preservation Projects* (U.S. Department of the Interior 1983); or

- (c) The proposed use is limited to the transfer, lease, or sale of cultural resources, and adequate restrictions or conditions are included to ensure preservation of the significant features of the resources.
- (4) The applicant shall be responsible for the Assessment of Effect.
- (I) If the Assessment of Effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Planning Director shall submit a copy of the assessment to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC .3818(G)(1).
  - (1) All parties notified shall have 30 calendar days from the date the Assessment of Effect is mailed to submit written comments to the Planning Director. The Planning Director shall record and address all written comments in the Site Review analysis.
  - (2) The Planning Director shall require the applicant to prepare a Mitigation Plan if the Assessment of Effect or substantiated comment received during the 30 day comment period indicates the proposed use would have an effect or an adverse effect on significant cultural resources.
  - (3) The Planning Director shall deem the cultural resource review process complete if no comment is received during the 30 day comment period and the Assessment of Effect indicates the proposed use would have no effect or no adverse effect on significant cultural resources.
  - (4) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3818(I) within 10 days of the expiration of the 30 day comment period.
  - (5) The decision of the Planning Director on an application for cultural resource review shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290.
- (J) Mitigation plans shall meet the following standards:
  - (1) Mitigation Plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and SHPO.
  - (2) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.
    - (a) Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation.

- (b) If the mitigation plan includes buffer areas to protect cultural resources, a deed covenant, easement, or other appropriate mechanism must be developed and recorded in county deeds and records.
- (3) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR Part 800.8(d), including, but not limited to:
- (a) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use;
  - (b) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;
  - (c) Documentation of consultation with SHPO regarding any alternatives or mitigation measures;
  - (d) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and local governments; and
  - (e) Copies of any written recommendations submitted to the Planning Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.
- (4) The applicant shall be responsible for Mitigation Plans.
- (K) The Planning Director shall submit a copy of the Mitigation Plan to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC .3818(I)(1).
- (1) All parties shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Planning Director. The Planning Director shall record and address all written comments in the Site Review analysis.
  - (2) If substantiated comment is received during the 30 day comment period, the Planning Director shall place the matter on the next available Planning Commission agenda. The Planning Commission shall determine if the adverse effect identified in the Assessment of Effect is reduced to no effect or no adverse effect.
  - (3) The Planning Director shall deem the cultural resource review process complete if the Mitigation Plan indicates that the impact of the proposed use is reduced to no effect or no adverse effect and no substantiated comment is received during the 30 day comment period.
    - (a) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3818(I) within 10 days of the expiration of the 30 day comment period.
    - (b) The decision of the Planning Director on an application for cultural resource review shall

be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290.

- (4) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

(L) Cultural Resources Discovered After Construction Begins

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

- (1) Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
- (2) Notification – The project applicant shall notify the Planning Director and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.
- (3) Survey and Evaluation – The Gorge Commission will survey the cultural resources after obtaining written permission from the landowner and appropriate permits from SHPO (*see* ORS 273.705, ORS 358.905 to 358.955, and RCW 27.53). It will gather enough information to evaluate the significance of the cultural resources. The survey and evaluation will be documented in a report that generally follows the standards in MCC .3818(C)(2) and MCC .3818(E).
  - (a) The Planning Director shall, based on the survey and evaluation report and any written comments, make a final decision within 10 days of the receipt of the report of the Gorge Commission on whether the resources are significant.
  - (b) The Planning Director shall require a Mitigation Plan if the affected cultural resources are found to be significant.
  - (c) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3810(B).
  - (d) The decision of the Planning Director shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290. Construction activities may recommence if no appeal is filed.
- (4) Mitigation Plan – Mitigation plans shall be prepared according to the information, consultation, and report standards of MCC .3818(I). Construction activities may recommence when the conditions in the mitigation plan have been executed.

(M) Discovery of Human Remains

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

- (1) Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
- (2) Notification – Local law enforcement officials, the Planning Director, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.
- (3) Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
- (4) Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and the cultural resource protection process may conclude.
- (5) Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, chapter 97.740 to 97.760.
  - (a) If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report standards of MCC .3818(I).
  - (b) The plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in the standards of MCC .3818(J) are met and the mitigation plan is executed.

CC. MCC 11.15.3820(G)(4) is amended to read:

- (4) Assessment of Effect
  - (a) For each significant (*i.e.*, National Register eligible) cultural resource inventoried within the area of the proposed development or change in use, assessments of effect shall be completed, using the criteria outlined in 36 CFR 800.9 *Assessing Effects*. Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources of the project area shall be included for subsections (b) through (d) below. The Forest Service shall review each determination for adequacy and appropriate action.
  - (b) If the proposed development or change in use will have no adverse effect as defined in 36 CFR 800.8 to a significant cultural resource, documentation for that finding shall be completed, following the “Documentation Requirements” of 36 CFR 800.8(a).
  - (c) If the proposed development or change in use will have an adverse effect as defined by 36

CFR 800.9(b) to a cultural resource, the type and extent of "Adverse Effect" upon the qualities of the property that make it eligible to the National Register shall be documented. This documentation shall follow the process outlined under 36 CFR 800.5(e).

(d) If the effect appears to be beneficial (*i.e.*, an enhancement to cultural resources), documentation shall be completed for the recommendation of that effect upon the qualities of the significant cultural resource that make it eligible to the National Register. This documentation shall follow the process outlined under 36 CFR 800.8 *Documentation Requirements*.

DD. MCC 11.15.3820(A) is amended to read:

(A) The cultural resource review criteria shall be deemed satisfied, except MCC .3820(~~E~~H), if the Forest Service or Planning Director does not require a cultural resource survey and no comment is received during the comment period provided in MCC .3810(B).

EE. MCC 11.15.3822(A) is amended to read:

(A) The wetland review criteria shall be deemed satisfied if:

- (1) The project site is not identified as a wetland on the *National Wetlands Inventory* (U.S. Fish and Wildlife Service, 1987);
- (2) The soils of the project site are not identified by the *Soil Survey of Multnomah County, Oregon* (U.S.D.A. Soil Conservation Service, 1983) as hydric soils;
- (3) The project site is adjacent to the main stem of the Columbia River.
- ~~(3)~~4 The project site is not within a wetland buffer zone; and
- ~~(4)~~5 Wetlands are not identified on the project site during site review, or
- ~~(5)~~6 The proposed use is one of the following uses, and:
  - (a) It is conducted using best management practices;
  - (b) It does not require structures, grading, draining, flooding, ditching, vegetation removal, or dredging beyond the extent specified below; and
  - (c) It complies with all applicable federal, state, and county laws:
    - (i) Fish and wildlife management uses conducted by federal, state, or Indian tribal resource agencies.
    - (ii) Soil, water, and vegetation conservation uses that protect and enhance wetlands acreage and functions.
    - (iii) Low-intensity recreation uses, including hunting, fishing, trapping, bird watching, hik-

ing, boating, swimming, and canoeing.

- (iv) Non-commercial harvesting of wild crops, such as ferns, moss, berries, tubers, tree fruits, and seeds in a manner that does not injure natural plant reproduction or impact sensitive plant species.
- (v) Agriculture, except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation. Cultivation and vegetation removal may be allowed in conjunction with a home garden.
- (vi) Ditching, tilling, dredging, or grading conducted solely for the purpose of repairing and maintaining existing irrigation and drainage systems necessary for agriculture, provided that such uses are not undertaken to cultivate lands that have not been cultivated, or have lain idle, for more than 5 years.
- (vii) Commercial fishing and trapping.
- (viii) Educational uses and scientific research.
- (ix) Navigation aids, including structures covered by Section 17(a)(3) of the Scenic Area Act.
- (x) Forest practices that do not violate conditions of approval for other approved uses.
- (xi) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads and utility facilities.

FF. MCC 11.15.3822(B) is amended to read:

- (B) If the project site is within a recognized wetland or wetland buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary. Wetlands boundaries shall be delineated using the procedures specified in the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands* (Federal Interagency Committee for Wetland Delineation, 1989), and any subsequent amendments.

GG. MCC 11.15.3824(B) is amended to read:

- (B) The following uses may be allowed in [~~wetlands and wetland buffer zones~~] streams, ponds, lakes and riparian areas when approved pursuant to the provisions of MCC .3568, MCC .3824(D), and reviewed under the applicable provisions of MCC .3814 through .3834:

HH. MCC 11.15.3822(E)(2) is amended to read:

- (2) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of a wetlands function, existing contour, vegetation, fish and wildlife resources, and hydrology;

II. MCC .3822(F)(1)(c) is amended to read:

(c) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan revision pursuant to MCC .3588 to demonstrate that practicable alternatives do not exist.

JJ. MCC 11.15.3824(E)(7) is amended to read:

(7) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement.

Rehabilitation and enhancement [~~should~~] shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable.

When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

The following rehabilitation and enhancement standards shall apply:

- (a) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.
- (b) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.
- (c) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.
- (d) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.
- (e) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.
- (f) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.
- (g) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.
- (h) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

- (i) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this standard.

KK.MCC 11.15.3826 is amended to read:

Wildlife Habitat Site Review shall be required for any project within 1,000 feet of ~~[the following]~~ sensitive wildlife areas and sensitive wildlife sites (i.e., sites used by sensitive wildlife species):

**Sensitive Wildlife Areas in the Columbia Gorge**

- Bald eagle habitat
- Deer and elk winter range
- Elk habitat
- Mountain goat habitat
- Peregrine falcon habitat
- Pika colony area
- Pileated woodpecker habitat
- Pine marten habitat
- Shallow water fish habitat (Columbia R.)
- Special streams
- Special habitat area
- Spotted owl habitat
- Sturgeon spawning area
- Tributary fish habitat
- Turkey habitat
- Waterfowl area
- Western pond turtle habitat

**~~[Sites Used by the Following Species]~~ Oregon Endangered, Threatened and Sensitive Species in the Columbia Gorge ~~[are Considered Sensitive Sites]~~ (1991)**

Common Name	Scientific Name
<b>Endangered:</b>	
Peregrine falcon	<i>Falco peregrinus*</i>
<b>Threatened:</b>	
Bald Eagle	<i>Haliaeetus leucocephalus**</i>
Northern spotted owl	<i>Strix occidentalis**</i>
Wolverine	<i>Gulo gulo</i>
<b>Sensitive:</b>	
Acom woodpecker	<i>Melanerpes formicivorus</i>
Bank swallow	<i>Riparia riparia</i>
Barrow's goldeneye	<i>Bucephala islandica</i>
Black-backed woodpecker	<i>Picoides arcticus</i>
Bufflehead	<i>Bucephala albeola</i>
Bull trout	<i>Salvelinus confluentus+</i>
California mountain kingsnake	<i>Lampropeltis zonata</i>
Cascade frog	<i>Rana cascadae</i>
Chinook salmon	<i>Oncorhynchus tshawytscha</i>
Chum salmon	<i>Oncorhynchus keta</i>
Clouded salamander	<i>Aneides ferreus</i>

Coastal cutthroat trout	<i>Oncorhynchus clarki</i>
Coho salmon	<i>Oncorhynchus kisutch</i>
Common kingsnake	<i>Lampropeltis getulus</i>
Cope's giant salamander	<i>Dicamptodon copei</i>
Dusky Canada goose	<i>Branta canadensis occidentalis</i>
Flammulated owl	<i>Otus flammeolus</i>
Fisher	<i>Martes pennanti</i>
Foothill yellow-legged frog	<i>Rana boylei</i>
Fringed myotis	<i>Myotis thysanodes</i>
Grasshopper sparrow	<i>Ammodramus savannarum</i>
Great gray owl	<i>Strix nebulosa</i>
Greater sandhill crane	<i>Grus canadensis tabida</i>
Harlequin duck	<i>Histrionica histrionica</i>
Larch mountain salamander	<i>Plethodon larselli</i> +
Lewis' woodpecker	<i>Melanerpes lewis</i>
Marten	<i>Martes americana</i>
Northern goshawk	<i>Accipiter gentilis</i>
Northern leopard frog	<i>Rana pipiens</i>
Northern pygmy-owl	<i>Glaucidium gnoma</i>
Olympic salamander	<i>Phyacotriton olympicus</i>
Oregon slender salamander	<i>Batrachoseps wrighti</i>
Painted turtle	<i>Chrysemys picta</i>
Pileated woodpecker	<i>Dryocopus pileatus</i>
Purple martin	<i>Progne subis</i>
Pygmy nuthatch	<i>Sitta pygmaea</i>
Red-legged frog	<i>Rana aurora</i>
Sharptail snake	<i>Contia tenuis</i>
Spotted frog	<i>Rana pretiosa</i>
Tailed frog	<i>Ascaphus truei</i>
Three-toed woodpecker	<i>Picoides tridactylus</i>
Townsend's big-eared bat	<i>Plecotus townsendii</i> +
Tricolored blackbird	<i>Agelaius tricolor</i> +
Western bluebird	<i>Sialia mexicana</i>
Western pond turtle	<i>Clemmys marmorata</i> +
White-headed woodpecker	<i>Picoides albolarvatus</i>
White-tailed jackrabbit	<i>Lepus townsendii</i>
Williamson's sapsucker	<i>Sphyrapicus thyroideus</i>

\* Endangered species under U.S. Endangered Species Act

\*\* Threatened species under U.S. Endangered Species Act

+ Candidate species for U.S. Endangered Species Act.

(A) The following uses may be allowed within 1,000 feet of sensitive wildlife areas and sites without review, if they do not involve new structures, vegetation removal, or actions that disturb the ground, such as grading, or ditching beyond the extent specified below:

- (1) Agriculture, except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation.
- (2) Ditching, tilling, dredging, or grading conducted solely for the purpose of repairing and maintaining existing irrigation and drainage systems necessary for agriculture, provided that such uses are not undertaken to cultivate lands that have not been cultivated, or have lain idle, for more than 5 years.

- (3) Forest practices that do not violate conditions of approval for other approved uses.
- (4) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads and utility facilities.
- (5) Fish and wildlife management uses conducted by federal, state, or Indian tribal resource agencies.

(B) Field Survey

A field survey to identify sensitive wildlife areas or sites shall be required for:

- (1) Land divisions that create four or more parcels;
- (2) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (3) Public transportation facilities that are outside improved rights-of-way;
- (4) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (5) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

(C) Uses not listed in MCC .3826(A) may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to MCC .3826(D) and reviewed under the applicable provisions of MCC .3814 through .3834.

(D) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

- (1) Site plans shall be submitted to Oregon Department of Fish and Wildlife by the Planning Director. State wildlife biologists will review the site plan and their field survey records. They will
  - (a) Identify/verify the precise location of the wildlife area or site,
  - (b) Ascertain whether the wildlife area or site is active or abandoned, and
  - (c) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons.

In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

- (2) The following factors may be considered when site plans are reviewed:
  - (a) Biology of the affected wildlife species.
  - (b) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron.
  - (c) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.
  - (d) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.
  - (e) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.
- (3) The wildlife protection process may terminate if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines:
  - (a) The sensitive wildlife area or site is not active, or
  - (b) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.
- (4) If the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Planning Director will incorporate them into the site review order and the wildlife protection process may conclude.
- (5) The project applicant shall prepare a wildlife management plan if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.
- (6) The Planning Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife. The Oregon Department of Fish and Wildlife will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Planning Director.

The Planning Director shall record and address any written comments submitted by the Oregon Department of Fish and Wildlife in its site review order.

Based on the comments from the Oregon Department of Fish and Wildlife, the Planning Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and standards. If the final decision contradicts the comments submitted by the Oregon Department of Fish and Wildlife, the Planning Director shall justify how the opposing conclusion was reached.

The Planning Director shall require the applicant to revise the wildlife management plan to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(E) Wildlife Management Plans

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

Wildlife management plans shall meet the following standards:

- (1) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.
- (2) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.
- (3) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.
- (4) A wildlife buffer area shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer areas shall be delineated on the site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.
- (5) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer area shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:
  - (a) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.

(b) Intensive uses shall be generally prohibited in wildlife buffer areas. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer area and rehabilitation and/or enhancement will be completed before a particular species returns.

- (6) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer areas. When a buffer area has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site.

Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.

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

(F) New fences in deer and elk winter range

- (1) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.
- (2) New and replacement fences that are allowed in winter range shall comply with the guidelines in *Specifications for Structural Range Improvements* (Sanderson, et. al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:
- (a) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.
- (b) The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.
- (c) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.

(d) Stays, or braces placed between strands of wire, shall be positioned between fence posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

(3) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

LL.MCC 11.15.3828 is amended to read:

Rare Plant Site Review shall be required for any project within 1,000 feet of ~~[the following]~~ endemic ~~[and rare]~~ plants and sensitive plant species:

**Columbia Gorge and Vicinity Endemic Plant Species**

Common Name	Scientific Name
Howell's bentgrass	<i>Agrostis howellii</i>
Northern wormwood	<i>Artemisia campestris</i> var. <i>wormskioldii</i>
Hood River milk-vetch	<i>Astragalus hoodianus</i>
Howell's reedgrass	<i>Calamagrostis howellii</i>
Smooth-leaf douglasia	<i>Douglasia laevigata</i> var. <i>laevigata</i>
Howell's daisy	<i>Erigeron howellii</i>
Columbia Gorge daisy	<i>Erigeron oreganus</i>
Long-beard hawkweed	<i>Hieracium longiberbe</i>
Smooth desert parsley	<i>Lomatium laevigatum</i>
Suksdorf's desert parsley	<i>Lomatium suksdorfii</i>
Columbia Gorge broad-leaf lupine	<i>Lupinus latifolius</i> var. <i>thompsonianus</i>
Barrett's penstemon	<i>Penstemon barrettiae</i>
Pacific bluegrass	<i>Poa gracillima</i> var. <i>multnomae</i>
Obscure buttercup	<i>Panunculus reconditus</i>
Oregon sullivantia	<i>Sullivantia oregana</i>
Columbia kitten tails	<i>Synthyris stellata</i>

**Rare Plant Species in the Columbia Gorge**

Common Name	Scientific Name
<b>List 1:</b>	
Howell's bentgrass	<i>Agrostis howellii</i> +
Oregon bolandra	<i>Bolandra oregana</i> +
Tall bugbane	<i>Cimicifuga elata</i> +
Howell's daisy	<i>Erigeron howellii</i> *+
Columbia Gorge daisy	<i>Erigeron oreganus</i> +
Branching stickweed	<i>Hackelia diffusa</i> var. <i>diffusa</i> +
Suksdorf's desert parsley	<i>Lomatium suksdoffii</i> *+
White meconella	<i>Meconella oregana</i> +
Columbia monkey flower	<i>Mimulus jungermannioides</i> +
Barrett's penstemon	<i>Penstemon barrettiae</i> *+
Obscure buttercup	<i>Ranunculus reconditus</i> *+
Columbia yellow cress	<i>Porippa columbiae</i> *+
Oregon sullivantia	<i>Sullivantia oregana</i> *+

**List 2:**

Hood River milk-vetch	<i>Astragalus hoodianus</i>
Large-awn sedge	<i>Carex macrochaeta</i>
Columbia lewisia	<i>Lewisia columbiana</i> var. <i>columbiana</i>
Fir clubmoss	<i>Lycopodium selago</i>
Wool-grass	<i>Scirpus cyperinus</i>
Scribner grass	<i>Scribneria bolanderi</i>
Violet suksdorfia	<i>Suksdorfia violacea</i>

**List 3 (Review):**

Cliff paintbrush	<i>Castilleja rupicola</i>
Shining flatsedge	<i>Cyperus bipartitus</i> = <i>C. rivularis</i>
Nuttall's larkspur	<i>Delphinium nuttallii</i>
Smooth douglasia	<i>Douglasia laevigata</i>
Baker's linanthus	<i>Linanthus bakeri</i>
Western ladies' tresses	<i>Spiranthes porrifolia</i>

**List 4 (Watch):**

Douglas' onion	<i>Allium douglasii</i> var. <i>nevii</i>
Cascade rock cress	<i>Arabis furcata</i>
The Dalles milk-vetch	<i>Astragalus sclerocarpus</i>
Columbia milk-vetch	<i>Astragalus succumbens</i>
Virginia grape-fern	<i>Botrychium virginianum</i>
Mountain lady's slipper	<i>Cypripedium montanum</i>
Branching stickseed	<i>Hackelia diffusa</i> var. <i>cottonii</i>
Gooseberry-leaved alumroot	<i>Heuchera grossulariifolia</i> var. <i>tenuifolia</i>
Long-beard hawkweed	<i>Hieracium longiberbe</i>
Smooth desert parsley	<i>Lomatium laevigatum</i> *
Columbia Gorge broad-leaf lupine	<i>Lupinus latifolius</i> var. <i>thompsonianus</i>
Branching montia	<i>Montia diffusa</i>
Withered bluegrass	<i>Poa marcida</i>
Columbia kittentails	<i>Synthyris stellata</i>

\* Candidate species for U.S. Endangered Species Act.

+ Candidate species for Oregon Endangered Species Act.

Source: Oregon Natural Heritage Program. *Rare, Threatened and Endangered Plants and Animals of Oregon*. Portland, Oregon: Oregon Natural Heritage Program, 1991.

(A) The following uses may be allowed within 200 feet of a sensitive plant without review, if they do not involve new structures, vegetation removal, or actions that disturb the ground, such as grading or ditching beyond the extent specified below:

- (1) Low-intensity recreation uses, including hunting, fishing, trapping, native plant study, bird watching, boating, swimming, and hiking. Regarding sensitive plants, horseback riding is not considered a low-intensity use.
- (2) Agriculture, except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation.
- (3) Ditching, tilling, dredging, or grading conducted solely for the purpose of repairing and maintaining existing irrigation and drainage systems necessary for agriculture, provided that such

uses are not undertaken to cultivate lands that have not been cultivated, or have lain idle, for more than 5 years.

- (4) Forest practices that do not violate conditions of approval for other approved uses.
- (5) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads and utility facilities.

(B) Field Survey

A field survey to identify sensitive plants shall be required for:

- (1) Land divisions that create four or more parcels;
- (2) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (3) Public transportation facilities that are outside improved rights-of-way;
- (4) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (5) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200 foot buffer area. The results of a field survey shall be shown on the site plan map.

(C) Uses not listed in MCC .3828(A) may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to MCC .3568, .3828(D), and reviewed under the applicable provisions of MCC .3814 through .3834.

(D) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:

- (1) Site plans shall be submitted to the Oregon Natural Heritage Program by the Planning Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200 foot buffer area on the project applicant's site plan.

If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.

- (2) The rare plant protection process may conclude if the Planning Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer area.

- (3) New uses shall be prohibited within sensitive plant species buffer areas, except those listed in MCC .3828(A).
- (4) If a proposed use must be allowed within a sensitive plant buffer area in accordance with formal variance practices, the project applicant shall prepare a protection and rehabilitation plan pursuant to MCC .3828(E).
- (5) The Planning Director shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Planning Director.

The Planning Director shall record and address any written comments submitted by the Natural Heritage Program staff in the site review order.

Based on the comments from the Natural Heritage Program staff, the Planning Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and standards. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Planning Director shall justify how the opposing conclusion was reached.

#### (E) Protection and Rehabilitation Plans

Protection and rehabilitation plans minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance. All plans shall meet the following standards:

- (1) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.
- (2) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.
- (3) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive three years after the date they are planted.

- (4) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.

- (5) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.
- (6) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.
- (7) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:
  - (a) Describe the biology of sensitive plant species that will be affected by a proposed use.
  - (b) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.
  - (c) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.
  - (d) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the local government an annual report that documents milestones, successes, problems, and contingency actions.

(F) Sensitive Plant Buffer Areas

- (1) A 200 foot buffer area shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.
- (2) Buffer areas may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer area be less than 25 feet.
- (3) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:
  - (a) Identifies the precise location of the sensitive plants,
  - (b) Describes the biology of the sensitive plants, and
  - (c) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival.

All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.

- (4) The Planning Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon Natural Heritage Program. The Natural Heritage Program staff will have 20

days from the date that such a request is mailed to submit written comments to the Planning Director.

The Planning Director shall record and address any written comments submitted by the Oregon Natural Heritage Program in the site review order.

Based on the comments from the Oregon Natural Heritage Program, the Planning Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Planning Director shall justify how the opposing conclusion was reached.

MM. MCC 11.15.3830(A) is amended to read:

- (A) Buffer zones shall be undisturbed unless it has been shown that there are no practicable alternatives pursuant to MCC .3822(F)(1), substituting the name of the resource as appropriate. New developments and uses may only be allowed in the buffer zone upon demonstration in the natural resources mitigation plan required by MCC .3830(B)(6) that there would be no adverse effects.

NN. MCC 11.15.3830(B)(5)(a)(ii) is amended to read:

- (ii) A buffer zone for sites of sensitive wildlife species, such as nesting, roosting and perching sites, as defined by species requirements shall be as determined by the Forest Service biologist in consultation with other state or federal agency biologists.

OO. MCC 11.15.3830(B)(5)(b) is amended to read:

(b) Riparian, Wetlands, Parks, and Lakes.

- (i) Adding any fill or draining of wetlands is prohibited.
- (ii) A minimum 200 foot buffer zone shall be created on the landward side of each wetland, pond or lake; or a wider variance from this requirement shall be determined during the site plan analysis of the wetland or riparian area and those species inhabiting the area as determined by the Forest Service biologist in consultation with state and/or federal agencies;
- (iii) A 200 foot buffer zone shall be created along each fish-bearing and perennial stream.
- (iv) A 50 foot buffer zone shall be created along intermittent streams.
- (v) Revegetation shall use only species native to the Columbia River Gorge, and shall provide and maintain habitat diversity beneficial to the fish, wildlife and native plants.
- (vi) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian standards upon demonstration of the following:

- The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way;
- The wetland is not critical habitat; and
- Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.

(vii) There shall be no destruction of wetlands except within roads and railroad rights-of-way as provided in subsection viii below. There shall be no destruction of riparian areas except for water dependent uses, such as boat ramps, and road construction and reconstruction. Above stated exceptions to riparian destruction policy shall meet minimum natural resource protection standards and be reviewed for meeting resource protection guidelines.

(viii) The exact location of wetlands boundaries shall be delineated using the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands Federal Interagency Committee for Wetland Delineation, 1989. Changes to this Federal manual would not apply to the Scenic Area unless the National Scenic Area Management Plan has been amended. The approximate location and extent of wetlands in the National Scenic Area is shown on the National Wetlands Inventory (U.S. Fish and Wildlife Service, 1987).

PP. MCC 11.15.3830(B)(5)(f) is amended to read:

(f) Air and water quality:

- (i) Streambank and shoreline stability shall be maintained or restored with natural revegetation.
- (ii) All new developments shall be carried out to comply with state water quality requirements.
- (iii) Existing levels of air visibility shall not be degraded. The Scenic Area shall be suited for designation as a Class 1 airshed.
- (iv) County, state and federal regulations for air and water quality and for pesticide use shall be followed.

QQ. MCC 11.15.3832 is amended to read:

The following uses are allowed, subject to compliance with MCC .3832(E) and (F).