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REVISED* STAFF REPORT FOR THE PLANNING COMMISSION HEARING
February 5, 2018

GENERAL MANAGEMENT AREA AND SPECIAL MANAGEMENT AREA GUIDELINE CHANGES BASED ON REVISIONS TO THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA MANAGEMENT PLAN
(PC-2013-3021)

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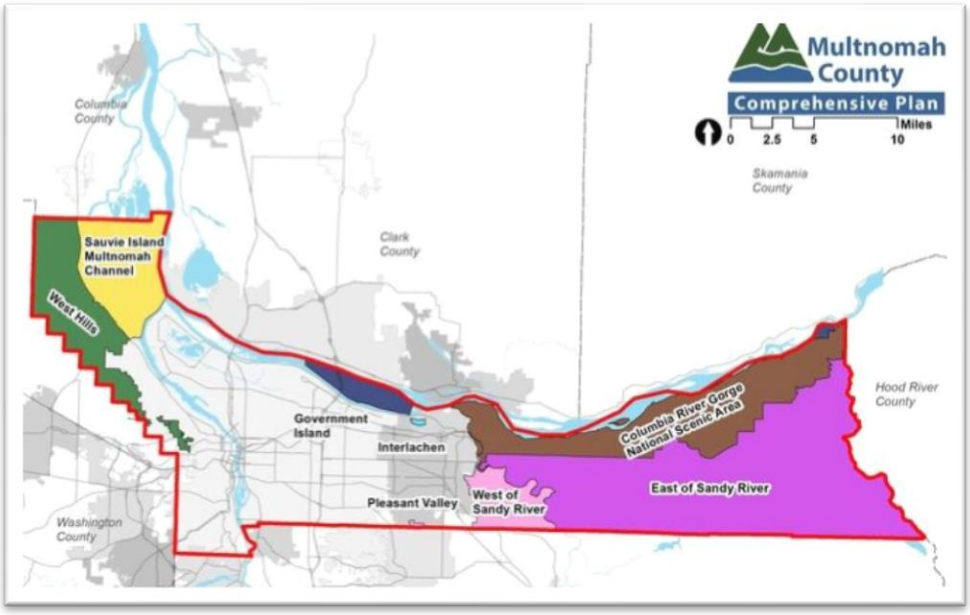
SECTION 1.0 INTRODUCTION

*On February 5, 2018 the Planning Commission held a public hearing on the proposed ordinance revisions in Section 2.0 of this report. The Commission approved the proposed revisions, with one modification consistent with a recommendation outlined in written testimony submitted February 5 by Steven D. McCoy, Staff Attorney with Friends of the Columbia River Gorge (hearing exhibit H.3).

The one revision approved by the Commission relocated proposed text in 38.7075(G)(4) [page 70] to the introductory section of 38.7075 [page 67] so that application of the proposed language in sub(4) was not limited to proposed uses in buffer zones. The intent of this language relocation was to align county code with the regulatory architecture of the Columbia River Gorge Management Plan. The proposed language in Section 2.0 below has been updated to reflect the Commission's recommendation.

The Columbia River Gorge National Scenic Area Act of 1986 created a mandate to, 1) protect and enhance the scenic, natural, cultural and recreational resources of the Columbia River Gorge and to, 2) protect and support the economy of the Columbia River Gorge by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with the first purpose above.

Multnomah County implements local land use zoning regulations in the Columbia River Gorge National Scenic Area, generally described as lands falling between the Sandy River and the Bonneville Dam south of the Columbia River. Multnomah County also implements scenic area regulations for the City of Troutdale within the portion of the city falling within the Columbia River Gorge, immediately east of the Sandy River. Multnomah County is required to maintain zoning regulations in compliance with the Columbia River Gorge Management Plan (Management Plan) for the Columbia River National Scenic Area.



The Gorge Commission is required to conduct periodic review of the Management Plan every 10 years and the last review and plan update occurred in 2004. Certain provisions of that updated plan were challenged in court but were recently settled by the parties to that case. On February 9, 2016, the Columbia River Gorge Commission adopted revisions to the Management Plan to respond to an Oregon Court of Appeals' decision (February 23, 2012 Court of Appeals of Oregon Decision A146584).

The Gorge Commission notified Multnomah County on July 20, 2017 that county code updates consistent with Management Plan revisions prompted by the Oregon Court of Appeals ruling must be completed within 270 days (by April 16, 2018). Similar notifications were transmitted to the other five National Scenic Area counties. Therefore, the revisions outlined in Section 2 of this report are mandatory, although variations in code language are permissible as long as language provides equal protection of gorge resources.

In general, revisions include required changes to both the General Management Area and Special Management Area guidelines to comply with cumulative adverse effects mandate of the Columbia River Gorge National Scenic Area Act for natural resources. The amendments better align protection measures in the General Management Area and the Special Management Area and will help protect natural resources from individually minor but collectively significant adverse impacts over time.

More specifically, the proposed ordinance:

- Clarifies that cumulative effects to natural resources are a type of adverse effect prohibited by the Management Plan;
- Adds definitions of 'Adversely Affect' and 'Air' found in the Management Plan;
- Adopts into code existing practice of requiring a cultural reconnaissance survey if any element of a land use application requires such a survey (*e.g.* a proposal for a land division and a new dwelling would require a reconnaissance survey if a survey would be required for the dwelling);
- Provides that the Gorge Commission may require a cultural reconnaissance survey for uses otherwise excepted from the survey requirement if necessary to ensure protection of cultural resources; and
- Clarifies that uses allowed in streams, ponds, lakes and riparian areas are also allowed in natural resource buffer zones subject to compliance with guidelines for the protection of identified resources.

This staff report often proposes identical language to that used in the Management Plan revisions with occasional minor grammatical modifications to help amendments better align with county code structure. For consistency, the location of new text proposed in this report was also selected to align as closely as possible with language approved by the Gorge Commission in Attachment A.

The Gorge Commission is currently undertaking a larger update to the Management Plan (Gorge 2020) which should contain more substantive updates when that work is complete in 2020. The amendments in this staff report are not related to the Gorge 2020 project.

SECTION 2.0 PROPOSED CODE AMENDMENTS

Staff Note: *The following text formatting is used to differentiate existing, proposed and deleted language.*

Double Underline = Proposed new language
~~Strikethrough~~ = Language proposed for deletion
* * * = Indicates end of section or separates non-contiguous code sections (if applicable)

§ 38.0015 Definitions

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

Adversely Affect or Adversely Affecting: A reasonable likelihood of more than moderate adverse consequences for the scenic, cultural, recreation or natural resources of the scenic area, the determination of which is based on:

(a) The context of a proposed action;

(b) The intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence;

(c) The relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts; and

(d) Proved mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant effects to an insignificant level.

Air: The mixture of gases comprising the Earth's atmosphere.

Cumulative effects: The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

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Staff Note: The proposal modifies sections of approval criteria below highlighted in grey

PART 6 - APPROVAL CRITERIA

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§ 38.7035 GMA SCENIC REVIEW CRITERIA

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

(A) All Review Uses and Conditional Uses:

(1) New buildings and roads shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.

(2) New buildings shall be compatible with the general scale (height, dimensions and visible mass) of similar buildings that exist nearby (e.g. dwellings to dwellings). Expansion of existing development shall comply with this guideline to the maximum extent practicable. For purposes of applying this standard, the term nearby generally means buildings within ¼ mile of the parcel on which development is proposed.

(3) New vehicular access points to the Scenic Travel Corridors shall be limited to the maximum extent practicable, and access consolidation required where feasible.

(4) Property owners shall be responsible for the proper maintenance and survival of any required vegetation.

(5) For all proposed development, the de-termination of compatibility with the landscape setting shall be based on in-formation submitted in the site plan.

(6) For all new production and/or development of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance which blends with and emulates surrounding landforms to the maximum extent practicable.

At minimum, such reclamation plans shall include:

(a) A map of the site, at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail, with 10

foot contour intervals or less, showing pre-mining existing grades and post-mining, final grades; locations of topsoil stockpiles for eventual reclamation use; location of catch-basins or similar drainage and erosion control features employed for the duration of the use; and the location of storage, processing and equipment areas employed for the duration of the use;

(b) Cross-sectional drawings of the site showing pre-mining and post-mining grades;

(c) Descriptions of the proposed use, in terms of estimated quantity and type of material removed, estimated duration of the use, processing activities, etc.;

(d) Description of drainage/erosion control features to be employed for the duration of the use; and

(e) A landscaping plan providing for revegetation consistent with the vegetation patterns of the subject land-scape setting, indicating the species, number, size and location of plantings for the final reclaimed grade, as well as a description of irrigation pro-visions or other measures necessary to ensure the survival of plantings.

(7) All reclamation plans for new quarries or expansion of existing quarries shall be sent to the appropriate state reclamation permitting agency for review and comment. The state agency shall have 30 calendar days from the date a reclamation plan is mailed to submit written comments on the proposal. State agency comments shall address the following:

(a) Whether the proposed mining is subject to state reclamation permit requirements;

(b) If subject to state jurisdiction, whether an application has been received for a state reclamation permit, and if, so, the current status of the application; and

(c) For uses subject to state jurisdiction, any issues or concerns regarding consistency with state reclamation requirements, or any suggested modifications to comply with state reclamation requirements.

The Planning Director may request technical assistance from state agencies on reclamation plans for proposed mining not within the state agency's jurisdiction.

(B) All Review Uses and Conditional Uses topographically visible from Key Viewing Areas:

(1) Each development shall be visually subordinate to its setting as seen from Key Viewing Areas.

(2) The extent and type of conditions applied to a proposed development or use to achieve the scenic standard shall be proportionate to its potential visual impacts as seen from Key Viewing Areas. Decisions shall include written findings addressing the factors influencing potential visual impact including but not limited to: the amount of area of the building site exposed to Key Viewing Areas, the degree of existing vegetation providing screening, the distance from the building site to the Key Viewing Areas it is visible from, the number of Key Viewing Areas it is visible from, and the linear distance along the Key Viewing Areas from which the building site is visible (for linear Key Viewing Areas, such as roads). Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to siting (location of

development on the subject property, building orientation, and other elements); retention of existing vegetation; design (color, reflectivity, size, shape, height, architectural and design details and other elements); and new landscaping.

(3) Determination of potential visual effects and compliance with visual subordinance policies shall include consideration of the cumulative effects of proposed developments.

(4) In addition to the site plan requirements in MCC 38.0045 (A) applications for all buildings visible from key viewing areas shall include a description of the proposed building(s)' height, shape, col-or, exterior building materials, exterior lighting, and landscaping details (type of plants used; number, size, locations of plantings; and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes).

(5) For proposed mining and associated activities on lands visible from Key Viewing Areas, in addition to submittal of plans and information pursuant to MCC 38.7035 (A) (6) and subsection (4) above, project applicants shall submit perspective drawings of the proposed mining areas as seen from applicable Key Viewing Areas.

(6) New development shall be sited on portions of the subject property which minimize visibility from Key Viewing Areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, sensitive wildlife sites or conflict

with the protection of cultural re-sources. In such situations, development shall comply with this standard to the maximum extent practicable.

(7) New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordinance from key viewing areas.

(8) Existing tree cover screening pro-posed development from key viewing areas shall be retained as specified in MCC 38.7035(C).

(9) Driveways and buildings shall be de-signed and sited to minimize visibility of cut banks and fill slopes from Key Viewing Areas.

(10) The exterior of buildings on lands seen from Key Viewing Areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all Key Viewing Areas by existing topo-graphic features. The Scenic Resources Implementation Handbook includes a list of recommended exterior materials. These recommended materials and other materials may be deemed consistent with this code, including those that meet recommended thresholds in the "visibility and Reflectivity Matrices" in the Implementation Handbook. Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure visual subordinance. Recommended square footage limitations for such surfaces are provided for guidance in the Implementation Handbook

(11) Exterior lighting shall be directed downward and sited, hooded and shielded such that it is not highly visible from Key Viewing Areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(12) Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Re-sources Implementation Handbook will include a recommended palette of colors.

(13) Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of dark earth-tone colors found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors.

(14) Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordinance requirements for lands seen from Key Viewing Areas. To be eligible for such exemption, the structure must be included in, or eligible for inclusion in, the National Register of Historic Places or be in the process of applying for a determination of significance pursuant to such regulations. Rehabilitation of or modifications to such historic structures shall be consistent with National Park Service regulations for historic structures.

(15) The silhouette of new buildings shall remain below the skyline of a bluff, cliff or ridge as seen from Key Viewing Areas. Variances may be granted if application of this standard would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use, and may be applied only after all reasonable efforts to modify the design, building height, and site to com-ply with the standard have been made.

(16) An alteration to a building built prior to November 17, 1986, which already protrudes above the skyline of a bluff, cliff or ridge as seen from a Key Viewing Areas, may itself protrude above the sky-line if:

(a) The altered building, through use of color, landscaping and/or other mitigation measures, contrasts less with its setting than before the alteration; and

(b) There is no practicable alternative means of altering the building without increasing the protrusion.

(17) The following standards shall apply to new landscaping used to screen development from key viewing areas:

(a) New landscaping (including new earth berms) shall be required only when there is no other means to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordinance. Development shall be sited to avoid the need for new landscaping wherever possible.

(b) If new landscaping is required, it shall be used to supplement other techniques for achieving visual sub-ordinance.

(c) Vegetation planted for screening purposes shall be of sufficient size to make the development visually sub-ordinate within five years or less of commencement of construction.

(d) Landscaping shall be installed as soon as practicable, and prior to project completion. Applicant. The prop-erty owner(s), and their successor(s) in interest are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not sur-vive.

(e) The Scenic Resources Implementation Handbook includes recommended species for each landscape setting consistent with MCC 38.7035(C) and the minimum recommended sizes for tree plantings (based on average growth rates expected for recommended species).

(18) Conditions regarding new landscaping or retention of existing vegetation for new developments on land designated GMA Forest shall meet both scenic guide-lines and the fuel break requirements of MCC 38.7305(A).

(19) New main lines on lands visible from Key Viewing Areas for the trans-mission of electricity, gas, oil, other fuels, or communications, except for connections to individual users or small clusters of individual users, shall be built in existing transmission corridors unless it can be

demonstrated that use of existing corridors is not practicable. Such new lines shall be underground as a first preference unless it can be demonstrated to be impracticable.

(20) New communication facilities (antennae, dishes, etc.) on lands visible from Key Viewing Areas, which require an open and unobstructed site shall be built upon existing facilities unless it can be demonstrated that use of existing facilities is not practicable.

(21) New communications facilities may protrude above a skyline visible from a Key Viewing Area only upon demonstration that:

(a) The facility is necessary for public service;

(b) The break in the skyline is seen only in the background; and

(c) The break in the skyline is the minimum necessary to provide the service.

(22) Overpasses, safety and directional signs and other road and highway facilities may protrude above a skyline visible from a Key Viewing Area only upon a demonstration that:

(a) The facility is necessary for public service;

(b) The break in the skyline is the minimum necessary to provide the service.

(23) Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to the set-back may be authorized.

(24) New buildings shall not be permitted on lands visible from Key Viewing Areas with slopes in excess of 30 percent. A variance may be authorized if the proper-ty would be rendered unbuildable through the application of this standard. In determining the slope, the average per-cent slope of the proposed building site shall be utilized.

(25) All proposed structural development involving more than 100 cubic yards of grading on sites visible from Key Viewing Areas shall include submittal of a grading plan. This plan shall be reviewed by the Planning Director for compliance with Key Viewing Area policies. The grading plan shall include the following:

(a) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail, with contour intervals of at least 5 feet, including:

1. Existing and proposed final grades;

2. Location of all areas to be graded, with cut banks and fill slopes delineated; and

3. Estimated dimensions of graded areas.

(b) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:

1. Its purpose;

2. An estimate of the total volume of material to be moved;

3. The height of all cut banks and fill slopes;

4. Provisions to be used for compaction, drainage, and stabilization of graded areas (preparation of this information by a licensed engineer or engineering geologist is recommended);

5. A description of all plant materials used to revegetate exposed slopes and banks, including type of species, number of plants, size and location, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings; and

6. A description of any other interim or permanent erosion control measures to be utilized.

(26) Expansion of existing quarries and new production and/or development of mineral resources proposed on sites more than 3 miles from the nearest Key Viewing Areas from which it is visible may be allowed upon a demonstration that:

(a) The site plan requirements for such proposals pursuant to this chapter have been met;

(b) The area to be mined and the area to be used for primary processing, equipment storage, stockpiling, etc. associated with the use would be visually
subordinate as seen from any Key Viewing Areas; and

(c) A reclamation plan to restore the site to a natural appearance which blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, a reclamation plans shall comply with MCC 38.7035 (A) (5); and

(d) A written report on a determination of visual subordinance has been completed, with findings addressing the extent of visibility of proposed mining activities from Key Viewing Areas, including:

1. A list of Key Viewing Areas from which exposed mining sur-faces (and associated facilities/activities) would be visible;

2. An estimate of the surface area of exposed mining surfaces which would be visible from those Key Viewing Areas;

3. The distance from those Key Viewing Areas and the linear distance along those Key Viewing Areas from which proposed min-ing surfaces are visible;

4. The slope and aspect of mining surfaces relative to those portions of Key Viewing Areas from which they are visible;

5. The degree to which potentially visible mining surfaces are screened from Key Viewing Are-as by existing vegetation, including winter screening considerations.

6. The degree to which potentially visible mining surfaces would be screened by new plantings, berms, etc. and appropriate time frames to
achieve such results, including winter screening considerations.

(27) Unless addressed by subsection (26) above, new production and/or development of mineral resources may be al-lowed upon a demonstration that:

(a) The site plan requirements for such proposals pursuant to this chapter have been met;

(b) The area to be mined and the area used for primary processing, equipment storage, stockpiling, etc. associated with the use would be fully screened from any Key Viewing Area; and

(c) A reclamation plan to restore the area to a natural appearance which blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with MCC 38.7035 (A) (6) and (7).

(28) An interim time period to achieve compliance with visual subordinance requirements for expansion of existing quarries and development of new quarries located more than 3 miles from the nearest visible Key Viewing Area shall be established prior to approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the date of approval.

(29) An interim time period to achieve compliance with full screening requirements for new quarries located less than 3 miles from the nearest visible Key Viewing Area shall be established prior to approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the date of approval. Quarrying activity occurring prior to achieving compliance with full

screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(C) All Review Uses and Conditional Uses within the following landscape settings, re-gardless of visibility from KVAs:

(1) Pastoral

(a) Accessory structures, outbuildings and accessways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures and farm fields.

(b) In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual subordinance for new development and expansion of existing development:

1. Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.

2. Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.

3. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas fir, Lombardy poplar (usually in rows), Oregon white oak, bigleaf maple, and black locust (primarily in the eastern Gorge). The Scenic Resources Implementation Handbook includes recommended minimum sizes.

4. At least one-quarter of any trees planted for screening shall be coniferous for winter screening.

(c) Compatible recreation uses include resource-based recreation uses of a very low or low-intensity nature, occurring infrequently in the land-scape.

(2) Coniferous Woodland

(a) Structure height shall remain be-low the forest canopy level.

(b) In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual subordinance for new development and expansion of existing development:

1. Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from Key Viewing Areas shall be retained.

2. At least half of any trees planted for screening purposes shall be species native to the setting. Such species include: Douglas fir, grand fir, western red cedar, western hemlock, bigleaf maple, red alder, ponderosa pine and Oregon white oak, and various native willows (for riparian areas). The Scenic Resources Implementation Handbook includes recommended minimum sizes.

3. At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(c) Compatible recreation uses include resource-based recreation uses of varying intensities. Typically, out-door recreation uses should be low-intensity, and include trails, small picnic areas and scenic viewpoints. Some more intensive recreation uses, such as campgrounds, may occur.

They should be scattered, interspersed with large areas of undeveloped land and low-intensity uses.

(3) Rural Residential

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

(b) In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual subordinance for new development and expansion of existing development:

1. Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.

2. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

3. At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(c) Compatible recreation uses include should be limited to small community park facilities, but occasional low-

intensity resource-based recreation uses (such as small scenic overlooks) may be allowed.

(4) Rural Residential in Conifer Wood-land or Pastoral

(a) New development in this setting shall meet the design standards for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral or Conifer-ous Woodland), unless it can be demonstrated that compliance with the standards for the more rural set-ting is impracticable. Expansion of existing development shall comply with this standard to the maximum extent practicable.

(b) In the event of a conflict between the standards, the standards for the more rural setting (Coniferous Wood-land or Pastoral) shall apply, unless it can be demonstrated that application of such standards would not be practicable.

(c) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

(5) Residential

(a) In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual subordinance for new development and expansion of existing development:

1. Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.

2. Structures' exteriors shall be non-reflective unless fully screened from Key Viewing Are-as with existing vegetation and/or topography.

3. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

4. At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(b) Compatible recreation uses are limited to community park facilities.

(6) Village

(a) New development in this setting is exempt from the color and siting requirements of MCC 38.7035(B).

(b) New commercial buildings shall be limited in size to a total floor area of 5,000 square feet or less, and shall be limited in height to 2 and 1/2 stories or less.

(c) For new commercial, institutional (churches, schools, government buildings) or multi-family residential uses on parcels fronting a Scenic Travel Corridor (the Historic Columbia River Highway) and expansion of existing development for such uses, parking shall be limited to rear or side yards of buildings to the maximum extent practicable.

(d) New vehicular access points to the scenic travel corridors shall be limited to the maximum extent practicable, and access consolidation shall be required where feasible.

(e) New development proposals and expansion of existing development shall be encouraged to follow planned unit development approaches, featuring consolidated access, commonly-shared landscaped open areas, etc.

(f) New commercial, institutional or multi-family residential uses fronting a Scenic Travel Corridor shall comply with the following landscape requirements:

1. Parking or loading areas for 10 or more spaces shall include a landscaped strip at least 5 feet in width between the new use and the Scenic Travel Corridor road-way.

2. The landscape strip required in subsection (f) 1. above shall include shrubs, vegetative ground cover and, at minimum, one tree spaced as appropriate to the species and not to exceed 25 feet apart on the average.

(g) The use of building materials reinforcing the Village Setting's character, such as wood, logs or stone, and reflective of community desires, should be encouraged.

(h) Architectural styles characteristic of the area (such as 1½ story dormer roof styles in Corbett), and reflective of community desires, should be encouraged. Entry signs should be consistent with such architectural styles.

(i) Design features which create a "pedestrian friendly" atmosphere, such as large shop windows on the ground floor of commercial buildings, porches along ground floors with street frontage, etc. should be encouraged.

(j) Pedestrian walkways and bicycle paths should be encouraged and integrated into new developments wherever feasible.

(k) Where feasible, existing tree cover of species native to the region or commonly found in the area shall be retained when designing new development or expanding existing development.

(l) Compatible recreation uses may include community parks serving the recreation needs of local residents, and varying intensities of other recreation uses.

(7) River Bottomlands

(a) In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual subordinance for new development and expansion of existing development:

1. Except as is necessary for site development or safety purposes, existing tree cover screening the development from Key Viewing Areas shall be retained.

2. At least half of any trees planted for screening purposes shall be species native to the River Bottomland setting. Public recreation developments are encouraged to maximize the percentage of planted screening vegetation native to this setting. Such species include: black cottonwood, big leaf maple, red alder, Oregon white ash, Douglas fir, western red cedar and western hemlock (west Gorge) and various native willow species.

3. At least one-quarter of any trees planted for screening purposes shall be coniferous for winter screening.

(b) Compatible recreation uses de-pend on the degree of natural re-source sensitivity of a particular site. In the most critically sensitive River Bottomlands, very low-intensity uses which do not impair wetlands or special habitat requirements may be compatible.

(8) Gorge Walls, Canyons and Wildlands

(a) New development and expansion of existing development shall be screened so as to not be seen from Key Viewing Areas to the maximum extent practicable.

(b) All trees planted to screen permit-ted development and uses from Key Viewing Areas shall be native to the area.

(c) Existing tree cover shall be retained to the maximum extent practicable, except for the minimum necessary to be removed to accommodate facilities otherwise permitted in the underlying land use designation or for safety purposes.

(d) All buildings shall be limited in height to 1 1/2 stories.

(e) All structures' exteriors shall be non-reflective.

(f) Signage shall be limited to natural materials such as wood or stone, and natural or earth-tone colors, unless public safety concerns or federal or state highway standards require otherwise.

(g) Compatible recreation uses are limited to very low or low-intensity, resource-based activities which focus on enjoyment and appreciation of sensitive resources. Such uses compatible (such as trails) are generally associated with minimal facility development, if any.

(D) All Review Uses and Conditional Uses within scenic travel corridors:

(1) For the purposes of implementing this section, the foreground of a Scenic Travel

Corridor shall include those lands within one-quarter mile of the edge of pavement of the Historic Columbia River Highway and I– 84.

(2) All new buildings and alterations to existing buildings, except in a GGRC, shall be set back at least 100 feet from the edge of pavement of the Scenic Travel Corridor roadway. A variance to this setback requirement may be granted pursuant to MCC 38.0065. All new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the Scenic Travel Corridor roadway, to the maxi-mum extent practicable.

(3) Additions to existing buildings or expansion of existing parking lots located within 100 feet of the edge of pavement of a Scenic Travel Corridor roadway except in a GGRC, shall comply with sub-section (2) above to the maximum extent practicable.

(4) All proposed vegetation management projects in public rights-of-way to pro-vide or improve views shall include the following:

(a) An evaluation of potential visual impacts of the proposed project as seen from any Key Viewing Area;

(b) An inventory of any rare plants, sensitive wildlife habitat, wetlands or riparian areas on the project site. If such resources are determined to be present, the project shall comply with applicable standards to protect the re-sources.

(5) When evaluating which locations to consider undergrounding of signal wires or powerlines, railroads and utility companies

shall prioritize those areas specifically recommended as extreme or high priori-ties for undergrounding in the Columbia River Gorge National Scenic Area Corridor Visual Inventory prepared in April, 1990.

(6) New production and/or development of mineral resources proposed within one-quarter mile of the edge of pavement of a Scenic Travel Corridor may be al-lowed upon a demonstration that full visual screening of the site from the Scenic Travel Corridor can be achieved by use of existing topographic features or existing vegetation designed to be retained through the planned duration of the pro-posed project. An exception to this may be granted if planting of new vegetation in the vicinity of the access road to the mining area would achieve full screening. If existing vegetation is partly or fully employed to achieve visual screening, over 75 percent of the tree canopy area shall be coniferous species providing ad-equate winter screening. Mining and associated primary processing of mineral resources is prohibited within 100 feet of a Scenic Travel Corridor, as measured from the edge of pavement, except for access roads. Compliance with full screening requirements shall be achieved within time frames specified in MCC 38.7035 (B) (29).

(7) Expansion of existing quarries may be allowed pursuant to MCC 38.7035 (B) (26). Compliance with visual subordinance requirements shall be achieved within time frames specified in MCC 38.7035 (B) (28).

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§ 38.7040 SMA SCENIC REVIEW CRITERIA

The following scenic review standards shall apply to all Review and Conditional Uses in the Special Management Area of the Columbia River Gorge National Scenic Area with the exception of rehabilitation or modification of historic structures eligible or on the National Register of Historic Places when such modification is in compliance with the national register of historic places guidelines:

(A) All Review Uses and Conditional Uses visible from KVAs. This section shall apply to proposed development on sites topographically visible from KVAs:

(1) New developments and land uses shall be evaluated, including cumulative effects to ensure that the scenic standard is met and that scenic resources are not adversely affected, including cumulative effects, based on the degree of visibility from Key Viewing Areas.

(2) The required SMA scenic standards for all development and uses are summarized in the following table.

REQUIRED SMA SCENIC STANDARDS		
LANDSCAPE SETTING	LAND USE DESIGNATION	SCENIC STANDARD
Coniferous Woodland, Oak-Pine Woodland	Forest (National Forest Lands), Open Space	NOT VISUALLY EVIDENT
River Bottomlands	Open Space	NOT VISUALLY EVIDENT
Gorge Walls, Canyonlands, Wildlands	Forest, Agriculture, Public Recreation, Open Space	NOT VISUALLY EVIDENT
Coniferous Woodland, Oak-Pine Woodland	Forest, Agriculture, Residential, Public Recreation	VISUALLY SUBORDINATE
Residential	Residential	VISUALLY SUBORDINATE
Pastoral	Forest, Agriculture, Public Recreation, Open Space	VISUALLY SUBORDINATE
River Bottomlands	Forest, Agriculture, Public Recreation	VISUALLY SUBORDINATE

(3) In all landscape settings, scenic standards shall be met by blending new development with the adjacent natural land-scape elements rather than with existing development.

(4) Proposed developments or land use shall be sited to achieve the applicable scenic standards. Development shall be designed to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of land-forms, vegetation cover, and natural characteristics. When screening of development is needed to meet the scenic standard from key viewing areas, use of existing topography and vegetation shall be given priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms.

(5) The extent and type of conditions ap-plied to a proposed development or use to achieve the scenic standard shall be proportionate to its degree of visibility from key viewing areas.

(a) Decisions shall include written findings addressing the Primary factors influencing the degree of visibility, including but not limited to:

1. The amount of area of the building site exposed to key viewing areas,

2. The degree of existing vegetation providing screening,

3. The distance from the building site to the key viewing areas from which it is visible,

4. The number of key viewing areas from which it is visible, and

5. The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

(b) Conditions may be applied to various elements of proposed developments to ensure they meet the scenic standard for their setting as seen from key viewing areas, including but not limited to:

1. Siting (location of development on the subject property, building orientation, and other elements),

2. Retention of existing vegetation,

3. Design (color, reflectivity, size, shape, height, architectural and design details and other elements), and

4. New landscaping.

(6) Sites approved for new development to achieve scenic standards shall be consistent with guidelines to protect wetlands, riparian corridors, sensitive plant or wildlife sites and the buffer zones of each of these natural resources, and guidelines to protect cultural resources.

(7) Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from Key Viewing Areas.

(8) Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that compliance with this standard is not feasible considering the function of the structure.

(9) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(a) New landscaping (including new earth berms) to achieve the required scenic standard from key viewing areas shall be required only when application of all other available guide-lines in this chapter is not sufficient to make the development meet the scenic standard from key viewing areas. Development shall be sited to avoid the need for new landscaping wherever possible.

(b) If new landscaping is necessary to meet the required standard, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to meet the scenic standard within five years or less from the commencement of construction.

(c) Landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(d) The Scenic Resources Implementation Handbook shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in this chapter, and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(10) Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors as dark or darker than the colors in the shadows of the natural features surrounding each landscape setting

(11) The exterior of structures on lands seen from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. The Scenic Resources Implementation Handbook will include a recommended list of exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets approval thresholds in the "Visibility and Reflectivity Matrices" in the Implementation Handbook. Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure meeting the scenic standard. Recommended square footage limitations for such surfaces will be provided for guidance in the Implementation Handbook.

(12) Any exterior lighting shall be sited, limited in intensity, shielded or hooded in a manner that prevents lights from being highly visible from Key Viewing Areas and from noticeably contrasting with the surrounding landscape setting except for road lighting necessary for safety purposes.

(13) Seasonal lighting displays shall be permitted on a temporary basis, not to exceed three months duration.

(B) The following shall apply to all lands within SMA landscape settings regardless of visibility from KVAs (includes areas seen from KVAs as well as areas not seen from KVAs):

(1) Gorge Walls, and Canyonlands and Wildlands: New developments and land uses shall retain the overall visual character of the natural appearing landscape.

(a) Structures, including signs, shall have a rustic appearance, use non-reflective materials, and have low contrast with the surrounding landscape and be of a Cascadian architectural style.

(b) Temporary roads shall be promptly closed and revegetated.

(c) New utilities shall be below ground surface, where feasible.

(d) Use of plant species non-native to the Columbia River Gorge shall not be allowed.

(2) Coniferous Woodlands and Oak-Pine Woodland: Woodland areas shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the overall visual character of the natural appearance of the Coniferous and Oak/Pine Woodland landscape.

(a) Buildings in the Coniferous Woodland landscape setting shall be encouraged to have a vertical overall appearance and a horizontal overall appearance in the Oak-Pine Woodland landscape setting.

(b) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native appearing characteristics.

(3) River Bottomlands: River bottomland shall retain the overall visual character of a floodplain and associated islands.

(a) Buildings should have an overall horizontal appearance in areas with little tree cover.

(b) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native appearing characteristics.

(4) Pastoral: Pastoral areas shall retain the overall appearance of an agricultural landscape.

The use of plant species common to the landscape setting shall be encouraged. The use of plant species in rows as commonly found in the landscape setting is encouraged.

(5) Residential: The Residential setting is characterized by concentrations of dwellings.

(a) At Latourell Falls, new buildings shall have an appearance consistent with the predominant historical architectural style.

(b) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native appearing characteristics.

(C) SMA Requirements for KVA Foregrounds and Scenic Routes

(1) All new developments and land uses immediately adjacent to the Historic Columbia River Highway, Interstate 84, and Larch Mountain Road shall be in conformance with state or county scenic route standards.

(2) The following guidelines shall apply only to development within the immediate foregrounds of key viewing areas. Immediate foregrounds are defined as within the developed prism of a road or trail KVA or within the boundary of the developed area of KVAs such as Crown Pt. and Multnomah Falls. They shall apply in addition to MCC 38.7040(A).

(a)The proposed development shall be designed and sited to meet the applicable scenic standard from the foreground of the subject KVA. If the development cannot meet the standard, findings must be made documenting why the project cannot meet the requirements of 38.7040(A) and why it cannot be redesigned or wholly or partly relocated to meet the scenic standard.

(b)Findings must evaluate the following:

1. The limiting factors to meeting the required scenic standard and/or applicable provisons of 38.7040(A),

2. Reduction in project size;

3. Options for alternative sites for all or part of the project, considering parcel configuration and on-site topographic or vegetative screening;

4. Options for design changes including changing the design shape, configuration, color, height, or texture in order to meet the scenic standard.

(c) Form, line, color, texture, and design of a proposed development shall be evaluated to ensure that the development blends with its setting as seen

from the foreground of key viewing areas:

1. Form and Line-Design of the development shall minimize changes to the form of the natural landscape. Development shall borrow form and line from the landscape setting and blend with the form and line of the landscape setting. Design of the development shall avoid contrasting form and line that unnecessarily call attention to the development.

2. Color-Color shall be found in the project's surrounding landscape setting. Colors shall be chosen and repeated as needed to provide unity to the whole design.

3. Texture-Textures borrowed from the landscape setting shall be emphasized in the design of structures. Landscape textures are generally rough, irregular, and complex rather than smooth, regular, and uniform.

4. Design-Design solutions shall be compatible with the natural scenic quality of the Gorge. Building materials shall be natural or natural appearing. Building materials such as concrete,

steel, aluminum, or plastic shall use form, line color and texture to harmonize with the natural environment. Design shall balance all design elements into a harmonious whole, using repetition of elements and blending of elements as necessary.

(3) Right-of-way vegetation shall be managed to minimize visual impact of clearing and other vegetation removal as seen from Key Viewing Areas. Roadside vegetation management should enhance views out from the highway (vista clearing, planting, etc.).

(4) Encourage existing and require new road maintenance warehouse and stockpile areas to be screened from view from Key Viewing Areas.

(5) Development along Interstate 84 and the Historic Columbia River Highway shall be consistent with the scenic corridor strategies developed for these roadways.

(D) SMA Requirements for areas not seen from KVAs

Unless expressly exempted by other provisions in MCC 38.7040, colors of structures on sites not visible from key viewing areas shall be earth-tones found at the specific site. The specific colors or list of acceptable colors shall be approved as a condition of approval, drawing from the recommended palette of colors included in the Scenic Resouces Implementation Handbook.

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§ 38.7045 GMA CULTURAL RESOURCE REVIEW CRITERIA

(A) Cultural Resource Reconnaissance Surveys

Each proposed use or element of a proposed use within an application shall be evaluated independently to determine whether a reconnaissance survey is required; for example, an application that proposes a land division and a new dwelling would require a reconnaissance survey if a survey would be required for the dwelling.

(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.

1. The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception.

2. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing.

3. 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:

1. Residential development that involves two or more new dwellings for the same project applicant;

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.

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 revi sions 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 resources, including those listed above in MCC 38.7045 (A) (1) (a) through (f). The location of known cultural resources are shown in the cultural resource inventory.

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

(4)~~(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 38.7045 (L) and (M), if:

(1) The project is exempted by MCC 38.7045 (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 38.0530 (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).

1. 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.

2. 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 38.0530 (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 information 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 in
formation 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:

1. A description of the fieldwork methodology used to identity cultural resources, including a description of the type and extent of the reconnaissance survey.

2. A description of any cultural resources that were discovered in the project area, including a written description and photographs.

3. 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:

1. 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.

2. Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.

3. Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.

4. Archaeological site inventory forms shall be submitted to SHPO whenever cultural resources are discovered.

(c) A confidential report that includes:

1. A description of the proposed use, including drawings and maps.

2. A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.

3. 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.

4. 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.

5. 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.

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

7. 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:

1. Original photographs;

2. Original maps; and

3. 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

38.0530 (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 Reconnassiance 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 Reconnassiance 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 38.0530 (B) 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 38.0530 (B).

(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 reconnassiance 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 reconnassiance 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 38.7045 (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:

1. Association with events that have made a significant contribution to the broad patterns of the history of this region;

2. Association with the lives of persons significant in the past;

3. 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

4. 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 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 38.7045 (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 38.0530 (B).

(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 800.5) and shall incorporate the results of the Reconnaissance or Historic Survey and the Evaluation of Significance. All documentation shall follow the requirements listed in 36 CFR Part 800.11.

(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 800.5].

(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 800.5]. Adverse effects on cultural resources include, but are not limited to:

1. Physical destruction, damage, or alteration of all or part of the cultural resource;

2. 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;

3. Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting;

4. Neglect of a significant cultural resource resulting in its deteriora
tion or destruction except as described in 36 CFR 800.5.

(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 Standards 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 38.7045 (E) (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 38.7045 (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 38.0530 (B).

(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 800.11, 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 38.7045 (E) (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 38.7045 (E) 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 38.0530 (B).

(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 358.905 to 358.955). 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 38.7045 (C) (2) and MCC 38.7045 (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 38.0530 (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 38.0530 (B). 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 38.7045 (J). 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 38.7045 (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 38.7045 (J) are met and the mitigation plan is executed.

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§ 38.7050 SMA CULTURAL RESOURCE REVIEW CRITERIA

(A) The cultural resource review criteria shall be deemed satisfied, except MCC 38.7050 (H), if the U.S. Forest Service or Planning Di-rector does not require a cultural resource survey and no comment is received during the comment period provided in MCC 38.0530 (B).

(B) If comment is received during the com-ment period provided in MCC 38.0530 (B), the applicant shall offer to meet with the in-terested persons within 10 calendar days. The 10 day consultation period may be extended upon agreement between the project appli-cant 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 dis-cussed.

(2) All written comments and consulta-tion meeting minutes shall be incorpo-rated into the reconnaissance or historic survey report. In instances where a sur-vey is not required, all such information shall be recorded and addressed in a re-port that typifies a survey report; inappli-cable elements may be omitted.

(C) The procedures of MCC 38.7045 shall be utilized for all proposed developments or land uses other than those on all Federal lands, federally assisted projects and forest practices.

(D) All cultural resource information shall remain confidential, according to the Act, Section 6(a)(1)(A). Federal agency cultural resource information is also exempt by stat-ute from the Freedom of Information Act under 16 USC 470 hh and 36 CFR 296.18.

(E) Principal investigators shall meet the pro-fessional standards published in 36 CFR part 61.

(F) The U.S. Forest Service will provide for doing (1) through (5) of subsection (G) below for forest practices and National Forest sys-tem lands.

(G) If the U.S. Forest Service or Planning Di-rector determines that a cultural resource sur-vey is required for a new development or land use on all Federal lands, federally assist-ed projects and forest practices, it shall con-sist of the following:

(1) Literature Review and Consultation

(a) An assessment of the presence of any cultural resources, listed on the National Register of Historic Places at the national, state or county level, on or within the area of potential direct and indirect impacts.

(b) A search of state and county gov-ernment, National Scenic Area/U.S. Forest Service and any other pertinent inventories, such as archives and photographs, to identify cultural re-sources, including consultation with the State Historic Preservation Office (SHPO) and tribal governments.

(c) Consultation with cultural re-source professionals knowledgeable about the area.

(d) If the U.S. Forest Service deter-mines that there no recorded or known cultural resource, after consul-tation with the tribal governments on or within the immediate vicinity of a new development or land use, the cultural resource review shall be complete.

(e) If the U.S. Forest Service deter-mines that there is the presence of a recorded or known cultural resources, including
those reported in consultation with the tribal governments on or within the immediate vicinity of a new de-velopment or land use, a field inven-tory by a cultural resource profes-sional shall be required.

(2) Field Inventory

(a) Tribal representatives shall be in-vited to participate in the field inven-tory.

(b) The field inventory shall consist of one or the other of the following standards, as determined by the cul-tural resource professional:

1. Complete survey: the systemat-ic examination of the ground sur-face through a controlled proce-dure, such as walking an area in evenly-spaced transects. A com-plete survey may also require techniques such as clearing of vegetation, angering or shovel probing of subsurface soils for the presence of buried cultural re-sources.

2. Sample survey: the sampling of an area to assess the potential of cultural resources within the area of proposed development or use. This technique is generally used for large or difficult to survey parcels, and is generally accom-plished by a stratified random or non-stratified random sampling strategy. A parcel is either strati-fied by variables such as vegeta-tion, topography or elevation, or by non-environmental factors such as a survey grid.

Under this method, statistically valid samples are selected and surveyed to indicate the probabil-ity of

presence, numbers and types of cultural resources throughout the sampling strata. Depending on the results of the sample, a complete survey may or may not subse-quently be recommended.

(c) A field inventory report is re-quired, and shall include the follow-ing:

1. A narrative integrating the liter-ature review of subsection (1) above with the field inventory of subsection (2) (b) above.

2. A description of the field in-ventory methodology utilized un-der subsection (2) (b) above, de-scribing the type and extent of field inventory, supplemented by maps which graphically illustrate the areas surveyed, not surveyed, and the rationale for each.

3. A statement of the presence or absence of cultural resources within the area of the new devel-opment or land in use.

4. When cultural resources are not located, a statement of the likeli-hood of buried or otherwise con-cealed cultural resources shall be included. Recommendations and standards for monitoring, if ap-propriate, shall be included.

(d) Report format shall follow that specified by the Oregon State Historic Preservation Office.

(e) The field inventory report shall be presented to the U.S. Forest Service for review.

(f) If the field inventory determines that there are no cultural resources within the area of the new develop-ment or land use, the cultural re-source review shall be complete.

(3) Evaluations of Significance

(a) When cultural resources are found within the area of the new develop-ment or land use, an evaluation of significance shall be completed for each cultural resource relative to the criteria of the National Register of Historic Places (36 CFR 60.4).

(b) Evaluations of cultural resource significance shall be guided by previ-ous and current research designs rele-vant to specific research questions for the area.

(c) Evaluations of the significance of traditional cultural properties should follow National Register Bulletin 38, Guidelines for the Evaluation and Documentation of Traditional Cultur-al Properties, within local and re-gional contexts.

(d) Recommendations for eligibility of individual cultural resources under National Register Criteria A through D (36 CFR 60.4) shall be completed for each identified resource. The U.S. Forest Service shall review evalua-tions for adequacy.

(e) Evidence of consultation with tribal governments and individuals with knowledge of the cultural re-sources in the project area, and doc-umentation of their concerns, shall be included as part of the evaluation of significance.

(f) If the U.S. Forest Service deter-mines that the inventoried cultural re-sources are not significant, the cultur-al resource review shall be complete.

(g) If the determines that the invento-ried cultural resources are significant, an assessment of effect shall be re-quired .

(4) Assessment of Effect

(a) For each significant (i.e., National Register eligible) cultural resource in-ventoried within the area of the pro-posed development or change in use, assessments of effect shall be com-pleted, using the criteria outlined in 36 CFR 800.5 Assessing Effects. Evi-dence of consultation with tribal gov-ernments and individuals with knowledge of the cultural resources of the project area shall be included for subsections (b) through (d) below. The U.S. 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" (36 CFR 800.4) to a signifi-cant cultural resource, documentation for that finding shall be completed, following the "Documentation Stand-ards" of 36 CFR 800.11. If the pro-posed development or change in use will have an effect, then the Resolu-tion of Adverse Effects must be ap-plied (36 CFR 800.5).

(c) If the proposed development or change in use will have an "Adverse Effect" as defined by 36 CFR 800.5 to a 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 36 CFR 800.6 “Reso-lution of Adverse Effects.” This doc-umentation shall follow the process outlined under 36 CFR 800.11 “Fail-ure to Resolve Adverse Effects.”

(d) If the "effect" appears to be bene-ficial (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 pro-cess outlined under 36 CFR 800.11 Documentation Standards.

(5) Mitigation

(a) If there will be an effect on cul-tural resources, measures shall be provided for mitigation of effects pursuant to 36 CFR 800.6 “Resolu-tion of Adverse Effects.” These measures shall address factors such as avoidance of the property through project design or modification and subsequent protection, burial under fill, data recovery excavations, or other measures which are proposed to mitigate effects.

(b) Evidence of consultation with tribal governments and individuals with knowledge of the resources to be affected, and documentation of their concerns, shall be included for all mitigation proposals.

(c) The U.S. Forest Service shall re-view all mitigation proposals for ade-quacy.

(H) Discovery During Construction

All authorizations for new developments or land uses shall be conditioned to require the immediate notification of the Planning Direc-tor in the event of the inadvertent discovery of cultural resources during construction or development.

(1) In the event of the discovery of cul-tural resources, work in the immediate ar-ea of discovery shall be suspended until a cultural resource professional can evalu-ate the potential significance of the dis-covery pursuant to MCC 38.7050 (G) (3).

(2) If the discovered material is suspected to be human bone or a burial, the follow-ing procedure shall be used:

(a) Stop all work in the vicinity of the discovery.

(b) The applicant shall immediately notify the U.S. Forest Service, the ap-plicant's cultural resource profession-al, the State Medical Examiner, and appropriate law enforcement agen-cies.

(c) The U.S. Forest Service shall noti-fy the tribal governments if the dis-covery is determined to be an Indian burial or a cultural resource.

(d) A cultural resource professional shall evaluate the potential signifi-cance of the discovery pursuant to MCC 38.7050 (G) (3) and report the results to the U.S. Forest Service which shall have 30 days to comment on the report.

(3) If the U.S. Forest Service determines that the cultural resource is not significant or does not respond within the 30 day re-sponse period, the cultural resource re-view process shall be complete and work may continue.

(4) If the U.S. Forest Service determines that the cultural resource is significant, the cultural resource professional shall recommend measures to protect and/or recover the resource pursuant to MCC 38.7050 (G) (4) and (5)

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§ 38.7055 GMA WETLAND REVIEW CRITERIA

(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.

(4) The project site is not within a wetland buffer zone; and

(5) Wetlands are not identified on the project site during site review.

(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 Corps of Engineers Wetland Delineation Manual (Wetland Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997.

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

The Planning Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Planning Director shall, at the applicant's expense, obtain professional services to render a final delineation.

(C) The following uses may be allowed in wetlands and wetland buffer zones when approved pursuant to the provisions of MCC 38.0045, MCC 38.7055 (E), reviewed under the applicable provisions of MCC 38.7035 through 38.7085:

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

(a) Increase the size of an existing structure by more than 100 percent,

(b) Result in a loss of wetlands acreage or functions, and

(c) Intrude further into a wetland or wetlands buffer zone.

New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.

(2) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(3) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(D) Uses not listed in MCC 38.7055 (A) and (C) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to MCC 38.7055 (F) and reviewed under the applicable provisions of MCC 38.7035 through 38.7085.

(E) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:

(1) Practicable alternatives to locating the structure outside of the wetland or wetland buffer zone and/or minimizing the impacts of the structure do not exist;

(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;

(3) The structure will be constructed using best management practices;

(4) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(5) The structure complies with all applicable federal, state, and county laws.

(F) Applications for all other Review and Conditional Uses in wetlands shall be processed pursuant to the provisions of MCC 38.0045 and shall demonstrate that:

(1) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:

(a) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands;

(b) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and

(c) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan revision pursuant to MCC 38.0100 to demonstrate that practicable alternatives do not exist.

An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

(2) The proposed use is in the public interest as determined by:

(a) The extent of public need for the proposed use.

(b) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.

(c) The functions and size of the wetland that may be affected.

(d) The economic value of the proposed use to the general area.

(e) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.

(3) Measures will be applied to ensure the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.

(4) Groundwater and surface-water quality will not be degraded by the proposed use.

(5) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.

(6) The proposed use complies with all applicable federal, state, and county laws.

(7) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.

(8) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands.

The following wetlands restoration, creation, and enhancement standards shall apply:

(a) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.

(b) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.

(c) Wetlands restoration, creation, and enhancement projects shall use native vegetation.

(d) The size of replacement wetlands shall equal or exceed the following ratios.(the first number specifies the acreage of wetlands requiring replacement and the second number specifies the acreage of wetlands altered or destroyed):

1. Restoration: 2:1

2. Creation: 3:1

3. Enhancement: 4:1

(e) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.

(f) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this standard is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, pro
vided that no net loss of wetlands functions occurs.

(g) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.

(h) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.

(i) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan.

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

(G) Wetlands Buffer Zones

(1) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

(2) The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.

(a) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet,
accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.

(b) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.

(c) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and non-woody vines.

(3) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:

(a) Forest communities: 75 feet

(b) Shrub communities: 100 feet

(c) Herbaceous communities: 150 feet

(4) Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

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

(H) Wetlands Compensation Plans

Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands and shall satisfy the following:

(1) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.

(2) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

(3) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.

(4) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(a) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.

(b) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(c) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.

(5) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.

(6) A statement indicating sufficient fiscal, technical, and administrative competence to successfully execute the plan.

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§ 38.7060 GMA STREAM, LAKE AND RIPARIAN AREA REVIEW CRITERIA

(A) The following uses may be allowed in streams, ponds, lakes and riparian areas, and their buffer zones, when approved pursuant to the provisions of MCC 38.0045, MCC 38.7060 (C), and reviewed under the applicable provisions of MCC 38.7035 through 38.7085:

(1) The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not:

(a) Increase the size of an existing structure by more than 100 percent,

(b) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or

(c) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure.

(2) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(3) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(B) Uses not listed in MCC 38.7060 (A) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to MCC 38.7060 (D) and reviewed under the applicable provisions of MCC 38.7035 through 38.7085.

(C) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in aquatic and riparian areas shall demonstrate that:

(1) Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer zone and/or minimizing the impacts of the structure do not exist;

(2) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas;

(3) The structure will be constructed using best management practices;

(4) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(5) The structure complies with all applicable federal, state, and local laws.

(D) Applications for all other Review and Conditional Uses in wetlands shall be processed pursuant to the provisions of MCC 38.0045 and shall demonstrate that:

(1) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by MCC 38.7055 (F) (1), substituting the term stream, pond, lake, or riparian area as appropriate.

(2) The proposed use is in the public interest as determined by MCC 38.7055 (F) (2), substituting the term stream, pond, lake, or riparian area as appropriate.

(3) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

As a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:

(a) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources (Oregon Department of Fish and Wildlife, 2000) unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife.

(b) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.

(c) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(d) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(e) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel’s width and grade should be used.

(f) Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(4) Groundwater and surface-water quality will not be degraded by the proposed use.

(5) Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(6) The use complies with all applicable federal, state, and county laws.

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

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

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

The following rehabilitation and enhancement 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 re-planted 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.

(8) Proposed uses in streams, ponds, lakes, and riparian areas and their buffer zones shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

(E) Stream, Pond, and Lake Buffer Zones

(1) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(a) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet.

(b) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet.

(c) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community and shall comply with MCC 38.7055 (G) (3), substituting the term pond or lake as appropriate.

(2) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(3) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Planning Director may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Planning Director shall, at the project applicant's expense, obtain professional services to render a final delineation.

(4) Proposed uses in streams, ponds, lakes, and riparian areas and their buffer zones shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

(F) Rehabilitation and Enhancement Plans

Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake and/or buffer area and shall satisfy the following:

(1) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.

(2) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.

(3) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(a) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.

(b) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(c) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.

(4) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.

(5) A statement indicating sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

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§ 38.7065 GMA WILDLIFE REVIEW CRITERIA

Wildlife Habitat Site Review shall be required for any project within 1,000 feet of 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

Oregon Endangered, Threatened and Sensitive Species in the Columbia Gorge (1991)

Common Name	Scientific Name

Endangered:

Peregrine falcon	*Falco peregrinus**

Threatened:

Bald Eagle	*Haliaeetus leucocephalus***
Northern spotted owl	*Strix occidentalis***
Wolverine	*Gulo gulo*

Sensitive:

Acorn woodpecker	*Melanerpes formicivorus*
Bank swallow	*Riparia riparia*
Barrow's goldeneye	*Bucephala islandica*
Black-backed woodpecker	*Picoides arcticus*
Bufflehead	*Bucephala albeola*
Bull trout	*Salvelinus confluentus+*
California mountain kingsnake	*Lampropeltis zonata*
Cascade frog	*Rana cascadae*
Chinook salmon	*Oncorhynchus tshawytscha*
Chum salmon	*Oncorhynchus keta*
Clouded salamander	*Aneides ferreus*
Coastal cutthroat trout	*Oncorhynchus clarki*
Coho salmon	*Oncorhynchus kisutch*
Common kingsnake	*Lampropeltis getulus*
Cope's giant salamander	*Dicamptodon copei*
Dusky Canada goose	*Branta canadensis occidentalis*
Flammulated owl	*Otus flammeolus*
Fisher	*Martes pennanti*
Foothill yellow-legged frog	*Rana boylii*
Fringed myotis	*Myotis thysanodes*
Grasshopper sparrow	*Ammodramus savannarum*
Great gray owl	*Strix nebulosa*
Greater sandhill crane	*Grus canadensis tabida*
Harlequin duck	*Histrionicas histrionicas*
Larch mountain salamander	*Plethodon larselli+*
Lewis' woodpecker	*Melanerpes lewis*
Marten	*Martes americana*
Northern goshawk	*Accipiter gentilis*
Northern leopard frog	*Rana pipiens*
Northern pygmy-owl	*Glaucidium gnoma*
Olympic salamander	*Phyacotriton olympicus*
Oregon slender salamander	*Batrachoseps wrighti*
Painted turtle	*Chrysemys picta*
Pileated woodpecker	*Dryocopus pileatus*
Purple martin	*Progne subis*
Pygmy nuthatch	*Sitta pygmaea*
Red-legged frog	*Rana aurora*
Sharptail snake	*Contia tenuis*
Spotted frog	*Rana pretiosa*
Tailed frog	*Ascaphus truei*
Three-toed woodpecker	*Picoides tridactylus*
Townsend's big-eared bat	*Plecotus townsendii+*
Tricolored blackbird	*Agelaius tricolor+*
Western bluebird	*Sialia mexicana*
Western pond turtle	*Clemmys marmorata+*
White-headed woodpecker	*Picoides albolarvatus*
White-tailed jackrabbit	*Lepus townsendii*
Williamson's sapsucker	*Sphyrapicus thyroideus*

* 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) 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 and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad, or utility corridors, or existing developed utility sites, that are maintained annually.

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

(B) Uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to MCC 38.7065 (C) and reviewed under the applicable provisions of MCC 38.7035 through 38.7085. The approximate locations of sensitive wildlife areas and sites are shown on maps provided to the County by the Gorge Commission. State wildlife biologists will help determine if a new use would adversely affect a sensitive wildlife area or site.

(C) 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 through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the 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.

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

(D) 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.

(E) 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 fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

(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.

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§ 38.7070 GMA RARE PLANT REVIEW CRITERIA

Rare Plant Site Review shall be required for any project within 1,000 feet of endemic plants and sensitive plant species.

Columbia Gorge and Vicinity Endemic Plant Species

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

Rare Plant Species in the Columbia Gorge

Scientific Name	**Common Name**

List 1:

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

List 2:

Hood River milk-vetch	*Astragalus hoodianus*
Large-awn sedge	*Carex macrochaeta*
Columbia lewisia	*Lewisia columbiana* var. *columbiana*
Fir clubmoss	*Lycopodium selago*

* 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) 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. and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites that are maintained annually.

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

(B) Uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to MCC 38.0045, 38.7070 (C), and reviewed under the applicable provisions of MCC 38.7035 through 38.7085. The approximate locations of sensitive plants are shown on maps provided to the County by the Gorge Commission. Staff with the Oregon Natural Heritage Program will help determine if a new use would invade the buffer zone of sensitive plants.
(C) 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.

(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 38.7070 (D).

(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.

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

(D) 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.

(E) 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.

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§ 38.7075 SMA NATURAL RESOURCE REVIEW CRITERIA

All new developments and land uses shall be evaluated using the following standards to ensure that natural resources are protected from adverse effects. Proposed uses and development within wetlands, streams, ponds, lakes, riparian areas and their buffer zones shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse shall be prohibited. Comments from state and federal agencies shall be carefully considered.

(A) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in MCC 38.7075 (2)(a) and (2)(b). These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined in MCC 38.7075 (2)(a) and (2)(b).

(1) All buffer zones shall be retained un-disturbed and in their natural condition, except as permitted with a mitigation plan.

(2) Buffer zones shall be measured out-ward from the bank full flow boundary for streams, the high water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the wetlands, stream, pond or lake boundary. On the main stem of the Columbia River above

Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(a) A minimum 200 foot buffer on each wetland, pond, lake, and each bank of a perennial or fish bearing stream, some of which can be intermittent.

(b) A 50-foot buffer zone along each bank of intermittent (including ephemeral), non-fish bearing streams.

(c) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all of the following:

1. The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way.

2. The wetland is not critical habitat.

3. Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.

(3) The buffer width shall be increased for the following:

(a) When the channel migration zone exceeds the recommended buffer width, the buffer width shall extend to the outer edge of the channel migration zone.

(b) When the frequently flooded area exceeds the recommended riparian buffer zone width, the buffer width shall be extended to the outer edge of the frequently flooded area.

(c) When an erosion or landslide hazard area exceeds the recommended width of the buffer, the buffer width shall be extended to include the hazard area.

(4) Buffer zones can be reconfigured if a project applicant demonstrates all of the following:

(a) The integrity and function of the buffer zones is maintained.

(b) The total buffer area on the development proposal is not decreased.

(c) The width reduction shall not occur within another buffer.

(d) The buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(5) Requests to reconfigure buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant (1)

identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(6) The local government shall submit all requests to reconfigure sensitive wildlife/plant or water resource buffers to the U.S. Forest Service and the appropriate state agencies for review. All written comments shall be included in the project file. Based on the comments from the state and federal agencies, the local government will make a final decision on whether the reconfigured buffer zones are justified. If the final decision contradicts the comments submitted by the federal and state agencies, the local government shall justify how it reached an opposing conclusion.

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

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

(D) Wetlands Boundaries shall be delineated using the following:

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

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

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

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

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

(F) The local government may verify the accuracy of, and render adjustments to, a bank full flow, high water mark, normal pool elevation (for the Columbia River), or wetland boundary delineation. If the adjusted boundary is contested by the project applicant, the local government shall obtain professional services, at the project applicant's expense, or the county will ask for technical assistance from the U.S. Forest Service to render a final delineation.

(G) Buffer zones shall be undisturbed unless the following criteria have been satisfied:

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

(2) Filling and draining of wetlands shall be prohibited with exceptions related to public safety or restoration/enhancement activities as permitted when all of the following criteria have been met:

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

(b) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project.

(c) The proposed project minimizes the impacts to the wetland.

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

(H) Protection of sensitive wildlife/plant areas and sites shall begin when proposed new developments or uses are within 1000 feet of a sensitive wildlife/plant site and/or area. Sensitive Wildlife Areas are those areas depicted in the wildlife inventory and listed in Table 2 of the Management Plan titled "Types of Wildlife Areas and Sites Inventoried in the Columbia Gorge", including all Priority Habitats Table. Sensitive Plants are listed in Table 3 of the Management Plan, titled "Columbia Gorge and Vicinity Endemic Plant Species." The approximate locations of sensitive wildlife and/or plant areas and sites are shown in the wildlife and rare plant inventory.

(I) The local government shall submit site plans (of proposed uses or development ~~that are~~ proposed within 1,000 feet of a sensitive wildlife and/or plant area or site) for review to the U.S. Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife for wildlife issues and by the Oregon Natural Heritage Program for plant issues).

(J) The U.S. Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:

(1) Identify/verify the precise location of the wildlife and/or plant area or site.

(2) Determine if a field survey will be required.

(3) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include

considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season. Cumulative effects that are adverse shall be prohibited.

(4) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.

(a) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(b) Requests to reduce buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant, (1) identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(c) The local government shall submit all requests to reconfigure sensitive wildlife/plant or water resource buffers to the U.S. Forest Service and the appropriate state agencies for review. All written comments shall be included in the record of application and based on the comments from the state and federal agencies, the local government will make a final decision on whether the reduced buffer zones is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the local government shall justify how it reached an opposing conclusion.

(K) The local government, in consultation with the State and federal wildlife biologists and/or botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the proposed developments or uses do not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or site:

(1) Published guidelines regarding the protection and management of the affected wildlife/plant species. Examples include: the Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron; the Washington Department of Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner 1991).

(2) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(3) Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.

(4) Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful life of the area or site.

(5) In areas of winter range, habitat components, such as forage, and thermal cover, important to the viability of the wildlife must be maintained or, if impacts are to occur, enhancement must mitigate the impacts so as to maintain overall values and function of winter range.

(6) The site plan is consistent with the "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife 2000).

(7) The site plan activities coincide with periods when fish and wildlife are least sensitive to disturbance. These would include, among others, nesting and brooding periods (from nest building to fledgling of young) and those periods specified.

(8) The site plan illustrates that new developments and uses, including bridges, culverts, and utility corridors, shall not interfere with fish and wildlife passage.

(9) Maintain, protect, and enhance the integrity and function of Priority Habitats (such as old growth forests, talus slopes, and oak woodlands) as listed in the Priority Habitats Table. This includes maintaining structural, species, and age diversity, maintaining connectivity within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function.

	PRIORITY HABITATS TABLE
Priority Habitats	Criteria
Aspen stands	High fish and wildlife species diversity, limited availability, high vulnerability to habitat alteration.
Caves	Significant wildlife breeding habitat, limited availability, dependent species.
Old-growth forest	High fish and wildlife density, species diversity, breeding habitat, seasonal ranges, and limited and declining availability, high vulnerability.

Oregon white oak woodlands	Comparatively high fish and wildlife density, species diversity, declining availability, high vulnerability
Prairies and steppe	Comparatively high fish and wildlife density, species diversity, important breeding habitat, declining and limited availability, high vulnerability.
Riparian	High fish and wildlife density, species diversity, breeding habitat, movement corridor, high vulnerability, dependent species.
Wetlands	High species density, high species diversity, important breeding habitat and seasonal ranges, limited availability, high vulnerability.
Snags and logs	High fish and wildlife density, species diversity, limited availability, high vulnerability, dependent species.
Talus	Limited availability, unique and dependent species, high vulnerability.

Cliffs	Significant breeding habitat, limited availability, dependent species.
Dunes	Unique species habitat, limited availability, high vulnerability, dependent species.

(L) The wildlife/plant protection process may terminate if the local government, in consultation with the U.S. Forest Service and state wildlife agency or Heritage program, determines (1) the sensitive wildlife area or site is not active, or (2) the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site, and (3) the proposed use is within the buffer and could be easily moved out of the buffer by simply modifying the

project proposal (site plan modifications). If the project applicant accepts these recommendations, the local government shall incorporate them into its development review order and the wildlife/plant protection process may conclude.

(M) If the above measures fail to eliminate the adverse affects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.

(N) The local government shall submit a copy of all field surveys (if completed) and mitigation plans to the U.S. Forest Service and appropriate state agencies. The local government shall include all comments in the record of application and address any written comments submitted by the state and federal wildlife agency/heritage programs in its development review order. Based on the comments from the state and federal wildlife agency/heritage program, the local government shall make a final decision on whether the proposed use would be consistent with the wildlife/plant policies and guidelines. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the local government shall justify how it reached an opposing conclusion.

(O) The local government shall require the project applicant to revise the mitigation plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife/plant area or site.

(P) Soil productivity shall be protected using the following guidelines:

(1) A description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.

(2) New developments and land uses shall control all soil movement within the area shown on the site plan.

(3) The soil area disturbed by new development or land uses, except for new cultivation, shall not exceed 15 percent of the project area.

(4) Within 1 year of project completion, 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil-stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.

(Q) An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes. A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:

(1) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife or plant areas and/or sites.

(2) The basic purpose of the use cannot be reasonably accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife or plant areas and/or sites..

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

(R) The Mitigation Plan shall be prepared when:

(1) The proposed development or use is within a buffer zone (wetland, pond, lakes, riparian areas, wildlife or plant areas and/or sites).

(2) There is no practicable alternative as determined by MCC 38.7075 (Q).

(S) In all cases, Mitigation Plans are the responsibility of the applicant and shall be prepared by an appropriate professional (botanist/ecologist for plant sites, a wildlife/fish biologist for wildlife/fish sites, and a qualified professional for water resource sites).

(T) The primary purpose of this information is to provide a basis for the project applicant to redesign the proposed use in a manner that protects sensitive water resources, and wildlife/plant areas and sites, that maximizes his/her development options, and that mitigates, through restoration, enhancement, and replacement measures, impacts to the water resources and/or wildlife/plant area or site and/or buffer zones.

(U) The applicant shall submit the mitigation plan to the local government. The local government shall submit a copy of the mitigation plan to the U.S. Forest Service, and appropriate state agencies. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the local government shall justify how it reached an opposing conclusion.

(V) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a mitigation plan involving wetland creation.

(W) Mitigation plans shall include maps, photographs, and text. The text shall:

(1) Describe the biology and/or function of the sensitive resources (e.g. Wildlife/plant species, or wetland) that will be affected by a proposed use. An ecological assessment of the sensitive resource to be altered or destroyed and the condition of the resource that will result after restoration will be required. Reference published protection and management guidelines.

(2) Describe the physical characteristics of the subject parcel, past, present, and future uses, and the past, present, and future potential impacts to the sensitive resources. Include the size, scope, configuration, or density of new uses being proposed within the buffer zone.

(3) Explain the techniques that will be used to protect the sensitive resources and their surrounding habitat that will not be altered or destroyed (for examples, delineation of core habitat of the sensitive wildlife/plant species and key components that are essential to maintain the long-term use and integrity of the wildlife/plant area or site).

(4) Show how restoration, enhancement, and replacement (creation) measures will be applied to ensure that the proposed use results in minimum feasible impacts to sensitive resources, their buffer zones, and associated habitats.

(5) Show how the proposed restoration, enhancement, or replacement (creation) mitigation measures are NOT alternatives to avoidance. A proposed development/use must first avoid a sensitive resource, and only if this is not possible should restoration, enhancement, or creation be considered as mitigation. In reviewing mitigation plans, the local government, appropriate state agencies, and U.S. Forest Service shall critically examine all proposals to ensure that they are indeed last resort options.

(X) At a minimum, a project applicant shall provide to the local government a progress report every 3-years that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress.

(Y) A final monitoring report shall be submitted to the local government for review upon completion of the restoration, enhancement, or replacement activity. This monitoring report shall document successes, problems encountered, resource recovery, status of any sensitive wildlife/plant species and shall demonstrate the success of restoration and/or enhancement actions. The local government shall submit copies of the monitoring report to the U.S. Forest Service; who shall offer technical assistance to the local government in helping to evaluate the completion of the mitigation plan. In instances where restoration and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the restoration and enhancement guidelines.

(Z) Mitigation measures to offset impacts to resources and/or buffers shall result in no net loss of water quality, natural drainage, fish/wildlife/plant habitat, and water resources by addressing the following:

(1) Restoration and enhancement efforts shall be completed no later than one year after the sensitive resource or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(2) All natural vegetation within the buffer zone shall be retained to the greatest extent practicable. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation buffers, livestock management, and noxious weed control. Within five

years, at least 75 percent of the replacement vegetation must survive. All plantings must be with native plant species that replicate the original vegetation community.

(3) Habitat that will be affected by either temporary or permanent uses shall be rehabilitated to a natural condition. Habitat shall be replicated in composition, structure, and function, including tree, shrub and herbaceous species, snags, pool-riffle ratios, substrata, and structures, such as large woody debris and boulders.

(4) If this standard is not feasible or practical because of technical constraints, a sensitive resource of equal or greater benefit may be substituted, provided that no net loss of sensitive resource functions occurs and provided the County, in consultation with the appropriate State and Federal agency, determine that such substitution is justified.

(5) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods. Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted

(6) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(a) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(b) Stream channels shall not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to hydrologic and biologic functions. Culverts shall only be permitted if there are no practicable alternatives as determined by MCC .38.7075 (Q).

(c) Fish passage shall be protected from obstruction.

(d) Restoration of fish passage should occur wherever possible.

(e) Show location and nature of temporary and permanent control measures that shall be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(f) Groundwater and surface water quality will not be degraded by the proposed use. Natural hydrologic conditions shall be maintained, restored, or enhanced in such a manner that replicates natural conditions, including current patterns (circulation, velocity, volume, and normal water fluctuation), natural stream channel and shoreline dimensions and materials, including slope, depth, width, length, cross-sectional profile, and gradient.

(g) Those portions of a proposed use that are not water-dependent or that have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(h) Streambank and shoreline stability shall be maintained or restored with natural revegetation.

(i) The size of restored, enhanced, and replacement (creation) wetlands shall equal or exceed the following ratios. The first number specifies the required
acreage of replacement wetlands, and the second number specifies the acreage of wetlands altered or destroyed.

Restoration: 2: l
Creation: 3: l
Enhancement: 4: l

(7) Wetland creation mitigation shall be deemed complete when the wetland is self-functioning for 5 consecutive years. Self-functioning is defined by the expected function of the wetland as written in the mitigation plan. The monitoring report shall be submitted to the local government to ensure compliance. The U.S. Forest Service, in consultation with appropriate state agencies, shall extend technical assistance to the local government to help evaluate such reports and any subsequent activities associated with compliance.

(8) Wetland restoration/enhancement can be mitigated successfully by donating appropriate funds to a non-profit wetland conservancy or land trust with explicit instructions that those funds are to be used specifically to purchase protection easements or fee title protection of appropriate wetlands acreage in or adjacent to the Columbia River Gorge meeting the ratios given above in MCC 38.7075 (Z) (6) (i). These transactions shall be explained in detail in the Mitigation Plan and shall be fully monitored and documented in the monitoring report.

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SECTION 3.0	**ATTACHMENTS**
ATTACHMENT A	JULY 20, 2017 NOTIFICATION OF MANAGEMENT PLAN CHNAGES FROM KRYSTYNA WOLNIAKOWSKI, COLUMBIA RIVER GORGE COMMISSION EXECUTIVE DIRECTOR
*HEARING EXHIBIT H.1	WRITTEN COMMENT SUBMITTED 2.5.18 (UNNAMED)
* HEARING EXHIBIT H.2	WRITTEN COMMENT SUBMITTED 2.5.18 (UNNAMED)
* HEARING EXHIBIT H.3	WRITTEN COMMENT SUBMITTED 2.5.18 BY STEVEN D. McCOY, STAFF ATTORNEY, FRIENDS OF THE COLUMBIA GORGE