

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 765

An Ordinance amending those sections of Multnomah County Code Chapter 11.15 regulating land uses within the Columbia River Gorge National Scenic Area.

Multnomah County Ordains as follows:

Section I. Findings.

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

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

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

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

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

Section II. Amendments

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

ADOPTED THIS 25th day of May, 1993, being the date of its
2nd reading before the Board of County Commissioners of Multnomah County.



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

John DuBay, Deputy County Counsel
of Multnomah County, Oregon

ATTACHMENT A

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

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

Streams: Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed does not have to contain water year-round. They do not include irrigation ditches, canals, storm or surface-water runoff structures, or other artificial watercourses unless they are used to convey streams naturally occurring prior to construction in such watercourses.

B. MCC 11.15.3556 is amended to add:

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

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

- **Primitive:** Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified.
- **Semiprimitive:** Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.
- **Roaded Natural:** Roaded areas with moderately frequent human encounters and with resource modifications evident.
- **Rural:** Roaded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.
- **Suburban:** Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent human encounters, and dominant resource modifications encroaching into the rural landscape.
- **Urban:** Highly accessible, roaded areas dominated by human encounters and human-related structures.

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

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

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

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

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

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

E. MCC 11.15.3568 is amended to read:

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

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

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

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

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

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

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

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

I. MCC 11.15.3578 is amended to read:

A landowner who sells or otherwise transfers real property on lands designated GGA or GGF may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in MCC .3566. A second dwelling may be allowed subject to compliance with MCC .3800 to .3834, and upon findings that:

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

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

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

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

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

(1) Consultation meetings should provide an opportunity for the project applicant and tribal representatives to identify potential conflicts and explore options to eliminate them. The project applicant must demonstrate that the proposed use would not affect or modify treaty or other rights of any Indian tribe.

(2) Any substantive comments, recommendations, or concerns expressed by Indian tribal govern-

ments during the consultation meeting shall be recorded and addressed by the project applicant in a Treaty Rights Protection Plan. The protection plan shall include measures to avoid effects to treaty and other rights of any Indian tribe. These measures may include reducing the size and modifying the location or design of the proposed uses, seasonal closures, stringent onsite monitoring, information signs, and highly visible buoys or other markers delineating fishing net locations.

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

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

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

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

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

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

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

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

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

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

(c) A finding by the Planning Director that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as provided in this subsection, in no way shall be interpreted as a waiver by the Indian tribe of a claim that such uses adversely affect or modify treaty or other tribal rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

([7]5) Fruit stands and produce stands upon a showing that sales will be limited to agricultural products raised on the property and other agriculture properties in the local region.

(86) Aquiculture.

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

(408) Road and railroad construction and reconstruction.

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

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

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

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

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

(a) There is no alternative location with less adverse effect on Agriculture lands.

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

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

(4) Expansion of existing non-profit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.

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

(6) Agricultural product processing and packaging, upon demonstration that the processing will be limited to products produced primarily on or adjacent to the property. "Primarily" means a clear majority of the product as measured by volume, weight, or value.

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

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

cultural practices from conflicting uses.

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

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

P. MCC 11.15.~~3670~~3810(B) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

T. MCC 11.15.3702 is amended to read:

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

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

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

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

[(G]F) Land divisions.

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

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

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

U. MCC 11.15.3704 is amended to read:

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

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

(H) Recreation development, subject MCC .3832.

(I) Places of worship

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

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

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

V. MCC 11.15. 3728 is amended to read:

Uses Under Prescribed Conditions

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

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

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

W. MCC 11.15. 3730 is amended to read:

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

(A) Travelers accommodations, bed and breakfast inns

(B) Restaurants

(C) Gift shops

(D) Utility facilities and railroads.

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

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

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

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

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

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

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

(54) Road and railroad construction and reconstruction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A public recreation site.

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

AA. MCC 11.15.3816 is amended to read:

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

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

BB. MCC 11.15.3818 is deleted and the following substituted:

11.15.3818 GMA Cultural Resource
Review Process

(A) Cultural Resource Reconnaissance Surveys

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

(a) The modification, expansion, replacement, or reconstruction of existing buildings and structures.

(b) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.

(c) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

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

(d) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land disturbing activities occurred in the project area. Land disturbing activities include grading and cultivation.

(e) Proposed uses that would occur on sites that have been adequately surveyed in the past.

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

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

(iii) The nature and extent of any cultural resources in the project area must be adequately documented.

(f) Proposed uses occurring in areas that have a low probability of containing cultural

resources, except:

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

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

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

- (2) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those listed above in MCC .3818(A)(1)(a) through (f). The location of known cultural resources are shown in the cultural resource inventory.
- (3) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or compromise features of the surrounding area that are important in defining the historic or architectural character of the buildings or structures that are 50 years old or older.

(B) The cultural resource review criteria shall be deemed satisfied, except MCC .3818(L) and (M), if:

- (1) The project is exempted by MCC .3818(A)(1), no cultural resources are known to exist in the project area, and no substantiated comment is received during the comment period provided in MCC .3810(B).
- (2) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this standard, a reasonable buffer zone must be established around the affected resources or properties; all ground disturbing activities shall be prohibited

within the buffer zone.

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

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

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

(1) Reconnaissance Survey for Small-Scale Uses

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

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

(2) Reconnaissance Survey for Large-Scale Uses

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

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

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

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

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

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

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

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

(3) Historic Surveys

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

(i) Original photographs;

(ii) Original maps; and

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

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

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

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

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

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

affect any of the following:

- (a) Cultural resources
- (b) Archaeological resources
- (c) Traditional cultural properties
- (d) Historic buildings or structures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The proposed use is limited to the transfer, lease, or sale of cultural resources, and adequate restrictions or conditions are included to ensure preservation of the significant features of the resources.

(4) The applicant shall be responsible for the Assessment of Effect.

(I) If the Assessment of Effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Planning Director shall submit a copy of the assessment to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC .3818(G)(1).

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

(2) The Planning Director shall require the applicant to prepare a Mitigation Plan if the Assessment of Effect or substantiated comment received during the 30 day comment period indicates the proposed use would have an effect or an adverse effect on significant cultural resources.

(3) The Planning Director shall deem the cultural resource review process complete if no comment is received during the 30 day comment period and the Assessment of Effect indicates the proposed use would have no effect or no adverse effect on significant cultural resources.

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

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

(J) Mitigation plans shall meet the following standards:

(1) Mitigation Plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and SHPO.

(2) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.

(a) Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation.

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

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

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

(L) Cultural Resources Discovered After Construction Begins

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

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

(M) Discovery of Human Remains

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

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

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

(4) Assessment of Effect

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

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

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

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

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

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

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

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

ing, boating, swimming, and canoeing.

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

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

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

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

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

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

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

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

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

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

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

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

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

The following rehabilitation and enhancement standards shall apply:

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

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

KK.MCC 11.15.3826 is amended to read:

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

Sensitive Wildlife Areas in the Columbia Gorge

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

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

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

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

* Endangered species under U.S. Endangered Species Act

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

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

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

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

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

(B) Field Survey

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

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

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

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

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

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

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

(2) The following factors may be considered when site plans are reviewed:

(a) Biology of the affected wildlife species.

(b) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron.

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

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

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

(3) The wildlife protection process may terminate if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines:

(a) The sensitive wildlife area or site is not active, or

(b) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

(4) If the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Planning Director will incorporate them into the site review order and the wildlife protection process may conclude.

(5) The project applicant shall prepare a wildlife management plan if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.

(6) The Planning Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife. The Oregon Department of Fish and Wildlife will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Planning Director.

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

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

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

(E) Wildlife Management Plans

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

Wildlife management plans shall meet the following standards:

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

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

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

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

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

(F) New fences in deer and elk winter range

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

(d) Stays, or braces placed between strands of wire, shall be positioned between 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.

LL.MCC 11.15.3828 is amended to read:

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

Columbia Gorge and Vicinity Endemic Plant Species

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

Rare Plant Species in the Columbia Gorge

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

List 2:

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

List 3 (Review):

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

List 4 (Watch):

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

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

+ Candidate species for Oregon Endangered Species Act.

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

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

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

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

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

(B) Field Survey

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

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

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

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

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

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

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

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

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

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

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

(E) Protection and Rehabilitation Plans

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

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

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

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

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

(F) Sensitive Plant Buffer Areas

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Air and water quality:

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

QQ. MCC 11.15.3832 is amended to read:

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