

CERTIFICATE AND ORDER

FOR FILING

PERMANENT

ADMINISTRATIVE RULES WITH THE OFFICE OF THE CODE REVISER

I **HEREBY CERTIFY** that the attached copy is a true, full and correct copy of **PERMANENT** rule(s) adopted on July 27, 1993, by the Columbia River Gorge Commission to become effective upon filing.

The within matter having come before the Columbia River Gorge Commission after all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises.

Notice of Intended Action in Code Revisers Register

No _____ Yes _____ X

NOW THEREFORE, IT IS HEREBY ORDERED that the following action to be taken:

Adopted: 350-70, 350-80, 350-90, 350-100, 350-110

as Administrative Rules of the Columbia River Gorge Commission

DATED this 2nd day of August, 1993.

By: Allen Bell

Title: Allen Bell, Acting Executive Director

Statutory Authority: RCW 43.97.015 to 43.97.035, Chapter 499, Washington Laws 1987

For Further Information Contact: Jan Brending, Rules Coordinator, (509) 493-3323.

CODE REVISER'S OFFICE
STATE OF WASHINGTON

AUG 06 1993
4:10
93-17.014

COLUMBIA RIVER GORGE COMMISSION

Chapter 350 Division 70

Appeals From Decisions Under Gorge Commission Ordinances

350-70-000. Purpose.

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

350-70-010. Authority.

The National Scenic Act authorizes appeals to the Gorge Commission by a person or entity adversely affected by a final action or order, and this includes decisions by the Executive Director under a land use ordinance for a county adopted by the Gorge Commission.

350-70-020. Scope.

Scope of Rules: All proceedings commenced by Notice of Intent to Appeal and Petition shall be governed by these rules.

Appeals commenced by a Notice of Appeal filed under the Final Interim Guidelines shall continue to be governed by Commission Rule 350-20 as adopted December 1, 1987, and the Final Interim Guidelines.

350-70-030. Application.

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

350-70-040. Definitions.

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

- (1) "Applicant" means the person who requested that the Executive Director of the Gorge Commission take an action which resulted in a land use decision.
- (2) "Commission" means the Columbia River Gorge Commission or any member thereof.
- (3) "Counties" means Multnomah, Hood River and Wasco Counties, Oregon, and Clark, Skamania, and Klickitat Counties, Washington.
- (4) "Days" means calendar days.
- (5) "Executive Director" means the director of the Gorge Commission.
- (6) "File" means to deliver to Commission offices by personal delivery or by mail, not by fax. To be considered filed, a document must be received at Commission offices by 5:00 p.m.
- (7) "Final decision": A decision is final when it is reduced to writing and bears the signature of the Executive Director of the Gorge Commission.
- (8) "Land use decision" means a final decision by the Executive Director based on the National Scenic Act.
- (9) "Notice" means the Notice of Intent to Appeal and Petition and refers to the document which must be filed with the Commission in order to begin a review proceeding.
- (10) "Party" means the petitioner, the applicant if different from the petitioner, the Executive Director, and any person who intervenes.
- (11) "Transmit" means to send with the United States Postal Service by first class mail or to deliver in person.

350-70-050. Notice of Intent to Appeal and Petition.

- (1) Filing: The Notice of Intent to Appeal and Petition from a decision by the Director shall be filed with the Commission on or before the 30th day after the date the decision

sought to be reviewed becomes final. A Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Intent to Appeal and Petition: The Notice of Intent to Appeal and Petition shall be filed with the Commission and served on all persons identified in the Notice as required by subsection (3)(f) of this rule on or before the date the Notice of Intent to Appeal and Petition is required to be filed.

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

- (a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as petitioner(s), and Executive Director, identifying the Executive Director as respondent;
- (b) Below the caption the heading "Notice of Intent to Appeal and Petition";
- (c) The full title of the decision to be reviewed as it appears on the final decision;
- (d) The date the decision to be reviewed became final;
- (e) A concise description of the decision to be reviewed;
- (f) The name, address and telephone number of each of the following:
 - (A) The Petitioner. If the petitioner is not represented by an attorney, the petitioner's name, address and telephone number shall be included. If an attorney represents the petitioner, the attorney's name, address and telephone number shall be substituted for that of the petitioner. If two or more petitioners are unrepresented by an attorney, one petitioner shall be designated as the lead petitioner.
 - (B) The Executive Director and the Director's legal counsel;
 - (C) The applicant, if any (and if other than the petitioner). If an applicant was represented by an attorney before the Executive Director, the applicant's address and telephone number may be omitted and the name, address and telephone number of the applicant's attorney shall be included;

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

(g) A statement advising all persons, other than the Executive Director, that in order to participate in the review proceeding a person must file a motion to intervene pursuant to 350-70-170.

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

(4) Filing Fee and Deposit for Costs: A filing fee and deposit for costs may be charged by the Columbia River Gorge Commission.

350-70-060. Special Review Process.

(1) In any development review decision by the Executive Director under any rule adopting ordinances, where the applicant contends the result eliminates all beneficial use of the property, the applicant must request reconsideration of the decision of the Executive Director and special review as follows:

(a) The request for reconsideration shall be in writing.

(b) The request for reconsideration shall set forth all pertinent facts in support of the applicant's position.

(c) The request for reconsideration shall be accompanied by copies of all relevant documents (maps, deeds, easements, reports, etc.) that support the position taken by the applicant.

(d) The request for reconsideration shall be served on the Executive Director and all parties as a separate section of the Notice of Intent to Appeal and Petition from the Executive Director's decision along with proof of service.

(2) The Director, on receipt of a request for reconsideration, shall take the following steps:

(a) Review the request for reconsideration.

- (b) Issue a written decision that addresses the specific portions of the request related to use of the property within 30 days of receipt of the request for reconsideration.
- (c) Specify the factual or legal principles relied on in support of the written decision.
- (d) Where appropriate, propose options for use for the property owner, or other options available to the property owner.
- (e) Approve, where appropriate, based on the specific facts and circumstances of the case, a use to ensure the property is not subject to what would otherwise constitute a taking if the Forest Service or the federal government does not provide just compensation for a designation it made.
- (f) The time period for submission of the Request for Review to the Gorge Commission shall not begin to run until the day after the decision on the request for reconsideration is issued.
- (g) The applicant and anyone who intervened may pursue the appeal process below once the special review process is completed.

350-70-070. Record.

- (1) Contents of Record: The record shall include the following:
 - (a) The final decision including findings of fact and conclusions of law of the Director's decision;
 - (b) All evidence, exhibits, maps, documents or other written materials included as part of the record during the course of the Executive Director's proceeding;
 - (c) Minutes of any meetings conducted by the Executive Director as required by law.

(2) Transmittal of Record: The Executive Director shall within 30 days after service of the Notice, transmit to the Commission the original or a certified copy, and two copies of the record of the proceeding under review. The Executive Director may, however, retain any large maps or documents which are difficult to duplicate, until the date of the hearing.

(3) Service of Record: Contemporaneously with transmittal, the Executive Director shall serve a copy of the record, exclusive of large maps and other documents which are difficult to duplicate, on the petitioner or the lead petitioner, if one is designated, and all other parties.

(4) Specifications of Record:

(a) The record shall:

(A) Be filed in a suitable folder; the cover shall bear the title of the case as it appears in the Notice, and the Commission's numerical designation for the case, and shall indicate the numerical designation given the land use decision by the Executive Director;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see Exhibit 2), and listing each large map or document retained by the Executive Director under subsection (2) of this rule;

(C) Be securely fastened;

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

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

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

350-70-080. Objections to the Record.

(1) Before filing an objection to the record, a party shall attempt to resolve the matter with the Executive Director's legal counsel and the other parties. If the Executive Director amends the record in response to an objection, the date the amendment is received by the Commission shall be considered the date the record is received for the purpose of computing time limits as required by these rules.

(2) An objection to the record shall be filed with the Commission within 10 days following service of the record on the person filing the objection. Objections may be made on the following grounds:

- (a) The record does not include all materials included as part of the record during the proceedings before the Executive Director. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.
- (b) The record contains material not included as part of the record during the proceedings before the Executive Director. The item(s) not included as part of the record during the proceedings before the Executive Director shall be specified, as well as the basis for the claim that the item(s) are not part of the record.
- (c) The minutes or transcripts of meetings or hearings are incomplete or do not accurately reflect the proceedings.

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

(4) The Commission or its staff may conduct a telephone conference with the parties to consider and resolve any objections to the record.

(5) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Commission shall issue a letter or order declaring the record complete and setting forth the schedule for subsequent events. Unless otherwise provided by the Commission, the date of the Commission's letter or order shall be deemed the date of receipt of the record for purposes of computing subsequent time limits.

350-70-090. Request for Review.

(1) **Filing and Service of Request:** The Request for Review shall be filed with the Commission within 30 days after the date the record is received by the Commission. The Request shall also be served on the Executive Director and any party who has filed a motion to intervene. Failure to file a Request for Review within the time required by this section shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the Gorge Commission.

(2) **Specifications of Request:** The Request for Review shall

- (a) Begin with a table of contents;
 - (b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer petition is given by the Commission. If a Request for Review exceeding the 50 page limit is filed without permission, the Commission shall notify the author, and a revised brief satisfying the 50 pages limit shall be filed within three (3) days of notification by the Commission.
 - (c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by attorney. If a party is represented by an attorney, the name, address and telephone number of the attorney shall be substituted for the party. If there is more than one petitioner, the cover page shall specify the petitioner(s) are filing the Request. An intervenor shall be designated as either petitioner or respondent.
 - (d) Be typewritten, in pica type, and double spaced;
 - (e) Be signed on the last page by the author.
- (3) Contents of Request: The Request for Review shall:
- (a) State the facts that establish petitioner's standing;
 - (b) Present a clear and concise statement of the case, in the following order, with separate section headings:
 - (A) The nature of the land use decision and the relief sought by petitioner;
 - (B) A summary of the arguments appearing under the assignments of error in the body of the Request;
 - (C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found.
 - (c) State why the challenged decision is a land use decision subject to the Commission's jurisdiction;
 - (d) Set forth each assignment of error under a separate heading. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;

- (e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law;
- (f) Contain a copy of any management plan provision, comprehensive plan provision, ordinance or other provision of local law cited in the request, unless the provision is quoted verbatim in the Request.

350-70-100. Respondent's Submission.

(1) Filing and Service of Submission: Respondent's submission and/or brief shall be filed within 30 days after the Request for Review is received by the Commission. A copy of the respondent's submission shall be served on the petitioner or lead petitioner and all intervenors.

(2) Specifications of Submission: Respondent's submission shall conform to the specifications of the petition for review, except that it shall have a red cover. If there is more than one respondent, the cover page shall specify which respondent is filing the brief.

(3) Contents of Submission:

(a) The respondent's submission shall follow the form prescribed for the Request for Review. The respondent shall specifically accept the petitioner's statement of the case or shall cite any alleged omissions or inaccuracies therein and may state additional relevant facts or other matters. The statement shall be in narrative form with citations to the pages of the record where support for the facts alleged are found.

(b) Respondent shall accept or challenge petitioner's statement of the Commission's jurisdiction and petitioner's statement of standing. The basis for any challenge shall be stated. If respondent contends that the facts alleged by petitioner in support of standing are not true, respondent shall specify which allegations are contested.

350-70-110. Reply Brief.

A reply brief shall not be filed.

350-70-120. Prehearing Conference.

The Commission, on its own motion or at the request of any party, may call a prehearing conference to consider:

- (1) Simplification of the issues;
- (2) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;
- (3) Limitation of the number of witnesses;
- (4) The form and substance of any prehearing order;
- (5) Such other matters as may aid in the disposition of the appeal.

350-70-130. Proposed Prehearing Order.

The Commission with or without a prehearing conference, may require that the parties prepare and sign a proposed prehearing order to be filed with the Commission on or before a date specified by the Commission. The order shall contain:

- (1) A statement of contentions of law of each party;
- (2) A concise statement of all contentions of fact to be proved by each party;
- (3) A statement of all agreed facts;
- (4) A list of witnesses and a summary of their testimony;
- (5) A list of exhibits and a statement of the contents of each;
- (6) Such other matters as the Commission may require in order to expedite the hearing and appeal.

350-70-140. Hearing.

- (1) The hearing before the Commission shall be "de novo" but shall include the record submitted by the Executive Director.
- (2) Conduct of hearing:
 - (a) The hearing shall be conducted in the following order:
 - (A) The petitioner shall present its evidence including that of any witnesses;

- (B) The other party(ies) shall have the opportunity to present evidence disputing that of the petitioner;
 - (C) The petitioner shall present rebuttal evidence as permitted by the Commission, limited to specific issues;
- (b) Any witness is subject to cross examination by opposing parties;
 - (c) Any member of the Commission may question any witness;
 - (d) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;
 - (e) The Commission may continue a hearing and may set time limits for any hearing;
 - (f) Exhibits shall be marked to identify the party offering the exhibits. The exhibits shall be preserved by the Commission as part of the record.
- (3) Evidentiary Rules:
- (a) Evidence of a type commonly relied upon reasonably prudent person in conduct of their serious affairs shall be admissible.
 - (b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.
 - (c) All evidence not objected to, shall be received by the Commission, subject to the Commission's power to exclude irrelevant, immaterial or unduly repetitious matter.
 - (d) Evidence objected to may be received by the Commission. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.

350-70-150. Depositions.

On petition of any party, the Commission may order testimony of any witness to be taken by deposition in the same manner prescribed for depositions in civil actions. Depositions may also be taken by the use of audio or audio visual recordings. The petition for deposition shall set forth:

- (1) The name and address of the witness whose testimony is desired;
- (2) A showing of relevance and materiality of the testimony;
- (3) A request for an order that the testimony of the witness be taken.

350-70-160. Subpoenas.

The Commission shall issue subpoenas to any party to the appeal upon written request and upon a showing that the witness or the documents to be subpoenaed will provide relevant evidence generally not available without subpoena. Subpoenas may also be issued under the signature of the attorney of record of a party. Witnesses appearing pursuant to subpoena, other than parties or employees of the Commission, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

350-70-170. Intervention.

(1) Standing to Intervene: The applicant and any person who appeared before the Executive Director may intervene in a review proceeding before the Commission. Status as an intervenor shall be recognized by letter or order of the Commission when a motion to intervene is filed.

(2) Motion to Intervene: In the interests of promoting timely resolution of appeals, a motion to intervene shall be filed within 10 days after the Notice of Intent to Appeal and Petition is filed pursuant to 350-70-050. The motion to intervene (exhibit 3) shall:

- (a) State whether the party is intervening on the side of the petitioner or the respondent;
- (b) State the facts which show the party is entitled to intervene, supporting the statement with affidavits, citations to the record or other proof;
- (c) Be served upon the Commission and all parties.

(3) Intervenor's Submission:

- (a) If intervention is sought as a petitioner, the submission (or brief) shall be filed within the time limit for filing the Request for Review, and shall satisfy the requirements for a Request for Review in 350-70-090.

(b) If intervention is sought as a respondent, the submission (or brief) shall be filed within the time for filing a respondent's brief and shall satisfy the requirements for a respondent's brief in 350-70-100.

(4) Objections to a motion to intervene shall be filed within 7 days of the filing of the motion.

350-70-180. Amicus Participation.

(1) A person or organization may appear as amicus only by permission of the Commission on written motion. The motion shall set forth the specific interest of the movant and state reasons why a review of relevant issues would be significantly aided by participation of the amicus. A copy of the motion shall be served on all parties to the proceeding.

(2) Appearance as amicus shall be by submission and/or brief only. An amicus brief shall be subject to the same rules as those governing briefs of parties to the appeal and shall be filed within the time required for filing respondent's brief. No filing fee is required. An amicus brief shall have a green cover.

(3) An amicus brief shall be submitted at the time the respondent's brief is due.

350-70-190. Consolidation.

The Commission, at the request of any party or on its own motion, may consolidate two or more proceedings, provided the proceedings seek review of the same or closely related land use decision(s).

350-70-200. Extensions of Time.

(1) In no event shall the time limit for the filing of the Notice of Intent to Appeal and Petition be extended.

(2) In no event shall the time limit for the filing of the Request for Review be extended without good cause shown, written consent by all parties and approval of the Gorge Commission.

(3) In the event the Commission extends the deadline for issuance of its final order without consent of the parties, it shall enter the specific findings to explain such action.

350-70-210. Stays.

- (1) A motion for a stay of a land use decision shall include:
 - (a) A statement setting forth movant's right to standing to appeal the decision;
 - (b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;
 - (c) A statement of facts and reasons for issuing a stay, demonstrating a colorable claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;
 - (d) A suggested expedited briefing schedule;
 - (e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

(2) A copy of a motion for stay shall be served on the Executive Director and the applicant for the land use decision, as well as any other parties, if any, on the same day the motion is filed with the Commission.

(3) Unless otherwise ordered by the Commission, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(4) The Commission shall base its decision on the stay, including the right to a stay, or conditions of any stay order, upon the motion presented. Documents may be attached to the motion in the form of affidavits, maps or other materials, or presented at a hearing which may be convened at the discretion of the Commission and follow the process in 350-70-140.

350-70-220. Final Order of Commission.

(1) An Order of the Commission is final when the cover page of the order containing the caption of the appeal:

- (a) States "Final Opinion and Order";

- (b) Contains findings of fact and conclusions of law or incorporates them from the record below.
- (c) Indicates whether the decision being reviewed is dismissed, affirmed, reversed or remanded;
- (d) Contains the date of the final order; and
- (e) Is date stamped by the Commission.

(2) The order shall be mailed to all parties.

(3) When an order of the Commission becomes final it shall be made available to interested members of the public. The Commission may charge a reasonable fee for copies of its final orders or other orders furnished to members of the public.

(4) Notwithstanding subsections (1)(a) and (b) of this section, an order granting a motion to dismiss an appeal is a final order.

350-70-230. Reversal or Remand of Land Use Decisions.

- (1) The Commission shall reverse a land use decision when:
 - (a) The Executive Director exceeded his/her jurisdiction;
 - (b) The decision is unconstitutional;
 - (c) The decision violates a provision of applicable law and is prohibited as a matter of law; or
 - (d) The decision was clearly erroneous or arbitrary and capricious.
- (2) The Commission shall remand a land use decision for further proceedings when:
 - (a) The findings are insufficient to support the decision;
 - (b) The decision is not supported by substantial evidence in the whole record;
 - (c) The decision is flawed by errors that prejudice the substantial rights of the petitioner(s); or

(d) The decision improperly construes the applicable law.

350-70, DIR.7/jmb

EXHIBIT I
(350-70-050)

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

Jane Clark,)	
)	
Petitioner,)	
)	
vs.)	CRGC No.
)	
Executive Director,)	
)	
Respondent.)	

NOTICE OF INTENT TO APPEAL AND PETITION

I.

Notice is hereby given that petitioner intends to appeal that land use decision of respondent entitled [INDICATE TITLE OF LAND USE DECISION], which became final on [INDICATE DATE] and which involves [SET FORTH A BRIEF STATEMENT OF THE NATURE OF THE DECISION]

II.

Petitioner, Jane Clark, is represented by: [INDICATE NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY].

Respondent, Executive Director, has as its mailing address and telephone number: [INDICATE MAILING ADDRESS AND TELEPHONE NUMBER] and has, as its legal counsel: [INDICATE NAME, ADDRESS AND TELEPHONE NUMBER].

III.

Applicant, John Developer, was represented in the proceeding below by: [INDICATE

NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY].

Other persons mailed written notice of the land use decision by Executive Director, as indicated by its records in this matter, include: [INDICATE NAMES, ADDRESSES AND TELEPHONE NUMBER OF ALL PERSONS WHOM THE EXECUTIVE DIRECTOR'S RECORDS INDICATE WERE MAILED WRITTEN NOTICE OF THE LAND USE DECISION. THE TELEPHONE NUMBERS OF SUCH PERSONS MAY BE OMITTED].

NOTICE:

Anyone designated in paragraph III of this Notice who desires to participate as a party in this case before the Columbia River Gorge Commission must file with the Commission a Motion to Intervene in this proceeding as required by CR 350-70-130.

Petitioner (each petitioner must sign)

or

Attorney for Petitioner(s)

CERTIFICATE OF SERVICE

I hereby certify that on [INDICATE DATE], I served a true and correct copy of this Notice of Intent to Appeal and Petition on all persons listed in paragraphs II and III of this Notice pursuant to CR 350-70-050(2) by (a) first class mail or (b) personal delivery. [INDICATE WHICH]

Dated: _____

Signature

EXHIBIT 2
(350-70-070)

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EXHIBIT 3
(350-70-1730)

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

Jane Clark,)	
)	
Petitioner,)	
)	
vs.)	CRGC No.
)	
Executive Director,)	
)	
Respondent.)	

MOTION TO INTERVENE

I.

John Smith moves to intervene on the side of (a) Petitioner or (b) Respondent [INDICATE WHICH] in the above-captioned appeal. Mr. Smith's (or his attorney's) address and phone number are as follows: [INDICATE ADDRESS AND PHONE NUMBER].

II.

The facts establishing movant's right to intervene are as follows: [SET FORTH STATEMENT OF FACTS].

III. [OPTIONAL]

In support of this motion, John Smith relies on the attached affidavit, Memorandum of Law or both.

Date

John Smith

or

Barbara Neil, Attorney for
John Smith

[Add Certificates of Filing and Service on separate page. See forms in Exhibits 4 and 5.]

EXHIBIT 4

CERTIFICATE OF FILING
[For Document Other Than
Notice of Intent to Appeal]

I hereby certify that on [INDICATE DATE], I filed the original of this [IDENTIFY DOCUMENT], together with [INDICATE NUMBER OF COPIES] copies, with the Columbia River Gorge Commission, 288 E. Jewett Blvd., P.O. Box 730, White Salmon, WA 98672, by (a) first class mail or (b) personal delivery [INDICATE WHICH].

Dated: _____

Signature

EXHIBIT 5

CERTIFICATE OF SERVICE
[For Document Other Than
Notice of Intent to Appeal]

I hereby certify that on [INDICATE DATE], I served a true and correct copy of this [IDENTIFY DOCUMENT] by (a) first class mail or (b) personal delivery [INDICATE WHICH] on the following persons: [LIST NAME AND ADDRESS OF EACH PARTY OR THE PARTY'S ATTORNEY].

Dated: _____

Signature

COLUMBIA RIVER GORGE COMMISSION

Chapter 350

Division 80

Klickitat County Land Use Ordinance

350-80-010. Purposes.

The purposes of the Land Use Ordinance are to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge, and to protect and support the economy of the Columbia River Gorge by allowing future economic development in a manner that enhances the scenic, cultural, recreational, and natural resources of the Gorge.

350-80-020. Area Affected.

Commission Rule 350-80 shall apply to all lands in Klickitat County, Washington within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act.

Commission Rule 350-80 becomes effective 30 days after adoption and filing by the Columbia River Gorge Commission with the exception of those portions of Commission Rule 350-80 pertaining to the Special Management Areas, which become effective upon concurrence by the Secretary of Agriculture.

Those portions of Commission Rule 350-80 pertaining to the General Management Area are no longer effective once Klickitat County has submitted a land use ordinance and the Columbia River Gorge Commission finds it consistent with the Management Plan. Those portions of Commission Rule 350-80 pertaining to the Special Management Area remain effective until the Secretary of Agriculture concurs on the ordinances adopted by Klickitat County.

350-80-030. Review and Approval Required.

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged, including those proposed by state or federal agencies, in the Columbia River Gorge National Scenic Area except for the uses listed in Commission Rule 350-80, when considered under the applicable procedural and substantive guidelines of this Rule.

350-80-040. Definitions.

As used in Commission Rule 350-80, unless otherwise noted, the following words and their derivations shall have the following meanings:

(1) **Accepted agricultural practice:** A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.

(2) **Accessory building:** A building or structure whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use.

(3) **Active wildlife site:** A wildlife site that has been used within the past 5 years by a sensitive wildlife species.

(4) **Agency official:** The federal, state, or local agency head or designee who has authority over a proposed project.

(5) **Agricultural structure:** A structure located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.

(6) **Agricultural use:** The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, livestock, poultry, fur-bearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes:

- (a) The operation or use of farmland subject to any agriculture-related government program.
- (b) Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.
- (c) Land planted in orchards or other perennials prior to maturity.

(d) Land under buildings supporting accepted agricultural practices.

Agricultural use does not include livestock feedlots.

(7) **Anadromous fish:** Species of fish that migrate upstream to freshwater after spending part of their life in the ocean (saltwater).

(8) **Anaerobic:** A condition in which molecular oxygen is absent (or effectively so) from the environment.

(9) **Aquaculture:** The cultivation, maintenance, and harvesting of aquatic species.

(10) **Aquatic area:** The water area of a stream, pond, or lake measured at the ordinary high water mark.

(11) **Archaeological resources:** See cultural resource.

(12) **Archival research:** Research in primary documents that is likely to yield information regarding human occupation of the area in question, including but not limited to deed, census, cartographic, and judicial records.

(13) **Bed and breakfast inn:** An establishment located in a structure designed as a single-family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single-family dwelling and are owner occupied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.

(14) **Best management practices:** Conservation techniques and management measures that

(a) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;

(b) minimize adverse effects to groundwater and surface-water flow and circulation patterns; and

(c) maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.

(15) **Biodiversity (SMA):** A diversity of biological organisms at the genetic, species, ecosystem, and landscape levels.

(16) **Boat landing:** Cleared area or developed structure used to facilitate launching or retrieving watercraft.

(17) **Buffer zone:** An area adjacent to a wetland, stream, pond, or other sensitive area that is established and managed to protect sensitive natural resources from human disturbance. In instances that involve a wetland, stream, or pond, the buffer zone includes all or a portion of the riparian area.

(18) **Building:** Any structure used or intended for supporting or sheltering any use or occupancy.

(19) **Camping or recreational vehicle:** A vacation trailer, camper, self-propelled vehicle, or structure equipped with wheels for highway use that is intended for recreational purposes, but not for residential purposes, and is equipped with plumbing, sink, or toilet. A camping or recreational vehicle shall be considered a dwelling unit if it is connected to a sewer system (including septic tank), water, and electrical lines or is occupied on the same parcel for more than 60 days in any consecutive 12-month period.

(20) **Campsite:** Single camping unit, that usually consists of a cleared, level area for a tent, and may include a parking spur, fire ring, table, and other amenities.

(21) **Capability:** The ability of land to produce forest or agricultural products due to characteristics of the land itself, such as soil, slope, exposure, or other natural factors.

(22) **Cascadian architecture (SMA):** Architectural style using native rock work, large timber, and steeply pitched roofs in a rustic manner.

(23) **Catastrophic situations (SMA):** Forces such as fire, insect and disease infestations, and earth movements.

(24) **Childcare center:** A facility providing daycare to three or more children, but not including:

(a) The provision of care that is primarily educational, unless provided to a preschool child for more than 4 hours a day.

(b) The provision of care that is primarily supervised training in a specific subject, including but not limited to dancing, gymnastics, drama, music or religion.

(c) The provision of short-term care related to or associated with group athletic or social activities.

(d) The provision of daycare in the provider's home in the family living quarters for less than 13 children.

(25) **Clearcut:** A created opening of 1 acre or more.

(26) **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.

(27) **Commercial development/use:** Any facility or use of land or water whose function is primarily retail buying or selling of goods or services or both. This does not include fruit or produce stands.

(28) **Commercial forest products:** These include timber for lumber, pulp, and firewood for commercial purposes.

(29) **Commercial recreation:** Any private (non-governmental) recreational activity or facility on privately owned land, excluding nonprofit facilities. This does not include operation of a public recreation facility by a private vendor.

(29) **Community facility:** Basic utilities and services necessary to support public service needs, including but not limited to water and power utilities, sanitation facilities, public microwave stations and communication facilities, schools, roads and highways. This does not include sanitary landfills.

(30) **Consulting parties (cultural resources):** Organizations or individuals who submit substantive written comments to the Development Review Officer in a timely manner because they are concerned with the effects of a proposed use on cultural resources.

(31) **Contiguous land:** Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether or not portions of the parcels have separate tax lot numbers, lie in different counties, lie in different sections or government lots, lie in different land use or zoning designations, or are separated by public or private roads. Contiguous land does not include parcels that meet only at a single point.

(32) **Counties:** The six counties within the Scenic Area: Hood River, Multnomah, and Wasco in Oregon, and Clark, Skamania, and Klickitat in Washington.

(33) **Created opening (SMA):** A created forest opening with less than 80 percent crown cover closure of trees averaging less than 20 feet tall.

(34) **Creation (wetlands):** A human activity that converts an upland into a wetland. This definition presumes that the area to be converted has not been a wetland in recent times (100 to 200 years).

(35) **Cultivation:** Any activity that prepares land for raising crops by turning, breaking, or loosening the soil. Cultivation includes plowing, harrowing, leveling, and tilling.

(36) **Cultural resource:** Evidence of human occupation or activity that is important in the history, architecture, archaeology or culture of a community or region. Cultural resources include, but are not limited to, the following:

- (a) Archaeological resources. Physical evidence or ruins of human occupation or activity that are located on or below the surface of the ground and are at least 50 years old.

Archaeological resources include, but are not limited to, the remains of houses, villages, camp and fishing sites, and cave shelters; rock art such as petroglyphs and pictographs; artifacts such as arrowheads, utensils, tools, fragments of tools and utensils, obsidian flakes or other material by-products from tool and utensil-making activities; and graves, human remains, and associated artifacts.

- (b) Historic buildings and structures. Standing or above-ground buildings and structures that are at least 50 years old.

Historic buildings and structures include, but are not limited to, log cabins, barns, canals, flumes, pipelines, highways, and tunnels.

- (c) Traditional cultural properties. Locations, buildings, structures, and objects that are associated with cultural beliefs, customs, or practices of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community.

Traditional cultural properties include, but are not limited to, a location associated with the traditional beliefs of a Native American group about its origins or its cultural history; a location where a community has traditionally carried out artistic or other cultural practices important in maintaining its historical identity; and a location where Native American religious practitioners have historically gone, and go today, to perform ceremonial activities. Objects may include petroglyphs, pictographs, rock cairns or other rock structures, trees, and rock outcrops.

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

(38) **Cut:** An area where soil or earth is excavated or removed in conjunction with development activities.

(39) **Dedicated site:** An area actively devoted to the current use and as delineated on the site plan.

(40) **Deer and elk winter range:** Areas normally used, or capable of being used, by deer and elk from December through April.

(41) **Destruction of wetlands:** Loss of the wetlands or any of its component parts, including the filling, draining, or other adverse effect to the sustainable functioning of the wetland.

(42) **Developed recreation:** Recreational opportunities characterized by high-density use on specific sites and requiring facilities installation. Density of use, amount of site development, and type of recreation site can vary widely across the spectrum of recreation activities.

(43) **Development:** Any land division or structure, including but not limited to, new construction of buildings and structures, and mining, dredging, filling, grading, paving, and excavation.

(44) **Diameter at breast height (dbh):** The diameter of a tree as measured at breast height.

(45) **Duplex:** A building containing two dwelling units and designed for occupancy by two families.

(46) **Dwelling, single-family:** A detached building containing one dwelling unit and designed for occupancy by one family only.

(47) **Dwelling unit:** A single unit designed for occupancy by one family and having not more than one cooking area or kitchen.

(48) **Effect on treaty rights:** To bring about a change in, to influence, to modify, or to have a consequence to Indian treaty or treaty-related rights in the Treaties of 1855 with

the Nez Perce, Umatilla, Warm Springs and Yakima tribes executed between the individual Indian tribes and the Congress of the United States and as adjudicated by the Federal courts.

(49) **Endemic:** Plant and animal species that are found only in the vicinity of the Columbia River Gorge area.

(50) **Enhancement (natural resources):** A human activity that increases one or more functions of an existing wetland, stream, lake, riparian area, or other sensitive area. Enhancement is generally limited to a wetland, stream, lake, riparian area, or other sensitive area that is degraded. Enhancing an area that is in good or excellent condition may reduce biological diversity and eliminate other natural functions and may not be desirable.

(51) **Ethnography:** The descriptive and analytic study of the culture of particular groups. An ethnographer seeks to understand a group through interviews with its members and often through living in and observing it.

(52) **Existing use or structure:** A legally established use that existed before the effective date of the Scenic Area Act, the Management Plan, or a land use ordinance established pursuant to the Scenic Area Act. "Legally-established" means established in accordance with the law in effect at the time of establishment of the use.

(53) **Exploration, development (extraction and excavation), and production of mineral resources:** Includes all or any part of the process of surface, underground, or submerged mining of mineral resources. Minerals include soil, coal, clay, stone, sand, gravel, metallic ore, oil and gases and any other material or substance excavated for commercial, industrial or construction use. For the Management Plan, this definition includes all exploration and mining, regardless of area disturbed or volume mined. Production of mineral resources means the use of portable crushing, onsite stockpiling, washing, milling, screening, or sorting equipment or other similar methods of initial treatment of a mineral resource to transport to another site for use or further processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.

(54) **Fill:** The placement, deposition, or stockpiling of sand, sediment, or other earth materials to create new uplands or create an elevation above the existing surface.

(55) **Fire break:** A break in ground cover fuels, adjacent to and surrounding buildings.

(56) **Forbs:** Broad-leaved herbs, in contrast to ferns, fern allies, and grasses and grasslike plants.

(57) **Foreground (SMA):** One-half mile on either side of a traveled road or trail.

(58) **Forest products:** Commodities produced from a forest, including, but not limited to, timber products, boughs, mushrooms, pine cones, and huckleberries.

(59) **Forest practices:** Those activities related to the growing and harvesting of forest tree species, as defined by the Oregon Forest Practices Act or the Washington Forest Practices Act.

(60) **Forest use:** The growing, propagation, and harvesting of forest tree species and other forest products.

(61) **Fully screened:** A description of the relative visibility of a structure where that structure is not visible as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan).

(62) **Grade (ground level):** The average elevation of the finished ground elevation as defined by the Uniform Building Code.

(63) **Grading:** Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

(64) **Height of building:** The vertical distance from the grade to the highest point of the roof.

(65) **Herbaceous:** A plant with no persistent woody stem above the ground, with characteristics of an herb.

(66) **Herbs:** Nonwoody (herbaceous) plants, including grasses and grasslike plants, forbs, ferns, fern allies, and nonwoody vines. (Note: Seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(67) **Historic buildings and structures:** See cultural resource.

(68) **Historic survey:** Actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs.

(69) **Horses, boarding of:** The stabling, feeding, and grooming for a fee, or the renting of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals, and exercise tracks.

(70) **Hydric soil:** A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

(71) **In-lieu sites:** Sites acquired by the Army Corps of Engineers and transferred to the Bureau of Indian Affairs for treaty fishing, in lieu of those usual and accustomed fishing areas lost by inundation from reservoir construction. These sites were acquired under the provisions of Public Law 14 and Public Law 100-581, Section 401. Additional in-lieu sites will be provided for.

(72) **Indian tribal government:** The governing bodies of the Nez Perce Tribe (Nez Perce Tribal Executive Committee), the Confederated Tribes of the Umatilla Indian Reservation (Board of Trustees), the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribal Council), and the Confederated Tribes and Bands of the Yakima Indian Nation (Tribal Council).

(73) **Indian tribes:** The Nez Perce Tribe, the Confederated Tribes and Bands of the Yakima Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(74) **Industrial uses:** Any use of land or water primarily involved in:

(a) Assembly or manufacture of goods or products;

(b) Processing or reprocessing of raw materials, processing of recyclable materials or agricultural products not produced within a constituent farm unit;

(c) Storage or warehousing, handling or distribution of manufactured goods or products, raw materials, agricultural products, forest products, or recyclable materials for purposes other than retail sale and service; or

(d) Production of electric power for commercial purposes.

(75) **Interpretive displays:** Signs and structures that provide for the convenience, education, and enjoyment of visitors, helping visitors understand and appreciate natural and cultural resources and their relationship to them.

(76) **Key components:** The attributes that are essential to maintain the long-term use and productivity of a wildlife site. The key components vary by species and wildlife site. Examples include fledgling and perching trees, watering sites, and foraging habitat.

(77) **Key viewing areas:** Those portions of important public roads, parks, or other vantage points within the Scenic Area from which the public views Scenic Area landscapes. These include:

Historic Columbia River Highway
Crown Point
Highway I-84, including rest stops
Multnomah Falls
Washington State Route 14
Beacon Rock
Panorama Point Park
Cape Horn
Dog Mountain Trail
Cook-Underwood Road
Rowena Plateau and Nature Conservancy Viewpoint
Portland Women's Forum State Park
Bridal Veil State Park
Larch Mountain
Rooster Rock State Park
Bonneville Dam Visitor Centers
Columbia River
Washington State Route 141
Washington State Route 142
Oregon Highway 35
Sandy River
Pacific Crest Trail

SMA only:

Old Washington State Route 14 (County Road 1230)
Wyeth Bench Road
Larch Mountain Road
Sherrard Point on Larch Mountain

(78) **Land division:** The division or redivision of contiguous land(s) into tracts, parcels, sites or divisions, regardless of the proposed parcel or tract size or use. A land division includes, but is not limited to, short subdivisions, partitions, and subdivisions.

(79) **Landscape setting:** The combination of land use, landform, and vegetation patterns that distinguish an area in appearance and character from other portions of the Scenic Area.

(80) **Livestock feedlot:** Stockyards and commercial livestock finishing yards for cattle, sheep, swine, and fur bearers. Feedlots do not include winter pasture or winter hay-feeding grounds.

(81) **Lot line adjustment:** Transfer of a portion of a parcel from one owner to the owner of an adjacent parcel resulting in no increase in the number of parcels.

(82) **Management plan:** The document entitled Management Plan for the Columbia River Gorge National Scenic Area adopted October 14, 1991. The Management Plan becomes effective upon approval of land use ordinances by the Commission for the General Management Area and concurrence of land use ordinances by the Secretary of Agriculture for the Special Management Area.

(83) **Mitigation:** The use of any or all of the following actions:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(84) **Multifamily dwelling:** A dwelling constructed or modified into two or more single-family units.

(85) **Native species:** Species that naturally inhabit an area.

(86) **Natural resources:** Naturally occurring features including land, water, air, plants, animals (including fish), plant and animal habitat, and scenery.

(87) **Natural resource specialist:** A person with professional qualifications, including an academic degree or sufficient professional experience, in the subject matter the specialist is being asked to analyze or evaluate.

(88) **Natural resource-based recreation (SMA):** Recreation activities, uses, or facilities that essentially depend on the unique natural, scenic, or cultural resources found

within the Scenic Area. Campgrounds, trails, boating and windsurfing facilities, swimming beaches, picnic sites, viewpoints, interpretive parks, and similar outdoor recreation facilities are considered resource-based; golf courses, tennis courts, and rental cabins are not.

(89) **Nonprofit organization:** An organization whose nonprofit status has been approved by the U.S. Internal Revenue Service.

(90) **Old growth:** Any stand of trees 10 acres or greater generally containing the following characteristics:

- (a) contain mature and overmature trees in the overstory and are well into the mature growth state;
- (b) in coniferous forests, will usually contain a multilayered canopy and trees of several age classes;
- (c) in coniferous forests, standing dead trees and down material are present; and
- (d) evidences of man's activities may be present, but do not significantly alter the other characteristics and would be a subordinate factor in description of such a stand.

(91) **Open Spaces:** Unimproved lands not designated as agricultural lands or forest lands by the Management Plan and designated as open space by the Management Plan. Open spaces include:

- (a) Scenic, cultural, and historic areas;
- (b) Fish and wildlife habitat;
- (c) Lands which support plant species that are endemic to the Scenic Area or which are listed as rare, threatened or endangered species pursuant to State or Federal Endangered Species Acts;
- (d) Ecologically and scientifically significant natural areas;
- (e) Outstanding scenic views and sites;
- (f) Water areas and wetlands;

- (g) Archaeological sites, Indian burial grounds and village sites, historic trails and roads and other areas which are culturally or historically significant;
- (h) Potential and existing recreation resources; and
- (i) Federal and state wild, scenic, and recreation waterways.

(92) **Ordinary high water mark:** The mark on all streams, ponds, and lakes that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting upland. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute.

(93) **Parcel:**

- (a) Any parcel legally created by a short division, partition, or subdivision.
- (b) Any unit of land legally created and separately described by deed or sales contract prior to November 17, 1986, if there were no applicable planning, zoning, and land division ordinances or regulations.
- (c) In the state of Washington, a unit of land created and separately described by deed or sales contract after November 17, 1986 if the unit created was approved by the Gorge Commission or the Forest Service Scenic Area Office.
- (d) A unit of land shall not be considered a separate parcel simply because the subject tract of land:
 - (A) Is a unit of land created solely to establish a separate tax account;
 - (B) Lies in different counties;
 - (C) Lies in different sections or government lots;
 - (D) Lies in different land use or zoning designations; or
 - (E) Is dissected by a public or private road.

(94) **Partial retention:** A visual quality objective that provides for management activities that may be evident but must remain visually subordinate to the characteristic

landscape. Activities may repeat form, line, color, or texture common to the characteristic landscape, but changes in their qualities of size, amount, intensity, direction, pattern, etc., shall remain visually subordinate to the characteristic landscape.

(95) **Practicable:** Able to be done, considering technology and cost.

(96) **Preexisting:** Existing prior to the adoption of the Columbia River Gorge National Scenic Area Management Plan.

(97) **Primarily:** A clear majority as measured by volume, weight, or value.

(98) **Project area:** The geographic area or areas within which new development and uses may cause changes in the character or use of cultural resources, if any such resources exist.

(99) **Public use facility:** Recreation development(s) that meet the definition of "recreation facility" in the Management Plan and are open for use by the general public. Private clubs and other facilities limited to members or otherwise restricted in availability shall not be considered public use facilities.

(100) **Rare plant species:** Used in a generic sense to refer to various categories of sensitive plants cited in federal and state programs.

(101) **Recreation facility:** A cluster or grouping of recreational developments or improvements located in relatively close proximity to one another, and that are not separated in distance by more than 1/4 mile of land that does not contain any such developments or improvements, except for roads and/or pathways.

(102) **Reconnaissance survey:** Actions conducted to determine if archaeological resources are present in an area that would be affected by a proposed use. Reconnaissance surveys may include archival research, surface surveys, subsurface testing, and ethnographic research.

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

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

- (b) **Semiprimitive:** Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.
- (c) **Roaded Natural:** Roaded areas with moderately frequent human encounters and with resource modifications evident.
- (d) **Rural:** Roaded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.
- (e) **Suburban:** Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent human encounters, and dominant resource modifications encroaching into the rural landscape.
- (f) **Urban:** Highly accessible, roaded areas dominated by human encounters and human-related structures.

(104) **Recreation resources:** Areas and facilities that provide recreation opportunities and experiences. Recreation resources include semiprimitive areas with few facilities and developed sites.

(105) **Rehabilitation (natural resources):** A human activity that returns a wetland, stream, buffer zone, or other sensitive area that was disturbed during construction of a permitted use to its natural or preconstruction condition.

(106) **Repair and maintenance:** An activity that restores the size, scope, configuration, and design of a serviceable structure to its previously authorized and undamaged condition. Activities that change the size, scope, and configuration of a structure beyond its original design are not included in this definition.

(107) **Resource-based recreation:** Those recreation uses that are essentially dependent upon the natural, scenic, or cultural resources of the Scenic Area and that do not adversely affect those resources upon which they depend.

(108) **Restoration (wetlands):** A human activity that converts an area that was formerly a wetland back into a wetland. This definition presumes that the area to be restored no longer qualifies as a wetland because of past activities, alterations, or catastrophic events.

(109) **Retention:** A visual quality objective that provides for management activities that are not visually evident to the casual visitor. Management activities may only repeat form,

line, color, and texture that are frequently found in the characteristic landscape. Changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not be evident.

(110) **Review uses:** Proposed uses and developments that must be reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they comply with the policies and guidelines in the Management Plan.

(111) **Riparian area:** The area immediately adjacent to streams, ponds, lakes, and wetlands that directly contributes to the water quality and habitat components of the water body. This may include areas that have high water tables and soils and vegetation that exhibit characteristics of wetness, as well as upland areas immediately adjacent to the water body that directly contribute shade, nutrients, cover, or debris, or that directly enhance water quality within the water body.

(112) **Road:** The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:

- (a) Ways described as streets, highways, throughways, or alleys.
- (b) Road-related structures that are in the right-of-way, such as tunnels, culverts, or similar structures.
- (c) Structures that provide for continuity of the right-of-way, such as bridges.

(113) **Scenic Area:** The Columbia River Gorge National Scenic Area.

(114) **Scenic travel corridor:** Those portions of Interstate 84, the Historic Columbia River Highway, Oregon Highway 35, and Washington State Routes 14, 141, and 142 located in the Scenic Area and specifically designated to be managed as scenic and recreational travel routes.

(115) **Secretary:** The Secretary of Agriculture.

(116) **Sensitive plant species:** Plant species that are

- (a) endemic to the Columbia River Gorge and vicinity;
- (b) listed as endangered or threatened pursuant to federal or state endangered species acts; or

- (c) listed as endangered, threatened or sensitive by the Oregon or Washington Natural Heritage Program.

In the Special Management Area, sensitive plant species also include plant species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(117) **Sensitive wildlife species:** Animal species that are

- (a) listed as endangered or threatened pursuant to federal or state endangered species acts;
- (b) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission;
- (c) listed as sensitive by the Oregon Fish and Wildlife Commission; or
- (d) considered to be of special interest to the public, limited to great blue heron, osprey, mountain goat, golden eagle, and prairie falcon.

In the Special Management Area, sensitive wildlife species also include animal species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(118) **Service station:** A business operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(119) **Serviceable:** Presently useable.

(120) **Shall:** Action is mandatory.

(121) **Should:** Action is encouraged.

(122) **Shrub:** A woody plant usually greater than 3 feet but less than 20 feet tall that generally exhibits several erect, spreading, or prostrate stems and has a bushy appearance. (Note: For the Management Plan, seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(123) **Sign:** Any placard, poster, billboard, advertising structure or inscribed surface, pattern or artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure, or other visually communicative or

expressive device that is visible from an out-of-doors position and is used to advertise or call the public's attention to any public, business, commercial, industrial, recreational or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name, text, device, signal, ornament, logotype, or advertising matters is made visible. The meaning of "sign" shall also include any sign currently in disuse, but still visible from an out-of-doors position, and any frame or support structure erected specifically to bear or uphold a sign.

(124) **Significant cultural resource (SMA):** A cultural resource that is included in, or eligible for inclusion in, the National Register of Historic Places. (The criteria for evaluating the eligibility of properties for the National Register of Historic Places appear in "National Register Criteria for Evaluation" [36 CFR 60].)

(125) **Skyline:** The line that represents the place at which a landform, such as a cliff, bluff or ridge, meets the sky, as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). In areas with thick, unbroken tree cover, the skyline is generally formed by the top of the vegetative canopy. In treeless areas or areas with more open tree cover, the skyline is generally formed by the surface of the ground.

(126) **Soil Capability Class:** A classification system developed by the U.S. Department of Agriculture Soil Conservation Service to group soils as to their capability for agricultural use.

(127) **Special habitat area:** Wetlands, mudflats, shallow water, and riparian vegetation that have high values for waterfowl, shorebirds, raptors, songbirds, upland game, and reptiles.

(128) **Special streams:** Streams that are primary water supplies for fish hatcheries and rearing ponds.

(129) **Stand:** A group of trees possessing uniformity in regard to type, age, vigor, or size.

(130) **Story:** A single floor level of a structure, as defined by the Uniform Building Code.

(131) **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. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff structures, or other artificial

watercourses unless they are used to convey streams naturally occurring prior to construction of such watercourses.

For the Management Plan, streams are categorized into two classes: perennial streams and intermittent streams. Perennial stream means a stream that flows year-round during years of normal precipitation. Intermittent stream means a stream that flows only part of the year, or seasonally, during years of normal precipitation.

(132) **Structure:** That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to, buildings, walls, fences, roads, parking lots, signs, and additions/alterations to structures.

(133) **Subsurface testing:** Any procedure that removes material from beneath the ground surface for the purpose of identifying cultural resources, such as shovel tests, posthole digger tests, and auger borings.

(134) **Suitability:** The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibility among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.

(135) **Travelers accommodations:** Any establishment having rooms rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental use or use of facilities.

(136) **Treaty rights or other rights:** Rights reserved by the Indian tribes through the Treaties of 1855. These include the right of fishing at all usual and accustomed places, as well as the privilege of pasturing livestock and hunting and gathering on open and unclaimed lands in common with the citizens of the states.

(137) **Tributary fish habitat:** Streams that are used by anadromous or resident fish for spawning, rearing and/or migration.

(138) **Undertaking:** Any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resources are located in the area of potential effects. For federal undertakings, the project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements [36 CFR 800.2(o)].

(139) **Unimproved lands:** Lands that generally do not have developments such as buildings or structures.

(140) **Upland:** Any area that does not qualify as a wetland because the associated hydrologic regime is not sufficiently wet to elicit development of vegetation, soils, and/or hydrologic characteristics associated with wetlands.

(141) **Uses allowed outright:** New uses and developments that may occur without being reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they are consistent with the Management Plan.

(142) **Utility facility:** Any structure that provides for the transmission or distribution of water, sewer, fuel, electricity, or communications.

(143) **Viewshed:** A landscape unit seen from a key viewing area.

(144) **Visual Quality Objective (VQO):** A set of visual management goals established by the Forest Service to achieve a desired visual objective. These objectives include retention and partial retention, and others in the Mt. Hood and Gifford Pinchot National Forest Plans.

(145) **Visually subordinate:** A description of the relative visibility of a structure where that structure does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually dominant in relation to their surroundings.

(146) **Water-dependent:** Uses that absolutely require, and cannot exist without, access or proximity to, or siting within, a water body to fulfill their basic purpose. Water-dependent uses include, but are not limited to, docks, wharfs, piers, dolphins, certain fish and wildlife structures, boat launch facilities, and marinas. Dwellings, parking lots, spoil and dump sites, roads, restaurants, trails and paths, trailer parks, resorts, and motels are not water-dependent.

(147) **Water-related:** Uses not directly dependent upon access to a water body, but whose presence facilitates public access to and enjoyment of a water body. In the GMA, water-related uses shall be limited to boardwalks, trails and paths, observation decks, and interpretative aids, such as kiosks and signs.

(148) **Wetlands:** Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do

support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include riparian areas, rivers, streams, and lakes.

(149) **Wetlands functions:** The beneficial roles that wetlands serve, including storage conveyance, and attenuation of floodwaters and stormwaters; groundwater recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game and nongame birds, mammals, and other living resources; protection of habitat for endangered, threatened, and sensitive species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

(150) **Woody plant:** A seed plant (gymnosperm or angiosperm) that develops persistent, hard, fibrous tissues.

350-80-050. Exempt Land Uses and Activities.

Commission Rule 350-80 shall not apply to:

- (1) Any treaty or other rights of any Indian tribes.
- (2) Lands held in trust by the Secretary of the Interior for Indian tribes or for individual members of Indian tribes, and lands acquired by the U.S. Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes or of individual members of Indian tribes. This exemption shall extend to lands selected by the U.S. Army Corps of Engineers as "in lieu" fishing sites pursuant to Public Law 100-581 before or after the effective date of the Management Plan. For those "in lieu" sites chosen after the effective date of the Management Plan, the exemption shall commence upon selection by the U.S. Army Corps of Engineers.
- (3) Rights to surface or ground water.
- (4) Water transportation activities on the Columbia River or its tributaries. The term "activities" includes those facilities necessary for navigation.
- (5) The operation, maintenance and modification of existing transmission facilities of the Bonneville Power Administration.
- (6) Laws, rules or regulations pertaining to hunting or fishing.
- (7) The operation, maintenance and improvement of navigation facilities at Bonneville Dam pursuant to federal law, except for the offsite disposal of excavation material.

(8) In the General Management Area, the rights and responsibilities of non-federal timber landowners under the Washington and Oregon Forest Practices Acts, or under county regulations that supersede those acts.

350-80-060. Prohibited Land Uses and Activities.

The following land uses and activities shall not be allowed within the Columbia River Gorge National Scenic Area:

- (1) Solid waste disposal sites or sanitary landfills within the Special Management Area.
- (2) New industrial development in the Scenic Area outside of the Urban Areas.
- (3) Except for uses allowed outright and review uses, new uses shall be prohibited on lands designated Agriculture-Special. Prohibited uses include, but are not limited to:
 - (a) Cultivation, including plowing, harrowing, leveling, tilling, or any activity that prepares land for raising crops by turning, breaking up, or loosening soil.
 - (b) Removal or clearing of native grasses, shrubs, and trees.
 - (c) Single-family dwellings and accessory structures, other than non-agricultural dwellings allowed as a review use.
 - (d) Barns, silos, and other agricultural buildings.
 - (e) Irrigation systems.
 - (f) Exploration, development, and production of mineral resources.
 - (g) Utility facilities, public use facilities, and roads.

350-80-070. Existing Uses.

Except as otherwise provided below, existing uses in the Scenic Area may continue, notwithstanding the provisions of Commission Rule 350-80.

- (1) Except as otherwise provided, any use or structure existing on the effective date of the Management Plan, may continue so long as it is used in the same manner and for the same purpose as on that date.

(2) Any use or structure damaged or destroyed by fire shall be treated as an existing use or structure if an application for replacement in kind and in the same location is filed within one year of such damage or destruction. Such uses or structures shall be subject to compliance with guidelines for protection of scenic resources involving color, reflectivity and landscaping. Replacement of an existing use or structure by a use or structure different in purpose, size or scope shall be subject to Commission Rule 350-80.

(3) Replacement or reestablishment of a use or structure discontinued for more than one year shall be subject to Commission Rule 350-80. Except as otherwise provided, an existing use or structure may be replaced within one year of discontinuation if used for the same purpose at the same location. This includes replacing an existing mobile home with a framed residence.

(4) In the Special Management Area, existing commercial and multi-family residential uses may expand as necessary for successful operation on the dedicated site, subject to Commission Rule 350-80-520 through 350-80-620 to minimize adverse effects on scenic, cultural, natural and recreation resources. Expansion beyond the dedicated site is prohibited. Commercial uses discontinued for 1 year or more shall no longer be considered as an existing use and shall no longer be permitted, in accordance with the provisions this rule.

(5) Existing industrial uses in the General Management Area may expand as necessary for successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.

(6) In the General Management Area, existing industrial uses may convert to less intensive uses. A less intensive use is a commercial, recreation or residential use with fewer adverse effects upon scenic, cultural, natural and recreation resources.

(7) In the General Management Area, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to Commission Rule 350-80 if any of the following conditions exist:

- (a) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as grazing. Mined land shall not include terrain which was merely leveled or cleared of vegetation.
- (b) The site has not maintained a required state permit.

(c) The site has not operated legally within 5 years before the date of adoption of the Management Plan.

(8) Uses involving the exploration, development or production of sand, gravel or crushed rock in the Special Management Area may continue when:

(a) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the Special Management Area.

(b) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural or recreation resources.

(9) Except as otherwise provided, whether a use has a vested right to continue will be determined by the law on vested rights in the appropriate state.

350-80-080. Application for Review and Approval.

(1) Prior to initiating any use or development which requires review and approval by the Development Review Officer, an application shall be completed pursuant to Commission Rule 350-80-080. The Development Review Officer shall accept and review the application pursuant to Commission Rule 350-80-100 through 350-80-170 for consistency with the appropriate guidelines of this rule. Review of a proposed use or development shall commence upon the acceptance of an application by the Development Review Officer. The Commission may charge a fee for review of applications.

(2) Standard application forms shall be available at county and city planning offices, the offices of the Columbia River Gorge Commission and the Forest Service.

(3) Applications for the review and approval of a proposed use or development shall provide the following information:

(a) The applicant's name, address and telephone number;

(b) The land owner's name, address and telephone number (if different from applicant's);

(c) The county in which the proposed use or development would be located;

(d) The section, quarter section, township and range in which the proposed development would be located;

- (e) The street address of the proposed use or development;
- (f) The tax lot number(s) and size in acres of the parcel(s) involved;
- (g) A description of the current land use for the parcel(s) involved and adjoining lands;
- (h) A written description of the proposed use or development, including details on the height, exterior color(s), and construction materials of the proposed structures.
- (i) A list of Key Viewing Areas from which the proposed use would be visible.
- (j) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the Development Review Officer to determine the location and extent of the proposed use or development and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail. If a parcel is very large, the map does not need to show the entire parcel. Rather, it can show only those portions of the parcel affected by the proposed use. The map shall include the following elements:
 - (A) North arrow.
 - (B) Map scale.
 - (C) Boundaries, dimensions, and size of the subject parcel.
 - (D) Significant terrain features or landforms.
 - (E) Groupings and species of trees or other vegetation on the parcel.
 - (F) Location and species of vegetation that would be removed or planted.
 - (G) Bodies of water and watercourses.
 - (H) Location and width of existing and proposed roads, driveways, and trails.
 - (I) Location and size of existing and proposed structures.

- (J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting.
- (K) Location and depth of all proposed grading and ditching.
- (k) In the Special Management Area, applications and/or site plans shall contain the natural resources information required in Commission Rule 350-80-600(2).
- (l) Any additional information which the applicant feels will assist in the evaluation of the proposal including, but not limited to, maps, drawings, and development plans.
- (m) The signature of the applicant and property owner or a statement from the property owner indicating that he is aware of the application being made on his property.
- (n) The signature of the property owner on a statement that authorizes the Development Review Officer or the Development Review Officer's designee reasonable access to the site in order to evaluate the application.
- (4) Applications for the following uses or developments shall include additional information as required by the appropriate guidelines in Commission Rule 350-80 or by the Development Review Officer:
 - (a) All buildings, roads, or mining and associated activities proposed on lands visible from Key Viewing Areas, pursuant to 350-80-520(2)(d).
 - (b) In the General Management Area, production and/or development of mineral resources and expansion of existing quarries pursuant to 350-80-520(1)(e), 350-80-520(2)(d), (2)(e), (2)(v), and (2)(w).
 - (c) In the General Management Area, any structural development involving more than 100 cubic yards of grading on sites visible from key viewing areas and which slope is between 10 and 30 percent, pursuant to 350-80-520(2)(u)
 - (d) In the General Management Area, vegetation management projects in public rights of way along Scenic Travel Corridors, pursuant to 350-80-520(4)(d).
 - (e) Large-scale uses as defined by guideline 350-80-540(1)(c)(C) shall include reconnaissance survey reports, pursuant to 350-80-540(1)(c)(F) and (G).

- (f) Proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings that are 50 years old or older, pursuant to 350-80-540(1)(c)(H)(iii).
- (g) In the General Management Area, new uses located in, or providing recreational access to the Columbia River or its fishbearing tributaries, pursuant to 350-80-150(8)(a)(A).
- (h) In the General Management Area, any review use in a wetland or within a wetland buffer zone, pursuant to Commission Rule 350-80-560(1)(b).
- (i) In the General Management Area, any review use in a stream, pond, lake, or within their buffer zones, pursuant to Commission Rule 350-80-570(1)(b).
- (j) In the General Management Area, any review use within 1000 feet of a sensitive wildlife area or site, pursuant to 350-80-580(1)(b). Large-scale uses as defined by 350-80-580(3) shall also include field survey information, pursuant to 350-80-580(3)(e).
- (k) In the General Management Area, any review use within 1000 feet of a sensitive plant, pursuant to Commission Rule 350-80-590(b). Large-scale uses as defined by 350-80-590(3) shall also include field survey information, pursuant to Commission Rule 350-80-590(3)(e).
- (l) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, pursuant to Commission Rule 350-80-190(1)(e), and if applicable, 350-80-190(1)(f).
- (m) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling not in conjunction with agricultural use, pursuant to Commission Rule 350-80-190(1)(n).
- (n) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative, pursuant to Commission Rule 350-80-190(1)(h).
- (o) In the General Management Area, on lands designated Large-Woodland, a single-family dwelling, pursuant to Commission Rule 350-80-270(1)(a),(c), and (l).

- (p) In the Special Management Area, on lands designated Forest, a single-family dwelling, pursuant to Commission Rule 350-80-270(2)(j).
- (q) In the Special Management Area, on lands designated Forest, forest practices, pursuant to Commission Rule 350-80-270(2)(b).
- (r) In the Special Management Area, on lands designated Open Space, any new use or development, pursuant to Commission Rule 350-80-340(11).
- (s) In the General Management Area, on lands designated Agriculture-Special, a single-family dwelling pursuant to 350-80-190(1)(h).
- (t) In the Special Management Area, on lands designated Agriculture, a single-family dwelling necessary and accessory to agricultural use, pursuant to Commission Rule 350-80-190(2)(b).
- (u) In the Special Management Area, on lands designated Agriculture, farm labor housing and agricultural buildings, pursuant to Commission Rule 350-80-190(2)(d).
- (v) In the General Management Area, on lands designated Small Woodland, a single-family dwelling pursuant to Commission Rule 350-80-270(1)(b).
- (w) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, a single-family dwelling in conjunction with agricultural use pursuant to Commission Rule 350-80-190(1)(e).
- (x) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, agricultural labor housing, pursuant to Commission Rule 350-80-270(1)(o).
- (y) In the General Management Area, on lands designated Agriculture-Special, new livestock grazing, new fences, livestock watering facilities, and corrals; or soil, water, and vegetation conservation activities, pursuant to Commission Rule 350-80-240.
- (z) Other uses as deemed necessary by the Development Review Officer.

(5) Completed application forms shall be submitted directly to the office of the Columbia River Gorge Commission.

350-80-090. Pre-Application Conference.

An applicant may request a pre-application conference prior to submitting an application for development review. The purposes of the conference shall be to acquaint the applicant with the substantive and procedural requirements of Commission Rule 350-80, to discuss the principle elements of the proposed action, and to identify guidelines that create opportunities or pose constraints for the proposed action.

350-80-100. Acceptance of Application.

Within 14 days of the receipt of an application, the Development Review Officer shall review the application for completeness and adequacy. The Development Review Officer shall accept a complete and adequate application within 14 days of receipt of the application.

(1) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Development Review Officer shall notify the applicant of all omissions and deficiencies in writing within 14 days of receipt of the application.

(2) No application shall be accepted which the Development Review Officer deems cannot be acted upon reasonably within 72 days, pursuant to 350-80-130(3), except when the applicant consents to a longer period for action.

(3) No application shall be accepted unless accompanied by a list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in Commission Rule 350-80-630. A statement from the County Assessor or appropriate agency confirming the accuracy of the list shall accompany the list.

(4) No application for a proposed use which is explicitly prohibited by Commission Rule 350-80-060 shall be accepted.

(a) The application shall be returned to the applicant.

(b) A letter, signed by the Development Review Officer, stating that the proposed use is prohibited and citing the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.

(c) Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to 350-70.

350-80-110. Notice of Development Review.

(1) Within 7 days of the acceptance of an application, the Development Review Officer shall issue notice of a proposed development review. The notice shall provide the following information:

- (a) The name of the applicant;
- (b) The general and specific location of the subject property;
- (c) A brief description of the proposed action;
- (d) The deadline for rendering a decision; and
- (e) The deadline for filing comments on the proposed action.

(2) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(3) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(4) The notice shall be mailed to:

- (a) The Forest Service, the applicable state, Indian Tribes and the applicable county and/or city; and
- (b) Owners of property within a radius of the subject parcel(s) as determined by 350-80-630; and
- (c) Other agencies and interested parties which request a notice which the Development Review Officer determines should be notified.

(4) The notice shall be posted at the Commission and Forest Service offices and shall be made available for posting at the applicable county or city planning office(s) and applicable library or libraries.

(5) For all development, notice shall be published in a newspaper of general circulation nearest to the site of the proposed action.

(6) A copy of the notice shall be filed in the records of the Commission.

350-80-120. Comment Period

Interested persons shall have 21 days from the date which the notice is sent to submit written comments to the Development Review Officer relative to the consistency of the proposed actions with the guidelines of Commission Rule 350-80:

(1) Within 7 days of the close of the comment period, the Development Review Officer shall determine if a wildlife management plan pursuant to Commission Rules 350-80-580(6), or a rare plant protection and rehabilitation plan pursuant to Commission Rules 350-80-590(6) is required.

(2) For proposed uses or developments where a cultural resources survey (reconnaissance or historic) is required and where the Commission is performing the survey, the survey shall be completed by the close of the comment period. Upon receipt of the completed survey, the Development Review Officer shall forward the survey to the State Historic Preservation Officers, and Indian Tribes pursuant to Commission Rules 350-80-540(1)(b) and (2)(b)(A).

(3) Within 7 days of the close of the 30 day reconnaissance survey comment period for State Historic Preservation Officers and Indian Tribes, the Development Review Officer shall determine if an evaluation of significance pursuant to Commission Rules 350-80-540(3) is required.

350-80-130. Decision of the Development Review Officer.

(1) In making a decision on a proposed use or development the Development Review Officer shall:

- (a) Consult with the applicant and such agencies as the Development Review Officer deems appropriate;
- (b) Consider information submitted by the applicant and all other relevant information available;
- (c) Consider all comments submitted pursuant to Commission Rule 350-80-120; and
- (d) Solicit and consider the comments of the Forest Service.

(2) The Development Review Officer shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-80. In approving a proposed development action, the Development

Review Officer may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-80.

(3) The Development Review Officer shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-80 within 72 days after acceptance of the application except in one or more of the following situations:

- (a) The applicant consents to an extension of time.
- (b) The Development Review Officer determines that additional information is required pursuant to Commission Rule 350-80-120.
- (c) The Development Review Officer determines that additional information is necessary to evaluate the impacts of the proposed use to scenic, cultural, natural, and recreation resources.
- (d) Unforeseen circumstances including, but not limited to, weather, illness, etc.

(4) The Development Review Officer shall mail a copy of the decision to the applicant, the Commission, the Forest Service, the applicable state, the Indian Tribes, the applicable county and/or city and each person who submitted comments under Commission Rule 350-80-150. The decision shall set forth the rights of appeal under Commission Rule 350-70.

(5) The decision of the Development Review Officer shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70.

(6) The decision of the Development Review Officer approving a proposed development action shall become void

- (a) when the development action is not undertaken within two years of the decision, or
- (b) when the development action is discontinued for any reason for one year or more.

(7) An applicant may request an extension of the validity of a development approval. Such request shall be considered an administrative action and shall be submitted to the Development Review Officer prior to the expiration of such approval, in writing, stating the

reason why an extension should be granted.

The Development Review Officer may grant an extension of up to 12 months in the validity of a development approval if it is determined that conditions, for which the applicant was not responsible, would prevent the applicant from commencing his operation within the original time limitation.

The Development Review Officer shall not grant an extension if the site characteristics and/or new information indicates that the proposed use may adversely affect scenic, cultural, natural or recreation resources in the National Scenic Area.

350-80-140. Changes or Alterations to an Approved Action.

Any change or alteration to a development action approved by the Commission or Development Review Officer pursuant to this rule shall be processed as new action, except that the Development Review Officer may approve minor changes or alterations deemed to be consistent with the guidelines of Commission Rule 350-80 and the findings and conclusions for the original action.

350-80-150. General Guidelines.

The following uses may be permitted when allowed by the land use designation, subject to compliance with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

(1) Land Divisions and Cluster Development

Land Divisions within the Columbia River Gorge National Scenic Area may be allowed subject to the following:

- (a) New land divisions are not allowed in the Special Management Area, unless the creation of a new parcel will facilitate land acquisition by the federal government to achieve the policies and guidelines of the Management Plan.
- (b) Unless otherwise specified, creation of a parcel, regardless of size, or any division of land except a lot-line adjustment shall be subject to the guidelines in Commission Rule 350-80.

- (c) At the time of creation of one or more new parcels, consolidation of access shall be considered in order to reduce adverse effects on scenic, cultural, natural and recreation resources.
- (d) Adjustment of the boundary between two or more contiguous parcels that 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) The minimum size for new parcels created for commercial uses within a Rural Center shall be based upon the site requirements (sewerage, parking, building, size, etc.) for the proposed use. Parcel size shall be determined by the Development Review Officer on a case-by-case basis.
- (f) The minimum size for new parcels created for residential uses within a Rural Center shall be 1 acre.

To encourage the efficient use of land, provide public amenities and standards for quality developments, and reduce the cost of providing services within Rural Centers, the Development Review Officer may allow a minimum parcel size of less than 1 acre within Rural Centers if a planned unit development approach is used for the subject parcel, incorporating features such as consolidated access and commonly shared open areas.

- (g) When allowed by a land use designation, a land division in the General Management Area may create parcels smaller than the designated minimum size and may include a bonus, as specified below, in order to cluster new dwellings. Approval of cluster development shall be contingent upon submission of plans specifying dwelling sites and areas of permanent, undeveloped open land. To approve a cluster development, the Development Review Office must find that clustering new dwellings will provide an opportunity not available through conventional parcel-by-parcel development to site new dwellings to:
 - (A) Be located in areas with screening vegetation or other features which reduce visibility of development as seen from Key Viewing Areas.
 - (B) Avoid significant landscape features.
 - (C) Protect the existing character of the landscape setting.
 - (D) Reduce interference with movement of deer or elk in winter range.

- (E) Avoid areas of known cultural resources.
 - (F) Consolidate road access, septic drainfields or other development features in order to reduce impacts associated with grading or ground disturbance.
 - (G) Reduce adverse effects to riparian areas, wetlands, natural areas, rare plants, sensitive wildlife sites or other natural resources.
 - (H) Increase the likelihood of agricultural or forest management on the undeveloped land left by the cluster development.
- (h) In the General Management Area, following cluster development, there may be no further division of any resulting parcel for residential purposes until the subject parcel is included within the boundary of an Urban Area. Approval of a cluster development shall include provisions for the permanent protection of open areas. No parcel in a cluster development may be smaller than 1 acre in a 5-acre Residential or a 10-acre Residential designation or 2 acres in a Small-Scale Agriculture or Small Woodland designation.
 - (i) In the General Management Area, cluster development may create up to 25 percent more parcels than otherwise allowed by the minimum parcel size on lands designated 5-acre Residential or 10-acre Residential and up to 50 percent more parcels on lands designated Small-Scale Agriculture or Small Woodland. Any division in a cluster development under this guideline may create at least one additional parcel.
 - (j) In the General Management Area, at least 75 percent of land subject to a cluster development shall be permanently protected as undeveloped land.
 - (k) In the General Management Area, contiguous parcels in the same ownership or in separate ownership may be consolidated and redivided to take advantage of cluster development bonuses.
- (2) Agricultural Buffer Zones

All new buildings shall comply with the following guidelines when proposed to be located on a parcel adjacent to lands designated Large-Scale or Small-Scale Agriculture and which are currently used for or are suitable for agricultural use:

(a) Setback Guidelines

Type of Buffer (size in feet)

Type of <u>Agriculture</u>	Open or <u>Fenced</u>	Natural or Created <u>Vegetation Barrier</u>	8-foot Berm or <u>Terrain Barrier</u>
Orchards	250'	100'	75'
Row crops/ vegetables	300'	100'	75'
Livestock grazing pasture, haying	100'	15'	20'
Grains	200'	75'	50'
Berries, vineyards	150'	50'	30'
Other	100'	50'	30'

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

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

(d) The necessary berming and/or planting must be completed during the first phase of development and maintained in good condition.

(e) If several crops or crop rotation is involved in the adjacent operation, the greater setback shall apply.

(f) A variance to buffer setbacks may be granted upon a demonstration that the guidelines of Commission Rule 350-80-150(7) have been satisfied.

(3) Temporary Use Hardship Dwelling

- (a) The temporary placement of a mobile home in the General Management Area may be granted under the following circumstances:
- (A) A family hardship exists where conditions relate to the necessary care for a member of the family occupying the principal dwelling and where medical conditions relate to the infirm or aged.
 - (B) The hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling, if the system is adequate to accommodate the additional dwelling, unless the additional dwelling can use an existing public sanitary sewer system.
 - (C) The hardship dwelling is found to be consistent with the guidelines for protection of scenic, cultural, natural and recreation resources of Commission Rule 350-80-520 through 350-80-620.
- (b) A permit may be issued for a 2-year period, subject to annual review for compliance with the provisions of this rule and any other conditions of approval.
- (c) Upon expiration of the permit or cessation of the hardship, whichever comes first, the mobile home shall be removed within 30 days.
- (d) A new permit may be granted upon a finding that a family hardship continues to exist.
- (4) Home Occupations and Cottage Industries

Home occupations and cottage industries may be established as specified in various land use designations consistent with the following conditions:

- (a) A home occupation may employ only residents of the home.
- (b) A cottage industry may employ up to three outside employees.
- (c) No more than 25 percent of the total actual living space of the dwelling may be utilized for the home occupation or cottage industry.
- (d) No more than 500 square feet of an accessory structure may be used for a home occupation or cottage industry.

- (e) There shall be no outside, visible evidence of the home occupation or cottage industry, including outside storage.
- (f) Exterior structural alterations to the residence for the home occupation or cottage industry shall not be permitted. New structures shall not be constructed for the primary purpose of housing a home occupation or cottage industry.
- (g) No retail sales may occur on the premises, except incidental sales at lodging establishments authorized in Commission rule 350-80-150(5).
- (h) One non-animated, non-illuminated sign, not exceeding 2 square feet in area may be permitted on the subject structure or within the yard containing the home occupation or cottage industry.
- (i) Parking not associated with residential use shall be screened so it is not visible from Key Viewing Areas.
- (j) In the General Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of Commission Rules 350-80-150(4) and (5).
- (k) In the Special Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of Commission Rules 350-80-150(4) and (5), except Commission Rule 350-80-150(5)(a).

(5) Bed and Breakfast Inns

Bed and breakfast inns may be established as authorized in specified land use designations subject to the following:

- (a) Guests may not occupy a facility for more than 14 consecutive days.
- (b) One non-animated, non-illuminated sign not exceeding 4 square feet in area may be permitted on the structure or within the yard containing the structure.
- (c) Parking areas shall be screened so as to not be visible from Key Viewing Areas.
- (d) In the Special Management Area, bed and breakfast inns associated with residential use shall be allowed only in structures that are included in, or eligible for inclusion in, the National Register of Historic Places.

(6) Docks

- (a) New private docks and boathouses serving only one family and one property shall be limited to a maximum of 120 square feet in size.
 - (b) New private docks and boathouses serving more than one family and property shall be limited to a maximum of 200 square feet in size.
 - (c) Public docks open and available for public use shall be allowed.
- (7) Variances from Setbacks and Buffers within the General Management Area.

Variances from setbacks and buffers within the General Management Area may be allowed subject to the following approval criteria:

- (a) When setbacks or buffers for the protection of scenic, cultural, natural, recreation, agricultural or forestry resources overlap or conflict, the setbacks or buffers may be varied upon a demonstration that:
 - (A) A setback or buffer to protect one resource would cause the proposed use to fall within a setback or buffer to protect another resource; and
 - (B) Variation from the specified setbacks or buffers would, on balance, best achieve the protection of the affected resources.
- (b) A setback or buffer for protection of scenic, cultural, natural, recreation, agricultural or forestry resources may be varied to allow a residence to be built on a parcel of land upon a demonstration that:
 - (A) The land use designation otherwise authorizes a residence on the tract;
 - (B) No site exists on the tract (all contiguous parcels under the same ownership) on which a residence could practicably be placed in full compliance with the setback or buffer;
 - (C) The variance from the specified setback or buffer is the minimum necessary to allow the residence.
- (c) The Development Review Officer may grant a variance to the setback and buffer requirements in Commission Rule 350-80-610, upon a finding that the following conditions exist:

- (A) The proposed project is a public use, resource-based recreation facility providing or supporting either recreational access to the Columbia River and its tributaries, or recreational opportunities associated with a Scenic Travel Corridor.
 - (B) All reasonable measures to redesign the proposed project to comply with required setbacks and buffers have been explored, and application of those setbacks and buffers would prohibit a viable recreation use of the site as proposed.
 - (C) Resource impacts have been mitigated to less than adverse levels through design provisions and mitigation measures.
 - (D) The variance is the minimum necessary to accommodate the use.
- (d) The Development Review Officer may grant a variance of up to 10 percent to the guidelines of General Management Area and Special Management Area Recreation Intensity Class 4 for parking and campground units upon demonstration that:
- (A) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from Scenic Area recreation demand studies shall be relied upon to meet this criterion in the absence of current applicable studies.
 - (B) The proposed use is dependent on resources present at the site.
 - (C) Reasonable alternative sites, including those in nearby Urban Areas, offering similar opportunities have been evaluated and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.
 - (D) The proposed use is consistent with the goals, objectives and policies in Chapter 4, Part I of the Management Plan.
 - (E) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural or cultural resources, and adjacent land uses.

(F) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

(8) Indian Tribal Treaty Rights and Consultation

(a) Tribal Government Notice

(A) New uses located in, or providing recreation river access to, the Columbia River or its fishbearing tributaries shall include the following supplemental information:

(i) The site plan map shall show adjacent river areas at least 1/2 mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.

(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:

(I) Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use (people, boats, and other uses) during peak-use periods.

(II) List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.

(III) List tribal ceremonial fishing seasons in the project vicinity.

(IV) Based on the above factors, assess the potential effects that the proposed uses may have on Indian treaty rights.

(B) Notices shall include a treaty rights protection plan if new uses may affect Indian treaty rights. The protection plan shall specify measures that will be used to avoid effects to Indian treaty rights. These measures may include reducing the size and modifying the location or design of the proposed uses, seasonal closures, stringent onsite monitoring, information signs, and highly visible buoys or other markers delineating fishing net locations.

- (C) Indian tribal governments shall have 20 calendar days from the date a notice is mailed to submit substantive written comments to the Development Review Officer. Indian tribal governments must identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the new uses.

(b) Tribal Government Consultation

- (A) When substantive written comments are submitted to a Development Review Officer in a timely manner, the project applicant shall offer to meet with the Development Review Officer and the Indian tribal government that submitted comments within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the Indian tribal government.

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

- (B) Any substantive comments, recommendations, or concerns expressed by Indian tribal governments during the consultation meeting shall be recorded and addressed by the project applicant in a treaty rights protection plan. The protection plan shall include measures to avoid effects to treaty and other rights of any Indian tribe.
- (C) The Development Review Officer shall submit all protection plans to the Indian tribal governments. Indian tribal governments shall have 30 calendar days from the date a protection plan is mailed to submit written comments to the Development Review Officer.

(c) Conclusion of the Treaty Rights Protection Process

- (A) The Development Review Officer shall decide whether the proposed uses would affect or modify any treaty or other rights of any Indian tribe.

The final decision shall integrate findings of fact that address any substantive comments, recommendations, or concerns expressed by Indian tribal governments. If the final decision contradicts the comments, recommendations, or concerns of Indian tribal governments,

the Development Review Officer must justify how it reached an opposing conclusion.

- (B) The treaty rights protection process may conclude if the Development Review Officer determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.
- (C) A finding by the Development Review Officer that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as provided in these guidelines, in no way shall be interpreted as a waiver by the Indian tribe of a claim that such uses adversely affect or modify treaty or other tribal rights.

(9) If new buildings or structures may detract from the use and enjoyment of established recreation sites on adjacent parcels, an appropriate buffer shall be established between the building/structure and the parcel.

(10) Section 8(o) of the National Scenic Act (16 USC § 544f(o)) is hereby incorporated by reference.

350-80-160. Signs.

(1) Signs may be allowed pursuant in all land use designations in the General Management Area to the following provisions:

- (a) Except for signs along public highways necessary for public safety, traffic control or road construction which are consistent with the Manual for Uniform Traffic Control Devices, the following signs are prohibited:
 - (A) Luminous signs or those with intermittent or flashing lights. These include neon signs, fluorescent signs, light displays and other signs which are internally illuminated, exclusive of seasonal holiday light displays.
 - (B) New billboards.
 - (C) Signs with moving elements.
 - (D) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle.

- (b) Any sign which does not conform with a provision of 350-80-160 and has existed prior to adoption of the Management Plan, shall be considered non-conforming and subject to the following:
- (A) Alteration of existing non-conforming signs shall comply with Commission Rule 350-80-160.
 - (B) Any non-conforming sign used by a business must be brought into conformance concurrent with any expansion or change in use which requires a development permit.
- (c) The following may be permitted without review, subject to consistency with Commission Rule 350-80-160(1)(a):
- (A) Ordinary repair and maintenance of signs.
 - (B) Election signs which are not displayed for more than 60 days. Removal shall be accomplished within 30 days of election day.
 - (C) "For Sale" signs not greater than 12 square feet. Removal shall be accomplished within 30 days of close of sale.
 - (D) Temporary construction site identification, public service company, safety or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the *Manual for Uniform Traffic Control Devices*. Removal shall be accomplished within 30 days of project completion.
 - (E) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet.
 - (F) Temporary signs advertising civil, social, or political gatherings and activities not exceeding 12 square feet. Removal shall be accomplished within 30 days of the close of the event.
 - (G) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the message intended.

(H) Signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings, not on roofs or marquees.

(d) All signs shall meet the following guidelines unless they conflict with the *Manual for Uniform Traffic Control Devices* for public safety, traffic control or highway construction signs. In such cases, the standards in the *Manual for Uniform Traffic Control Devices* shall supersede these guidelines.

(A) The support structure shall be unobtrusive and have low visual impact.

(B) Lettering colors with sufficient contrast to provide clear message communication shall be allowed. Colors of signs shall blend with their setting to the maximum extent practicable.

(C) Backs of all signs shall be unobtrusive, non-reflective, and blend in with the setting.

(D) Spot lighting of signs may be allowed where needed for night visibility. Backlighting is not permitted for signs.

(e) Business identification or facility entry signs located on the premises may be allowed, subject to Commission Rule 350-80-160(1)(d).

(f) Other signs not addressed or expressly prohibited by this rule may be permitted without review.

(2) Signs in the Special Management Area shall be allowed pursuant to the following provisions:

(a) Prohibited Signs

(A) Advertising billboards.

(B) Signs that move or give the appearance of moving, except signs used for highway construction, warning or safety.

(C) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle, except for signs used for highway construction, warning or safety.

- (b) Pre-existing signs are allowed to continue provided no changes occur in size, structure, color, or message.
- (c) Temporary signs shall be permitted without review when in compliance with subsection (f) below and the following:
 - (A) One political sign per parcel road frontage. The sign shall be no greater than 12 square feet in area and displayed for no more than 60 calendar days. Removal shall be accomplished within 30 days of election day.
 - (B) "For Sale" signs not greater than 12 square feet, removal shall be accomplished within 30 days of close of sale.
 - (C) One temporary construction site identification sign which is not greater than 32 square feet. Removal shall be accomplished within 30 days of project completion.
 - (D) Signs providing direction to and announcement of temporary garage/yard sales provided placement duration does not exceed three days and the signs are not greater than two square feet in area.
 - (E) Temporary signs, not exceeding 12 square feet and placed no longer than 10 days in advance of the event, advertising civil, social, or political gatherings and activities. Removal must be accomplished within 30 days of the close of the event.
 - (F) Temporary signs of public service companies indicating danger and/or service and safety information. Removal must be accomplished upon project completion.
- (d) New signs shall be allowed as specified in the applicable land use designation.
- (e) No sign shall be erected or placed in such a manner that it may interfere with, be confused with, or obstruct the view of any traffic sign, signal, or device.
- (f) All new signs shall meet the following guidelines, and be consistent with the *Manual for Uniform Traffic Control Devices*.
 - (A) Signs shall be maintained in a neat, clean and attractive condition.

- (B) The character and composition of sign materials shall be harmonious with the landscape and/or related to and compatible with the main structure upon which the sign is attached.
 - (C) Signs shall be placed flat on the outside walls of buildings, not on roofs or marquees.
 - (D) Signs shall be unobtrusive and have low contrast with the setting.
 - (E) The visual impact of the support structure shall be minimized.
 - (F) Outdoor sign lighting shall be used for purposes of illumination only, and shall not be designed for, or used as, an advertising display, except for road safety signs.
 - (G) Backs of all signs shall be visually unobtrusive, nonreflective, and blend in with the setting.
 - (H) Sign internal illumination or backlighting shall not be permitted except for highway construction, warning or safety.
- (g) Public signs shall meet the following guidelines in addition to subsections (b) through (f) above:
- (A) The Graphic Signing System provides design guidelines for public signs in and adjacent to public road rights-of-way. All new and replacement public signs shall conform to the guidelines in this system. Types of signs addressed include recreation site entry, route marker, interpretive, guide, directional, and urban area entry.
 - (B) Signs located outside public road rights-of-way are encouraged to be designed in such a way as to be consistent with similar purpose signs described in the Graphic Signing System.
 - (C) Signs posted by governmental jurisdictions giving notice to the public shall be no larger than that required to convey the intended message.
- (h) Signs for public and commercial recreation facilities, home occupations, cottage industries, and commercial uses shall meet the following guidelines in addition to subsections (b) through (f):

- (A) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than two square feet.
- (B) Any sign advertising or relating to a business which is discontinued for a period of 30 consecutive days shall be presumed to be abandoned and shall be removed within 30 days thereafter, unless permitted otherwise by the jurisdictional authority.
- (C) Any signs relating to, or advertising, a business shall be brought into conformance with these sign guidelines prior to any expansion or change in use which is subject to review.
- (D) Off-site and on-site directional signs on approach roads to recreational facilities may be permitted. Name and interpretive signs may be permitted on-site, but should be kept to the minimum required to achieve the purpose(s) of the facilities.
- (E) Commercial recreation businesses approved in conjunction with a recreational facility may have a name sign not exceeding 16 square feet.
- (F) Recreation developments may have one on-premise name sign at each principal entrance. Such signs are encouraged to be of a low profile, monument type, and shall conform to the Graphic Signing System.
- (i) Sign clutter and other negative visual effects from excessive signs along all roads and highways, and at parking lots and recreation facilities, shall be reduced.
- (j) Directional and safety signs are allowed to the extent necessary to satisfy requirements for smooth traffic flow and public safety. All parties and jurisdictions placing such signs must do so in accordance with the Graphic Signing System, consistent with the standards in the *Manual on Uniform Traffic Control Devices*.
- (k) Interstate 84 shall not have interpretive signing, except for signs permitted for services. Regulatory, warning, service, and other signs as provided for in the Graphic Signing System are allowed.

350-80-170. Agricultural Land Designations.

Commission Rule 350-80-170 through 350-80-240 shall apply to those areas designated Large-Scale or Small-Scale Agriculture, SMA-Agriculture, and Agriculture-Special on the Scenic Area Land Use Designation Map.

350-80-180. Uses Allowed Outright-Agricultural Land.

(1) The following uses are allowed on lands designated Large-Scale or Small-Scale Agriculture without review:

- (a) Agricultural use, except new cultivation.
- (b) Forest practices that do not violate conditions of approval for other approved uses.
- (c) Repair, maintenance, and operation of existing structures, trails, roads, railroads and utility facilities.
- (d) Buildings less than 60 square feet in floor area and not exceeding 18 feet in height measured at the roof peak, which are accessory to a dwelling.

(2) The following uses are allowed on land designated SMA-Agriculture without review:

- (a) New agricultural uses and open space uses allowed under Commission Rule 350-80-340(10), except where there would be potential impact to cultural or natural resources.
- (b) Maintenance, repair and operation of existing dwellings, structures, agricultural buildings, trails, roads, railroads, and utility facilities.
- (c) Accessory structures less than 60 square feet in area and less than 18 feet in height measured at the roof peak.

(3) The following uses may be allowed on lands designated Agriculture-Special without review:

- (a) Existing livestock grazing. A livestock operation ceases to be existing when the land on which it is conducted has lain idle for more than 5 years.

- (b) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads, and utility facilities.
- (c) Low-intensity recreation uses that occur with the knowledge and permission of the landowner, including hunting, fishing, trapping, native plant study, birdwatching, photography, horseback riding, and hiking.
- (d) Temporary livestock facilities, such as portable livestock pens and corrals.
- (e) New fences that exclude livestock from lands that are not part of an existing livestock operation.

350-80-190. Review Uses-Agricultural Land.

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture subject to compliance with the scenic, cultural, natural, and recreation resource guidelines (Commission Rule 350-20-520 through 350-80-620):

- (a) New cultivation, subject to compliance with Commission Rule 350-80-540 through 350-80-590.
- (b) Agricultural buildings in conjunction with agricultural use.
- (c) 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.
- (d) The temporary use of a mobile home in the case of a family hardship, subject to Commission Rule 350-80-150(3).
- (e) On lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, upon a demonstration that all of the following conditions exist:
 - (A) The subject farm or ranch (including all of its constituent parcels, contiguous or otherwise) has no other dwellings that are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and that could be used as the principal agricultural dwelling.
 - (B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, where the day-to-day activities of one or

more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. Current use includes a minimum area which would satisfy subsection (e)(C)(iv) below; and

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following factors:

- (i) Size of the entire farm or ranch, including all land in the same ownership;
- (ii) Type(s) of agricultural uses (crops, livestock) and acreage;
- (iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area; and
- (iv) Income capability. The farm or ranch, and all its constituent parcels, is capable of producing at least \$40,000 in gross annual income. This determination shall be made using the following formula:

(A)(B)(C) = I where:

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

(f) On lands designated Large-Scale Agriculture, a second single-family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling which is included in, or is eligible for inclusion in, the National Register of Historic Places, in accordance with the criteria for use in evaluating the eligibility of cultural resources contained in the National Register Criteria for Evaluation (36 CFR 60.4).

(g) On lands designated Small-Scale Agriculture, a single-family dwelling on any legally existing parcel.

- (h) On lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative provided that all of the following conditions exist:
 - (A) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator's spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, brother or sister;
 - (B) The dwelling would be located on the same parcel as the dwelling of the principal operator; and
 - (C) The operation is a commercial enterprise as determined by Commission Rule 350-80-190(1)(e)(C).
- (i) Construction, reconstruction or modifications of roads not in conjunction with agriculture.
- (j) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.
- (k) Structures associated with hunting and fishing operations.
- (l) Towers and fire stations for forest fire protection.
- (m) Agricultural labor housing upon a showing that:
 - (A) The proposed housing is necessary and accessory to a current agricultural use;
 - (B) The housing shall be seasonal unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject farm or ranch unit. Seasonal use shall not exceed 9 months; and
 - (C) The housing will be located to minimize the conversion of lands capable of production of farm crops or livestock and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.
- (n) On lands designated Large-Scale Agriculture, on a parcel which was legally created and existed prior to November 17, 1986, a single-family dwelling not in

conjunction with agricultural use upon a demonstration that all of the following conditions exist:

- (A) The dwelling will not force a change in or increase the cost of accepted agricultural practices on surrounding lands;
- (B) The subject parcel is predominantly unsuitable for the production of farm crops and livestock, considering soils, terrain, location and size of the parcel. Size alone shall not be used to determine whether a parcel is unsuitable for agricultural use. An analysis of suitability shall include the capability of the subject parcel to be utilized in conjunction with other agricultural operations in the area;
- (C) The dwelling shall be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required in Commission Rule 350-80-150(2), or any abutting parcel designated Commercial Forest Land or Large or Small Woodland, as required in Commission Rule 350-80-310;
- (D) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland; and
- (E) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland within 500 feet of the perimeter of the subject parcel on which the dwelling is proposed to be located have been notified and given at least 10 days to comment prior to a decision.

(o) On parcels in Small-Scale Agriculture, a land division creating parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in Commission Rule 350-80-150(1). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40, 80, or 160 acres, this provision will apply to parcels 80 acres or larger, 160 acres or larger, or 320 acres or larger, respectively.

(p) Life estates, pursuant to Commission Rule 350-80-210.

- (q) Land divisions when all resulting parcels satisfy the minimum lot sizes as designated on the land use designation map.

(2) The following uses may be allowed on lands designated SMA-Agriculture, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (Commission Rule 350-80-520 through 350-80-620). The use or development shall be sited to minimize the loss of land suitable for the production of agricultural crops or livestock:

- (a) Forest uses and practices as allowed in Commission Rule 350-80-270(2)(b).
- (b) A single-family dwelling necessary for and accessory to agricultural use upon a demonstration that all of the following conditions exist:
 - (A) The proposed dwelling would be the only dwelling on the subject farm or ranch, including contiguous lots/parcels.
 - (B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, where the day-to-day activities of one or more residents of the dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy guideline (C)(iv), below.
 - (C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following criteria:
 - (i) Size of the entire farm or ranch, including all land in the same ownership.
 - (ii) Type(s) of agricultural uses (crops, livestock, orchard, etc.) and acreage.
 - (iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.
 - (iv) Income capability. The farm or ranch, and all its contiguous parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula, with periodic adjustments for inflation:

(A)(B)(C) = I where:

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

B = Average price of the commodity

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

I = Income capability

(D) Minimum parcel size of 40 contiguous acres.

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

(d) Farm labor housing and agricultural buildings upon a showing that the following conditions exist:

(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 Commission Rule 350-80-190(2)(b)(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.

(e) Home occupations and cottage industries pursuant to Commission Rule 350-80-150(4). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(f) Bed and breakfast inns subject to Commission Rule 350-80-150(5). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

- (g) Fruit stands and produce stands upon a showing that sales will be limited to agricultural products raised on the property and other agriculture properties in the local region.
- (h) Aquaculture.
- (i) Exploration, development, and production of sand, gravel, and crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the Special Management Area.
- (j) Utility facilities necessary for public service upon a showing that:
 - (A) There is no alternative location with less adverse effect on Agriculture lands.
 - (B) The size is the minimum necessary to provide the service.
- (k) Temporary asphalt/batch plant operations related to public road projects, not to exceed six months.
- (l) Signs as specified in Commission Rule 350-80-160(2).
- (m) Community facilities and non-profit facilities related to agricultural resource management.
- (n) Expansion of existing non-profit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.
- (o) Recreation, interpretive and educational developments and uses consistent with Commission Rule 350-80-620.
- (p) Road and railroad construction and reconstruction.
- (q) Agricultural product processing and packaging, upon demonstration that the processing will be limited to products produced primarily on or adjacent to the property. "Primarily" means a clear majority of the product as measured by volume, weight, or value.

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

350-80-200. Review Uses with Additional Approval Criteria -- Large-Scale or Small-Scale Agriculture Designations.

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (Commission Rule 350-80-520 through 350-80-620) and Commission Rule 350-80-220.

- (a) Utility facilities and railroads necessary for public service upon a showing that:
 - (A) There is no practicable alternative location with less adverse effect on agricultural or forest lands, and
 - (B) The size is the minimum necessary to provide the service.
- (b) Home occupations or cottage industries in existing residential or accessory structures, subject to Commission Rule 350-80-150(4).
- (c) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.
- (d) Wineries, in conjunction with on-site viticulture, upon a showing that processing and sales of wine is from grapes grown on the subject farm or in the local region.
- (e) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.
- (f) Exploration, development and production of mineral and geothermal resources subject to Commission Rule 350-80-520.
- (g) Personal-use airstrips including associated accessory structures such as a hangar. A personal-use airstrip is an airstrip restricted, except for aircraft emergencies, to use by the owner and on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal use airstrip other than those owned or controlled by the owner of the airstrip.

- (h) Aquaculture.
- (i) Recreation development, subject to Commission Rule 350-80-610 and the Recreation Development Plan (Management Plan, Part III, Chapter 1).
- (j) Boarding of horses.
- (k) Temporary portable asphalt/batch plants related to public road projects, not to exceed six months.
- (l) Bed and breakfast inns in single-family dwellings, subject to Commission Rule 350-80-150(5) and provided that the residence:
 - (A) Is included in the National Register of Historic Places; or
 - (B) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation; or
 - (C) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.
- (m) Non-profit, environmental learning or research facilities.
- (n) Expansion of existing schools or places of worship.

(2) The following uses may be allowed on lands designated Agriculture-Special subject to compliance with the appropriate scenic, natural, cultural, and recreation resource guidelines (Commission Rule 350-80-520 through 350-80-620) and Commission Rule 350-80-230:

- (a) New livestock grazing. Any operation that would introduce livestock to land that has not been grazed, or has laid idle, for more than 5 years shall be considered new livestock grazing.
- (b) New fences, livestock watering facilities, and corrals.
- (c) Soil, water, and vegetation conservation uses.

- (d) Replacement or minor expansion of existing and serviceable structures within a dedicated site. Expansion shall be limited to the dedicated site.
- (e) Fish and wildlife management uses, educational activities, and scientific research.
- (f) Land divisions that facilitate livestock grazing or protect and enhance natural areas. No resulting parcel may be smaller than 160 acres, unless it would facilitate the protection of scenic, cultural, natural, or recreation resources.
- (g) Single-family dwellings that are not in conjunction with agricultural use, if a landowner demonstrates that (1) the dwelling cannot be constructed on a portion of the parcel that is located outside of the natural area, and (2) the dwelling is sited and designed in a manner that minimizes adverse effects to the natural area. All dwellings shall meet the criteria in Commission Rule 350-80-190(1)(n). The buffer guidelines for non-agricultural dwellings may be waived if they would prevent the optimum siting of a dwelling.
- (h) Recreation uses, subject to the provisions for recreation intensity classes (Commission Rule 350-80-620).

350-80-210. Approval Criteria for Life Estates -- Large-Scale or Small-Scale Agriculture Designations.

A landowner who sells or otherwise transfers real property on lands designated Large-Scale or Small-Scale Agriculture may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in Commission Rule 350-80-040. A second dwelling in conjunction with agricultural use may be allowed, subject to compliance with guidelines in Commission Rule 350-80-520 through 350-80-620 for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

- (1) The proposed dwelling is in conjunction with agricultural use, using guideline 350-80-190(1)(e).
- (2) Upon termination of the life estate, the original or second dwelling shall be removed.

350-80-220. Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture.

Uses identified in Commission Rule 350-80-200(1) may be allowed only if they meet both of the following criteria:

(1) The use is compatible with agricultural uses and would not force a change in or significantly increase the cost of accepted agricultural practices on nearby lands devoted to agricultural use; and

(2) The use will be sited to minimize the loss of land suitable for the production of crops or livestock.

350-80-230. Approval Criteria for Review Uses on Lands Designated Agriculture-Special.

Uses identified in Commission Rule 350-80-200(2) may be allowed only if they meet all of the following criteria:

(1) A range conservation plan pursuant to Commission Rule 350-80-240 shall be prepared before new livestock grazing commences; new fences, livestock watering facilities, and corrals are constructed; or soil, water, and vegetation conservation activities are undertaken [review uses (a), (b) and (c) in Commission Rule 350-80-190(3)].

(2) The Development Review Officer shall submit all land use applications and range conservation plans to the Oregon or Washington Natural Heritage Program. The state heritage program will have 20 days from the date that an application and/or plan is mailed to submit written comments to the Development Review Officer. The Development Review Officer shall record and address any written comments submitted by the state heritage program in the development review order.

(3) Based on the comments from the state heritage program, the Development Review Officer shall make a final decision on whether the proposed use is consistent with the Agriculture-Special policies of the Management Plan. If the final decision contradicts the comments submitted by the state heritage program, the Development Review Officer shall justify how it reached an opposing conclusion.

350-80-240. Range Conservation Plans.

(1) If a range conservation plan is required before a use is allowed, it shall be prepared by landowners in cooperation with range scientists from local conservation districts.

Specialists from the Oregon or Washington Natural Heritage Program should be consulted while the plan is being prepared.

- (2) Range conservation plans shall ensure that new uses do not adversely affect natural areas. They shall accomplish the following goals:
 - (a) Maintain native rangeland that is in excellent or good condition; enhance rangeland that is in fair or poor condition.
 - (b) Preserve native trees and shrubs.
 - (c) Reestablish native grasses in degraded areas that have been invaded by non-native plants and weeds.
- (3) Range conservation plans shall include the following elements:
 - (a) Range inventory. This shall include existing composition, carrying capacity, and condition of rangeland; the location of rare plants and non-native weeds; and existing fences, watering ponds, and other range improvements.
 - (b) Rehabilitation plan. This shall include actions that will be taken to rehabilitate native rangeland that is in fair or poor condition, such as weed and soil erosion control, seeding, and prescribed burning.
 - (c) Livestock management plan. This shall include the grazing system that will be used, including number and size of pastures, expected livestock numbers, and grazing/deferral periods and sequence. Management plans shall project livestock movements for at least 3 years.
 - (d) Monitoring program. This shall track the annual progress of the conservation plan and condition of the range. Monitoring techniques shall be described, such as line transects or photographic plots.

350-80-250. Forest Land Designations.

Commission Rule 350-80-250 through 350-80-310 shall apply to those areas designated Commercial Forest Land, Large or Small Woodland and SMA-Forest on the Scenic Area Land Use Designation Map.

350-80-260. Uses Allowed Outright -- Forest Land.

(1) The following uses are allowed on lands designated Commercial Forest Land or Large or Small Woodland without review:

- (a) Forest practices that do not violate conditions of approval for other approved uses.
- (b) Agricultural use, except new cultivation.
- (c) Repair, maintenance, and operation of existing structures, trails, roads, railroads and utility facilities.
- (d) Buildings less than 60 square feet in floor area and not exceeding 18 feet in height measured at the roof peak, which are accessory to a dwelling.

(2) The following uses are allowed on land designated SMA-Forest without review:

- (a) New agricultural uses as allowed in Commission Rule 350-80-180(2) and the open space uses allowed in Commission Rule 350-80-340(10), except where there would be potential impact to cultural or natural resources.
- (b) Maintenance, repair, and operation of existing dwellings, signs, structures, trails, roads, railroads, and utility facilities.
- (c) Accessory structures of less than 60 square feet in area and less than 18 feet in height measured at the roof peak.

350-80-270. Review Uses -- Forest Land.

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

- (a) On lands designated Large Woodland, a single-family dwelling upon a demonstration that all of the following conditions exist:
 - (A) The dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The principal purpose for locating a dwelling on lands designated Large Woodland is to enable the resident

to conduct efficient and effective forest management. This requirement indicates a relationship between ongoing forest management and the location of a dwelling on the subject parcel. A dwelling may not always be required for forest management.

- (B) The subject parcel has been enrolled in the appropriate state's forest assessment program.
 - (C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the Development Review Officer. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor and expenses; and how the dwelling will contribute toward the successful completion of the operations.
 - (D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forestry and that could be used as the principal forest dwelling.
 - (E) The dwelling complies with the "Approval Criteria for the Siting of Dwellings on Forest Land" (Commission Rule 350-80-310) and "Approval Criteria for Fire Protection in Forest Zones" (Commission Rule 350-80-300).
 - (F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.
- (b) On lands designated Small Woodland, one single-family dwelling on a legally created parcel upon the parcel's enrollment in the state's forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with Commission Rule 350-80-300 and Commission Rule 350-80-310. A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on

accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

- (c) One single-family dwelling if shown to be in conjunction with and substantially contribute to the current agricultural use of a farm pursuant to Commission Rule 350-80-190(1)(e). The siting of the dwelling shall comply with Commission Rule 350-80-300.
- (d) Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation. "Auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure shall be located on-site, temporary in nature, and not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when the particular forest practice for which it was approved has concluded.
- (e) Temporary portable facilities for the primary processing of forest products grown on a parcel or contiguous parcels in the same ownership where the facility is to be located. The facility shall be removed upon completion of the harvest operation.
- (f) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.
- (g) Structures associated with hunting and fishing operations
- (h) Towers and fire stations for forest fire protection.
- (i) New agricultural structures subject to Commission Rule 350-80-300.
- (j) The temporary use of a mobile home in the case of a family hardship, subject to Commission Rule 350-80-150(3), 350-80-300 and 350-80-310.
- (k) Accessory building(s) greater than 60 square feet in floor area and/or exceeding 18 feet in height as measured at the roof peak; subject to Commission Rule 350-80-300 and 350-80-310.
- (l) A second single-family dwelling for a farm operator's relative, subject to Commission Rule 350-80-190(1)(h), 350-80-300 and 350-80-310.

- (m) Private roads serving a residence, subject to Commission Rule 350-80-300 and 350-80-310.
- (n) Recreation development, subject to Commission Rule 350-80-610 and the Recreation Development Plan (Management Plan, Part III, Chapter 1).
- (o) Construction or reconstruction of roads or modifications not in conjunction with forest use or practices.
- (p) Agricultural labor housing upon a showing that:
 - (A) The proposed housing is necessary and accessory to a current agricultural use.
 - (B) The housing shall be seasonal unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject agricultural unit. Seasonal use shall not exceed nine months.
 - (C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock and will not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.
- (q) On lands designated Commercial Forest Land, a temporary mobile home in conjunction with a timber operation, upon a finding that security personnel are required to protect equipment associated with a harvest operation or the subject forest land from fire. The mobile home must be removed upon completion of the subject harvest operation or the end of the fire season. The placement of the mobile home is subject to Commission Rule 350-80-300 and 350-80-310.
- (4) On parcels in Small Woodland, a land division creating parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" [Commission Rule 350-80-150(1)]. If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40 or 80 acres, this provision will apply to parcels 80 acres or larger or 160 acres or larger, respectively.
- (s) New cultivation, subject to compliance with Commission Rule 350-80-540, 350-80-560, 350-80-570, 350-80-580 and 350-80-590.

(t) Life Estates on lands designated Large or Small Woodland, pursuant to Commission Rule 350-80-320.

(2) The following uses may be allowed on lands designated SMA-Forest subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620). The use or development will be sited to minimize the loss of land suitable for the production of forest products:

(a) Any use listed in Commission Rule 350-80-190(2).

(b) Forest practices in accordance with a site plan for forest practices approved by the Oregon Department of Forestry or Washington Department of Natural Resources, or other designated forest practices review agency, including the following:

(A) The following information, in addition to the site plan requirements of Commission Rule 350-80-080, shall be included on the site plan:

(i) Boundary of proposed commercial forest practice.

(ii) Location of proposed rock or aggregate sources.

(iii) Timber types.

(iv) Harvest units.

(v) Silvicultural prescriptions.

(vi) Road and structure construction and/or reconstruction design.

(vii) Major skid trails, landings, and yarding corridors.

(viii) Commercial firewood cutting areas.

(ix) Existing and proposed rock pit development plans.

(x) Protection measures for scenic, cultural, natural, and recreation resources, such as road closures.

(B) A discussion of slash disposal methods.

- (C) A reforestation plan as reviewed by the appropriate state forest practices agency.
- (c) Railroad and road construction or reconstruction.
- (d) Exploration, development, and production of sand, gravel, or crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products in the Special Management Area.
- (e) Silvicultural nurseries.
- (f) Utility facilities for public service upon a finding that:
 - (A) There is no alternative location with less adverse effect on Forest Land, and
 - (B) The size is the minimum necessary to provide the service.
- (g) Structures or vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.
- (h) Fish hatcheries and aquaculture facilities.
- (i) Public recreation, commercial recreation, interpretive and educational developments and uses consistent with Commission Rule 350-80-620.
- (j) One dwelling on a parcel of 40 contiguous acres or larger if an approved Forest Management Plan demonstrates that such dwelling is necessary for and accessory to forest uses. The Forest Management Plan shall demonstrate the following:
 - (A) The dwelling will contribute substantially to the growing, propagation, and harvesting of trees. The principal purpose for allowing a dwelling on forest lands is to enable the resident to conduct efficient and effective management. This requirement shall indicate a relationship between ongoing forest management and the need for dwelling on the subject property.
 - (B) The subject parcel has been enrolled in the state's forest assessment program.

- (C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the Development Review Officer. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor, and expenses; and how the dwelling will contribute towards the successful management of the property.
- (D) There are no other dwellings on the parcel that are vacant or currently occupied by persons not engaged in forest management of the subject parcel.
- (E) The dwelling complies with all applicable building code and fire protection guidelines.
- (F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operations are entitled to carry on accepted agricultural or forest practices.

(k) Accessory structures over 60 square feet.

(l) Home occupations and cottage industries pursuant to Commission Rule 350-80-150(4).

(m) Temporary portable facility for the processing of forest products.

(n) Towers and fire stations for forest fire protection.

(o) Community facilities and nonprofit facilities related to forest resource management.

(p) Expansion of existing nonprofit group camps, retreats, or conference or education centers, necessary for the successful operation of the facility on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(q) Signs as specified in Commission Rule 350-80-160(2).

350-80-280. Review Uses with Additional Approval Criteria -- Commercial Forest Land, or Large or Small Woodland Designations.

The following uses may be allowed on lands designated Commercial Forest Land, or Large or Small Woodland, subject to compliance with the appropriate scenic, cultural, natural, or recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620) and Commission Rule 350-80-290:

(1) Utility facilities and railroads necessary for public service upon a showing that (a) there is no practicable alternative location with less adverse effect on agricultural and forest lands and on scenic, cultural, natural and recreation resources and (b) the size is the minimum necessary to provide the service.

(2) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in Commission Rule 350-80-150(4).

(3) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(4) Wineries, in conjunction with onsite viticulture, upon a showing that processing and sales of wine is from grapes grown on the subject farm or in the local region.

(5) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(6) Exploration, development, and production of mineral and geothermal resources, subject to Commission Rule 350-80-520 through 350-80-530.

(7) Aquaculture.

(8) Boarding of horses.

(9) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.

(10) Expansion of existing nonprofit group camps, retreats, or conference centers.

(11) Bed and breakfast inns in single-family dwellings, subject to Commission Rule 350-80-150(5) and provided that the residence:

- (a) Is included in the National Register of Historic Places, or
 - (b) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or
 - (c) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.
- (12) Nonprofit, environmental learning or research facilities.

350-80-290. Approval Criteria for Specified Review Uses on Lands Designated Commercial Forest Land or Large or Small Woodland.

Uses identified in Commission Rule 350-80-280 may be allowed only if they meet the following criteria:

- (1) The owners of land designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture and that lies within 500 feet of the perimeter of the subject parcel have been notified of the land use application and have been given at least 10 days to comment prior to a final decision;
- (2) The use will not interfere seriously with accepted forest or agricultural practices on nearby lands devoted to resource use;
- (3) The use will be sited in a way that minimizes the loss of forest or agricultural land and minimizes the chance of interference with accepted forest or agricultural practices on nearby lands; and
- (4) The use will not significantly increase fire hazard, fire suppression costs or risks to fire suppression personnel and will comply with Commission Rule 350-80-300.

350-80-300. Approval Criteria for Fire Protection in Forest Designations.

All uses, as specified, shall comply with the following fire safety guidelines:

- (1) All buildings shall be surrounded by a maintained fuel break of 50 feet. Hazardous fuels shall be removed within the fuel break area. Irrigated or fire resistant vegetation may be planted within the fuel break. This could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced greater than 15 feet between the

crowns and pruned to remove dead and low (less than 8 feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees.

(2) Buildings with plumbed water systems shall install at least one standpipe a minimum of 50 feet from the structure(s).

(3) A pond, stream, tank or sump with storage of not less than 1,000 gallons, or a well or water system capable of delivering 20 gallons per minute shall be provided. If a well pump is located on-site, the electrical service shall be separate from the dwelling.

(4) Access drives shall be constructed to a minimum of 12 feet in width and not exceed a grade of 12 percent. Turnouts shall be provided at a minimum of every 500 feet. Access drives shall be maintained to a level that is passable to fire equipment. Variances to road guidelines may be made only after consultation with the local rural fire district, and the Washington Department of Natural Resources in Washington, or the Oregon Department of Forestry in Oregon.

(5) Within one year of the occupancy of a dwelling, the Development Review Officer shall conduct a review of the development to assure compliance with these guidelines.

(6) Telephone and power supply systems shall be underground whenever possible.

(7) Roofs of structures should be constructed of fire-resistant materials such as metal, fiberglass shingle or tile. Roof materials such as cedar shake and shingle should not be used.

(8) Any chimney or stovepipe on any structure for use with a woodstove or fireplace should be screened with no coarser than 1/4 inch mesh metal screen that is noncombustible and corrosion resistant and should be equipped with a spark arrestor.

(9) All structural projections such as balconies, decks and roof gables should be built with fire resistant materials equivalent to that specified in the Uniform Building Code.

(10) Attic openings, soffit vents, foundation louvers or other ventilation openings on dwellings and accessory structures should be screened with no coarser than 1/4 inch mesh metal screen that is noncombustible and corrosion resistant.

350-80-310. Approval Criteria for Siting of Dwellings on Forest Land.

The approval of new dwellings and accessory structures on forest lands shall comply with the following guidelines:

(1) The dwelling and structures shall be sited on the parcel so that they will have the least impact on nearby or adjoining forest operations. Dwellings shall be set back at least 200 feet from adjacent properties. Clustering or locating proposed development closer to existing development on adjacent lands may minimize impacts on nearby or adjacent forest operations.

(2) The amount of forest land used to site dwellings, structures, access roads, and service corridors shall be minimized. This can include locating new dwellings and structures as close to existing public roads as possible, thereby minimizing the length of access roads and utility corridors; or locating the dwelling, access road, and service corridors on portions of the parcel that are least or poorly suited for forestry. Areas may not be suitable for forestry because of existing nonforest uses, adjacent dwellings, or land productivity.

(3) Dwellings shall be located to minimize the risks associated with fire. Dwellings should be located on gentle slopes and in any case not on slopes which exceed 40 percent. Narrow canyons and draws should be avoided. Dwellings should be located to minimize the difficulty in gaining access to the structure in the case of fire. Dwellings should be located to make the access roads as short and flat as possible.

(4) A variance to the siting guidelines of this rule may be granted pursuant to the provisions of Commission Rule 350-80-150(7).

350-80-320. Approval Criteria for Life Estates in Commercial Forest Land or Small or Large Woodland.

A landowner who sells or otherwise transfers real property on lands designated Commercial Forest Land or Large or Small Woodland may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel. A second dwelling unit on lands designated Commercial Forest Land or Large or Small Woodland may be allowed, subject to compliance with the guidelines in Commission Rule 350-80-520 through 350-80-620 for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

(1) The proposed dwelling is in conjunction with agricultural use, using guideline 350-80-190(1)(e).

(2) On lands designated Large Woodland, the dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The proposed dwelling shall comply with guideline 350-80-270(1)(a).

(3) On lands designated Small Woodland, the proposed dwelling complies with guideline 350-80-270(1)(b).

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

350-80-330. Open Space Designations.

Commission Rule 350-80-330 through 350-80-340 shall apply to those areas designated GMA-Open Space and SMA-Open Space on the Scenic Area Land Use Designation Map.

350-80-340. Review Uses -- Open Space.

(1) The following uses may be allowed on all lands designated GMA-Open Space subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

- (a) Low intensity recreation, subject to Commission Rule 350-80-610(2).
- (b) Land divisions to facilitate efforts to protect and enhance scenic, cultural, natural or recreation resources.
- (c) Repair, maintenance, operation and improvement of existing structures, trails, roads, railroads, utility facilities and hydroelectric facilities.
- (d) Removal of timber, rocks or other materials for purposes of public safety and placement of structures for public safety.

(2) The following uses may be allowed on land designated GMA-Open Space in the Gorge Walls, Canyonlands and Wildlands landscape setting:

- (a) All uses listed in Commission Rule 350-80-340(1).
- (b) Livestock grazing.
- (c) Fish and wildlife management uses conducted by federal, state or tribal resource agencies.
- (d) Soil, water or vegetation uses performed in accordance with a conservation plan approved by a county conservation district.
- (e) Harvesting of wild crops.
- (f) Educational or scientific research.

- (g) Continued operation of existing quarries if they are determined to be consistent with guidelines to protect scenic, cultural, natural and recreation resources (Commission Rule 350-80-520 through 350-80-620).

(5) The following uses may be allowed on land designated GMA-Open Space within the Mosley Lakes Natural Area:

- (a) All those uses allowed in Commission Rule 350-80-340(1).
- (b) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.
- (c) Educational or scientific research, after consultation with the Washington Natural Heritage Program.
- (d) Commercial trapping.

(4) The following uses may be allowed on land designated GMA-Open Space within the Chenoweth Table Natural Area:

- (a) All those uses allowed in Commission Rule 350-80-340(1).
- (b) Low-intensity recreation, subject to the guidelines for recreation intensity classes 350-80-610(2), after consultation with the Oregon Natural Heritage Program.
- (c) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Oregon Natural Heritage Program.
- (d) Educational or scientific research, after consultation with the Oregon Natural Heritage Program.

(5) The following uses may be allowed on land designated GMA-Open Space within the Squally Point Natural Area:

- (a) Except as limited by guideline (5)(b) below, all those uses allowed in Commission Rule 350-80-340(1).

- (b) Except in the upland dunes south of the railroad tracks, low-intensity recreation, subject to the guidelines for recreation intensity classes 350-80-610(2), after consultation with the Oregon Natural Heritage Program.
- (c) Repair and maintenance of railroads, except measures to stabilize dunes, after consultation with the Oregon Natural Heritage Program.

(6) The following uses may be allowed on land designated GMA-Open Space within the Klickitat River Wildlife and Natural Area:

- (a) All those uses allowed in Commission Rule 350-80-340(1).
- (b) Low-intensity recreation, subject to the guidelines for recreation intensity classes 350-80-610(2), after consultation with the Washington Natural Heritage Program and Washington Department of Wildlife.
- (c) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.
- (d) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(7) The following uses are allowed on land designated GMA-Open Space within the Balch Lake Wetland Area:

- (a) All those uses allowed in Commission Rule 350-80-340(1).
- (b) Livestock grazing, subject to a range conservation plan, after consultation with the Washington Department of Wildlife.
- (c) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.
- (d) Educational and scientific research, after consultation with the Washington Department of Wildlife.
- (e) Low-intensity recreation, subject to the guidelines for recreation intensity classes 350-80-610(2), after consultation with the Washington Department of Wildlife.

(8) The following uses may be allowed on lands designated GMA-Open Space within the mouth of the Wind River Wildlife Area:

- (a) All those uses allowed in Commission Rule 350-80-340(1).
- (b) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.
- (c) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.
- (d) Harvesting of wild crops.
- (e) Educational or scientific research, after consultation with the Washington Department of Wildlife or Fisheries.
- (f) Commercial fishing and trapping.
- (g) Low-intensity recreation, subject to the guidelines for recreation intensity classes 350-80-610(2), after consultation with the Washington Department of Wildlife.

(9) The following uses may be allowed on lands designated GMA-Open Space within state parks:

- (a) All uses listed in Commission Rule 350-80-340(1).
- (b) Fish and wildlife management uses conducted by federal, state or tribal resource agencies.
- (c) Soil, water or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.
- (d) Harvesting of wild crops.
- (e) Educational or scientific research.

(10) On land designated SMA-Open Space, the maintenance, repair, and operation of existing dwellings, structures, trails, roads, railroads, and utility facilities may occur without review.

(11) The following uses may be allowed on lands designated SMA-Open Space, subject to compliance with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620) and when consistent with an open space plan approved by the U.S. Forest Service pursuant to guideline (12) below:

- (a) Changes in existing uses including reconstruction, replacement, and expansion of existing structures and transportation facilities, except for commercial forest practices.
- (b) Structures or vegetation management activities, including scientific research, related to scenic, cultural, recreational, and natural resource enhancement projects.
- (c) Low intensity recreation uses, including educational and interpretive facilities, consistent with Commission Rule 350-80-620.
- (d) Utility facilities for public service upon a showing that:
 - (A) There is no alternative location with less adverse effect on Open Space land.
 - (B) The size is the minimum necessary to provide the service.
- (e) New signs, pursuant to Commission Rule 350-80-160.

(12) An Open Space plan shall be completed by the primary managing agency or landowner prior to any new land uses or development, and shall be reviewed by the Forest Service. The Open Space plan shall include the following:

- (a) Direction for resource protection, enhancement, and management.
- (b) Review of existing uses to determine compatibility with Open Space values.
- (c) Consultation with members of the public and with agency and resource specialists.

350-80-350. Residential Land Designations.

Commission Rule 350-80-350 through 350-80-390 shall apply to those areas designated Residential on the Scenic Area Land Use Designation Map.

350-80-360. Uses Allowed Outright -- Residential Land.

(1) The following uses are allowed on lands in the General Management Area designated Residential without review:

- (a) Agricultural use, except new cultivation.
- (b) Forest practices that do not violate conditions of approval for other approved uses.
- (c) Repair, maintenance and operation of existing structures, trails, roads, railroads and utility facilities.
- (d) Buildings less than 60 square feet in area and not exceeding 18 feet in height measured at the roof peak, which are accessory to a dwelling.

(2) The following uses are allowed on land in the Special Management Area designated Residential without review:

- (a) Agricultural uses except where there would be potential impact to cultural or natural resources.
- (b) Maintenance, repair, and operation of dwellings, signs, structures, existing trails, roads, railroads, and utility facilities.
- (c) Accessory structures of less than 60 square feet in area and 18 feet in height measured at the roof peak.

350-80-370. Review Uses -- Residential Land.

(1) The following uses may be allowed on lands in the General Management Area designated Residential, subject to compliance with the scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

- (a) One single-family dwelling per legally created parcel.
 - (A) If the subject parcel is located adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land or Large or Small Woodland, the use shall comply with the buffer and notification requirements of Commission Rule 350-80-150(2), 350-80-310(1), and the notification requirements of Commission Rules 350-80-190(1)(n)(E) and 350-80-290(1); and
 - (B) If the subject parcel is located adjacent to lands designated Commercial Forest Land or Large or Small Woodland, the placement of a dwelling

shall also comply with the fire protection guidelines of Commission Rule 350-80-300.

- (b) Buildings exceeding 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, subject to Commission Rule 350-80-150(3).
- (d) Construction or reconstruction of roads.
- (e) On parcels 10 acres or larger designated Residential-5, or 20 acres or larger designated Residential-10, a land division creating new parcels smaller than the designated minimum parcel size, subject to the provisions of Commission Rule 350-80-150(1).
- (f) New cultivation, subject to compliance with Commission Rule 350-80-540 and 350-80-660 through 350-80-590.
- (g) Land divisions, subject to the minimum lot size as indicated on the Land Use Designation Map.

(2) The following uses may be allowed on lands in the Special Management Area designated Residential subject to compliance with the scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

- (a) One single-family dwelling per legally created lot or consolidated parcel, subject to the guidelines of Commission Rule 350-80-270(2)(j)(E).
- (b) Accessory structures over 60 square feet.
- (c) New utility facilities.
- (d) Fire stations.
- (e) Home occupations and cottage industries pursuant to Commission Rule 350-80-150(4).
- (f) Bed and breakfast inns in structures that are included in, or eligible for inclusion in, the National Register of Historic Places, pursuant to 350-80-150(5).

- (g) Community parks and playgrounds.
- (h) Road and railroad construction and reconstruction.
- (i) Forest practices, pursuant to the provisions of Commission Rule 350-80-270(2).
- (j) Signs, as specified in Commission Rule 350-80-160.

350-80-380. Review Uses with Additional Approval Criteria -- Residential Land.

The following uses may be allowed on lands in the General Management Area designated Residential subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and Commission Rule 350-80-390:

- (1) Accredited child care centers on land designated 1-acre Residential or 2-acre Residential. A child care center may be allowed in other Residential designations within an existing church or community building.
- (2) Schools within an existing church or community building.
- (3) Utility facilities and railroads.
- (4) Home occupations and cottage industries pursuant to Commission Rule 350-80-150(4).
- (5) Fire stations.
- (6) Recreation development, subject to compliance with Commission Rule 350-80-610.
- (7) Community parks and playgrounds, consistent with the guidelines of the National Park and Recreation Society regarding the need for such facilities.
- (8) Bed and breakfast inns in single-family dwellings located on lands designated Residential-5 or Residential-10, pursuant to 350-80-150(5).

350-80-390. Approval Criteria for Specified Review Uses on Lands Designated Residential.

The uses identified in Commission Rule 350-80-390 may be allowed only if they meet all of the following:

(1) The proposed use will be compatible with the surrounding area. Review of compatibility shall include impacts associated with the visual character of the area, traffic generation, and noise, dust and odors.

(2) The proposed use will not require public services other than those existing or approved for the area.

(3) If the subject parcel is located within 500 feet of lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, new buildings associated with the proposed use shall comply with Commission Rule 350-80-150(2).

(4) If the subject parcel is located within 500 feet of lands designated Commercial Forest Land or Large or Small Woodland, new buildings associated with the proposed use shall comply with Commission Rule 350-80-300.

350-80-400. Rural Center.

Commission Rule 350-80-400 through 350-80-420 shall apply to those areas designated Rural Center on the Scenic Area Land Use Designation Map.

350-80-410. Uses Allowed Outright -- Rural Center.

The following uses are allowed on lands designated Rural Center without review:

(1) Agricultural use, except new cultivation.

(2) Forest practices that do not violate conditions of approval for other approved uses.

(3) Repair, maintenance and operation of existing structures, trails, roads, railroads and utility facilities.

(4) Buildings less than 60 square feet in area and not exceeding 18 feet in height measured at the roof peak, which are accessory to a dwelling.

350-80-420. Review Uses -- Rural Center.

The following uses may be allowed on lands designated Rural Center subject to compliance with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

- (1) One single-family dwelling per legally created parcel.
- (2) 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.
- (3) The temporary use of a mobile home in the case of a family hardship, pursuant to Commission Rule 350-80-150(3).
- (4) Duplexes.
- (5) Fire stations.
- (6) Libraries.
- (7) Government buildings.
- (8) Community centers and meeting halls.
- (9) Schools.
- (10) Accredited child care centers.
- (18) Rural service commercial and tourist commercial uses limited to 5,000 square feet of floor area per building or use.
 - (a) Grocery stores.
 - (b) Variety and hardware stores.
 - (c) Shops, offices and repair shops.
 - (d) Personal services such as barber and beauty shops.
 - (e) Travelers accommodations, bed and breakfast inns.

- (f) Restaurants.
- (g) Taverns and bars.
- (h) Gas stations.
- (i) Gift shops.

(12) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to Commission Rule 350-80-150(4).

(13) Utility facilities and railroads.

(14) Recreation development, subject to Commission Rule 350-80-610.

(15) Places of worship.

(16) New cultivation, subject to compliance with Commission Rule 350-80-540, 350-80-560, 350-80-570, 350-80-580 and 350-80-590.

(17) Land divisions subject to Commission rule 350-80-150(1).

(18) Planned developments incorporating features such as consolidated access and commonly shared open areas.

350-80-430. Commercial Land.

Commission Rule 350-80-430 through 350-80-360 shall apply to those areas designated Commercial on the Scenic Area Land Use Designation Map.

350-80-440. Uses Allowed Outright -- Commercial Land.

The following uses are allowed on lands designated Commercial without review:

- (1) Agricultural use, except new cultivation.
- (2) Forest practices that do not violate conditions of approval for other approved uses.
- (3) Repair, maintenance and operation of existing structures, trails, roads, railroads and utility facilities.

(4) Buildings less than 60 square feet in area and not exceeding 18 feet in height measured at the roof peak, which are accessory to a dwelling.

350-80-450. Review Uses with Additional Approval Criteria -- Commercial Land.

The following uses may be allowed on lands designated Commercial, subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and Commission Rule 350-80-460:

- (1) Travelers accommodations, bed and breakfast inns subject to Commission Rule 350-80-150(5).
- (2) Restaurants.
- (3) Gift shops.
- (4) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to Commission Rule 350-80-150(4).
- (5) One single-family dwelling per legally created parcel.
- (6) Utility facilities and railroads.

350-80-460. Approval Criteria for Review Uses on Lands Designated Commercial.

The uses identified in Commission Rule 350-80-450 may be allowed only if they meet both of the following criteria:

- (1) The proposal is limited to 5,000 square feet of floor area per building or use.
- (2) The proposed use would be compatible with the surrounding areas, including review for impacts associated with the visual character of the area, traffic generation and noise, dust and odors.

350-80-470. Recreation.

Commission Rule 350-80-470 through 350-80-510 shall apply to those areas designated Public Recreation and Commercial Recreation on the Scenic Area Land Use Designation Map.

350-80-480. Uses Allowed Outright -- Public Recreation and Commercial Recreation.

(1) The following uses are allowed on lands in the General Management Area designated Public Recreation and Commercial Recreation without review:

- (a) Forest practices that do not violate conditions of approval for other approved development.
- (b) Repair, maintenance and operation of existing structures, trails, roads, railroads, and utility facilities.
- (c) Agricultural uses, except for new cultivation.

(2) The following uses are allowed on lands in the Special Management Area designated Public Recreation without review:

- (a) Agricultural use, except where there would be potential impact to cultural or natural resources.
- (b) Maintenance, repair, and operation of existing dwellings, structures, trails, roads, railroads, utility facilities, and public recreation facilities.
- (c) Accessory structures less than 60 square feet in area and 18 feet in height measured at the roof peak.

350-80-490. Review Uses -- Public Recreation and Commercial Recreation.

(1) The following uses are allowed on all lands in the General Management Area designated Public Recreation:

- (a) The following uses may be allowed on lands in the General Management Area designated Public Recreation, subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and where applicable Commission Rule 350-80-610(5)(a) and (c) through (g):
 - (A) Publicly-owned, resource-based recreation uses consistent with Commission Rule 350-80-610.

- (B) Commercial uses and non-resource based recreation uses that are part of an existing or approved, resource-based public recreation use consistent with guidelines contained in this section.
- (C) New cultivation, subject to compliance with Commission Rule 350-80-540 and 350-80-560 through 350-80-590.

(b) The following uses may be allowed on lands in the General Management Area designated Public Recreation, subject to compliance with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and Commission Rule 350-80-500:

- (A) Residences and accessory structures, limited to one single-family dwelling for each parcel legally created prior to adoption of the Management Plan. Exceptions may be considered only upon demonstration that more than one residence is necessary for management of a public park.
- (B) Agricultural buildings.
- (C) Utility transmission, transportation, communication and public works facilities.

(c) Land divisions, subject to compliance with Commission Rule 350-80-500(3).

(2) The following uses are allowed on all lands in the General Management Area designated Commercial Recreation:

(a) The following uses may be allowed on lands in the General Management Area designated Commercial Recreation, subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and where applicable Commission Rule 350-80-610(5)(a) and (c) through (g):

- (A) Commercially-owned, resource-based recreation uses consistent with Commission Rule 350-80-610.
- (B) Overnight accommodations that are part of a commercially-owned resource-based recreation use, where such resource-based recreation use occurs on the subject site or is accessed through the site on adjacent lands, and which meet the following guidelines:

- (i) Buildings containing individual units are no larger than 1,500 square feet in total floor area and no higher than two and one-half stories.
 - (ii) Buildings containing more than one unit are no larger than 5,000 square feet in total floor area and no higher than two and one-half stories.
 - (iii) The total number of individual units shall not exceed 25, unless the proposed development complies with guidelines for clustered accommodations in subsection (iv) below
 - (iv) Clustered overnight travelers accommodations meeting the following guidelines may include up to 35 individual units:
 - (I) Average total floor area of all units is 1,000 square feet or less per unit;
 - (II) A minimum of 50 percent of the project site is dedicated to undeveloped, open areas (not including roads or parking areas);
 - (III) The facility is in an area classified for high intensity recreation (Recreation Intensity Class 4).
 - (C) Commercial uses, including restaurants sized to accommodate overnight visitors and their guests, and nonresource-based recreation uses which are part of an existing or approved resource-based commercial recreation use consistent with the guidelines contained in this section.
 - (D) New cultivation, subject to compliance with Commission Rule 350-80-540 and 350-80-560 through 350-80-590.
- (b) The following uses may be allowed, subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and Commission Rule 350-80-510:
- (A) Residences and accessory structures limited to one single-family dwelling for each lot or parcel legally created prior to adoption of the Management Plan.

(B) Agricultural buildings.

(C) Utility transmission, transportation and communication facilities.

(c) Land divisions, subject to compliance with Commission Rule 350-80-510(3).

(3) The following uses are allowed on lands in the Special Management Area designated Public Recreation subject to compliance with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

(a) Forest uses and practices as allowed in Commission Rule 350-80-270(2).

(b) Public trails, consistent with Commission Rule 350-80-620.

(c) Public recreational facilities, consistent with Commission Rule 350-80-620.

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

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

(f) Home occupations and cottage industries, pursuant to Commission Rule 350-80-150(4).

(g) Road and railroad construction and reconstruction.

(h) 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.

(i) New signs pursuant to 350-80-160(2).

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

(k) Agricultural uses as allowed in Commission Rule 350-80-190(2).

(4) New commercial recreation facilities shall be allowed in Forest Land and

Agricultural Land use designations, consistent with the guidelines established for the recreation intensity classes Commission Rule 350-80-620.

350-80-500. Approval Criteria for Non-Recreation Uses in Public Recreation Designations.

The uses identified in Commission Rule 350-80-490(1)(b) may be allowed only if they meet the following criteria:

(1) The proposed use will not interfere with existing or approved public recreation uses on the subject property or adjacent lands. Mitigation measures to comply with this criterion may include onsite buffers, seasonal or temporary closures during peak recreation use periods, etc.

(2) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structure and other improvements may be used to comply with this criterion.

(3) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance or otherwise improve recreational uses on the site.

350-80-510. Approval Criteria for Non-Recreation Uses in Commercial Recreation Designations.

The uses identified in Commission Rule 350-80-490(2)(b) may be allowed only if they meet the following criteria:

(1) The proposed use will not interfere with existing or approved commercial recreation uses on the subject property or adjacent lands. Mitigation measures to comply with this criterion may include onsite buffers, seasonal or temporary closures during peak recreation use periods, etc.

(2) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structure and other improvements may be used to comply with this criterion.

(3) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance or otherwise improve recreational uses on the site.

350-80-520. General Management Area Scenic Review Criteria.

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

- (1) All Review Uses:
 - (a) New buildings and roads shall be sited and designed to retain the existing topography and reduce necessary grading to the maximum extent practicable.
 - (b) New buildings shall be generally consistent with the height and size of existing nearby development.
 - (c) Project applicants shall be responsible for the proper maintenance and survival of any planted vegetation required by the guidelines in Commission Rule 350-80-520.
 - (d) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.
 - (e) For all new production and/or development of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance which blends with and emulates surrounding landforms to the maximum extent practicable.

Such a plan shall be approved by the appropriate state agency for uses under their jurisdiction, or approved by the Development Review Officer with technical assistance from applicable state agencies for uses not under state agency jurisdiction. At a minimum, such reclamation plans shall include:

- (A) A map of the site, at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail, with 10 foot contour intervals or less, showing pre-mining existing grades and post-mining final grades; locations of topsoil stockpiles for eventual reclamation use; location of catch-basins or similar drainage and erosion control features employed for the duration of the use; and the location of storage, processing and equipment areas employed for the duration of the use.
- (B) Cross-sectional drawings of the site showing pre-mining and post-mining grades.

- (C) Descriptions of the proposed use, in terms of estimated quantity and type of material removed, estimated duration of the use, processing activities, etc.
- (D) Description of drainage/erosion control features to be employed for the duration of the use.
- (E) A landscaping plan providing for revegetation consistent with the vegetation patterns of the subject landscape setting, indicating the species, number, size and location of plantings for the final reclaimed grade, as well as a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(2) All Review Uses visible from Key Viewing Areas shall comply with the following applicable guidelines:

- (a) Size, height, shape, color, reflectivity, landscaping, siting or other aspects of proposed development shall be evaluated to ensure that such development is visually subordinate to its setting as seen from Key Viewing Areas.
- (b) The extent and type of conditions applied to a proposed development to achieve visual subordination should be proportionate to its potential visual impacts as seen from Key Viewing Areas. Primary factors influencing the degree of potential visual impact include: the amount of area of the building site exposed to Key Viewing Areas, the degree of existing vegetation providing screening, the distance from the building site to the Key Viewing Areas from which it is visible, the number of Key Viewing Areas from which it is visible, and the linear distance along the Key Viewing Areas from which the building site is visible (for linear Key Viewing Areas, such as roads). Written reports on determination of visual subordination and final conditions of approval shall include findings addressing each of these factors.
- (c) Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.
- (d) For all buildings, roads or mining and associated activities proposed on lands visible from Key Viewing Areas, the following supplemental site plan information shall be submitted in addition to the site plan requirements in Commission Rule 350-80-080 and 350-80-520(1)(e) for mining and associated activities:

- (A) For buildings, a description of the proposed building(s)' height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used, number, size, locations of plantings, and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes).
 - (B) Elevation drawings showing the appearance of proposed building(s) when built and surrounding final ground grades, for all buildings over 400 square feet in area.
- (e) For proposed mining and associated activities on lands visible from Key Viewing Areas, in addition to submittal of plans and information pursuant to Commission Rule 350-80-520(1)(e) and subsection (d) above, project applicants shall submit perspective drawings of the proposed mining areas as seen from applicable Key Viewing Areas.
 - (f) New buildings or roads shall be sited on portions of the subject property which minimize visibility from Key Viewing Areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, sensitive wildlife sites or conflict with the protection of cultural resources. In such situations, development shall comply with this guideline to the maximum extent practicable.
 - (g) In siting new buildings and roads, use of existing topography and vegetation to screen such development from Key Viewing Areas shall be give priority over other means of achieving visual subordinance, such as planting of new vegetation or use of artificial berms to screen the development from Key Viewing Areas.
 - (h) Driveways and buildings shall be designed and sited to minimize grading activities and visibility of cut banks and fill slopes from Key Viewing Areas.
 - (i) The exterior of buildings on lands seen from Key Viewing Areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all Key Viewing Areas by existing topographic features.
 - (j) Exterior lighting shall be directed downward and sited, hooded and shielded such that it is not highly visible from Key Viewing Areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

- (k) Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of colors specified in the design guidelines for the subject property's landscape setting.
- (l) Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordination requirements for lands seen from Key Viewing Areas. To be eligible for such exemption, the structure must be included in, or eligible for inclusion in, the National Register of Historic Places or be in the process of applying for a determination of significance pursuant to such regulations. Rehabilitation of or modifications to structures meeting this guideline shall be consistent with National Park Service regulations for such structures.
- (m) The silhouette of new buildings shall remain below the skyline of a bluff, cliff or ridge as seen from Key Viewing Areas. Variances to this guideline may be granted if application of the guideline would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use, and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the guideline have been made.
- (n) An alteration to a building built prior to November 17, 1986, which already protrudes above the skyline of a bluff, cliff or ridge as seen from a Key Viewing Area, may itself protrude above the skyline if:
- (A) The altered building, through use of color, landscaping and/or other mitigation measures, contrasts less with its setting than before the alteration; and
 - (B) There is no practicable alternative means of altering the building without increasing the protrusion.
- (o) New main lines on lands visible from Key Viewing Areas for the transmission of electricity, gas, oil, other fuels, or communications, except for connections to individual users or small clusters of individual users, shall be built in existing transmission corridors unless it can be demonstrated that use of existing corridors is not practicable. Such new lines shall be underground as a first preference unless it can be demonstrated to be impracticable.
- (p) New communication facilities (antennae, dishes, etc.) on lands visible from Key Viewing Areas, which require an open and unobstructed site shall be built upon

existing facilities unless it can be demonstrated that use of existing facilities is not practicable.

- (q) New communications facilities may protrude above a skyline visible from a Key Viewing Area only upon demonstration that:
 - (A) The facility is necessary for public service;
 - (B) The break in the skyline is seen only in the background; and
 - (C) The break in the skyline is the minimum necessary to provide the service.
- (r) Overpasses, safety and directional signs and other road and highway facilities may protrude above a skyline visible from a Key Viewing Area only upon a demonstration that:
 - (A) The facility is necessary for public service; and
 - (B) The break in the skyline is the minimum necessary to provide the service.
- (s) Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to the setback may be authorized.
- (t) New buildings shall not be permitted on lands visible from Key Viewing Areas with slopes in excess of 30 percent. A variance may be authorized if the property would be rendered unbuildable through the application of this guideline. In determining the slope, the average percent slope of the proposed building site shall be used.
- (u) All proposed structural development involving more than 100 cubic yards of grading on sites visible from Key Viewing Areas and which slope between 10 and 30 percent shall include submittal of a grading plan. This plan shall be reviewed by the Development Review Officer for compliance with Key Viewing Area policies. The grading plan shall include the following:

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

(i) Existing and proposed final grades;

(ii) Location of all areas to be graded, with cut banks and fill slopes delineated; and

(iii) Estimated dimensions of graded areas.

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

(i) Its purpose;

(ii) An estimate of the total volume of material to be moved;

(iii) The height of all cut banks and fill slopes;

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

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

(vi) A description of any other interim or permanent erosion control measures to be utilized.

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

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

- (B) The area to be mined and the area to be used for primary processing, equipment storage, stockpiling, etc. associated with the use would be visually subordinate as seen from any Key Viewing Areas.
- (C) A reclamation plan to restore the site to a natural appearance which blends with and emulates surrounding landforms to the maximum extent practicable has been approved. The plan shall be approved by the applicable state agency with jurisdiction, or approved by the Development Review Officer with technical assistance from applicable state agencies for uses not under state agency jurisdiction. At minimum, the reclamation plan shall comply with Commission Rule 350-80-520(1)(e).
- (D) A written report on a determination of visual subordination has been completed, with findings addressing the extent of visibility of proposed mining activities from Key Viewing Areas, including:
 - (i) A list of Key Viewing Areas from which exposed mining surfaces (and associated facilities/activities) would be visible;
 - (ii) An estimate of the surface area of exposed mining surfaces that would be visible from those Key Viewing Areas;
 - (iii) The distance from those Key Viewing Areas and the linear distance along those Key Viewing Areas from which proposed mining surfaces are visible;
 - (iv) The slope and aspect of mining surfaces relative to those portions of Key Viewing Areas from which they are visible;
 - (v) The degree to which potentially visible mining surfaces are screened from Key Viewing Areas by existing vegetation, including winter screening considerations.
 - (vi) The degree to which potentially visible mining surfaces would be screened by new plantings, berms, etc. and appropriate time frames to achieve such results, including winter screening considerations.

(w) Unless addressed by guideline (v) above, new production and/or development of mineral resources may be allowed upon a demonstration that:

- (A) The site plan requirements for such proposals pursuant to this section have been met;
- (B) The area to be mined and the area used for primary processing, equipment storage, stockpiling, etc. associated with the use would be fully screened from any Key Viewing Area; and
- (C) A reclamation plan to restore the area to a natural appearance which blends with and emulates surrounding landforms to the maximum extent practicable has been approved by the applicable state agency with jurisdiction, or approved by the Development Review Officer with technical assistance from applicable state agencies for uses not under state agency jurisdiction. At minimum, the reclamation plan shall comply with Commission Rule 350-80-520(1)(e).

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

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

(z) Compliance with specific approval conditions to achieve visual subordination (such as landscaped screening), shall occur within a period not to exceed 2 years after the date of development approval. This guideline shall apply to all development regulated by this section except mining and associated uses.

(3) All Review Uses within the following landscape settings shall comply with the following applicable guidelines:

(a) Pastoral

- (A) New development shall be compatible with the general scale (height, dimensions, overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.
- (B) Accessory structures, outbuildings and accessways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures and farm fields.
- (C) In portions of this setting visible from Key Viewing Areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:
 - (i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.
 - (ii) Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.
 - (iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust (primarily in the eastern Gorge).
 - (iv) At least one-quarter of any trees planted for screening shall be coniferous for winter screening.
 - (v) The exteriors of structures shall be dark and either natural or earth-tone colors unless specifically exempted by Commission Rule 350-80-520(2)(k) or (l).
- (D) Compatible recreation uses include resource-based recreation uses of a very low or low-intensity nature (as defined by Commission Rule 350-80-610), occurring infrequently in the landscape.

(b) Coniferous Woodland

- (A) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion

of existing development shall comply with this guideline to the maximum extent practicable.

- (B) Structure height shall remain below the forest canopy level.
- (C) In portions of this setting visible from Key Viewing Areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:
 - (i) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from Key Viewing Areas shall be retained.
 - (ii) At least half of any trees planted for screening purposes shall be species native to the setting. Such species include: Douglas fir, grand fir, western red cedar, western hemlock, big leaf maple, red alder, ponderosa pine and Oregon white oak, and various native willows (for riparian areas).
 - (iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.
 - (iv) The exteriors of structures shall be either natural or earth-tone colors unless specifically exempted by Commission Rule 350-80-520(2)(k) or (l).
- (D) Compatible recreation uses include resource-based recreation uses of varying intensities. Typically, outdoor recreation uses should be low-intensity, and include trails, small picnic areas and scenic viewpoints. Some more intensive recreation uses, such as campgrounds, may occur. They should be scattered, interspersed with large areas of undeveloped land and low-intensity uses.

(c) Oak-Pine Woodland

- (A) New development shall be compatible with the general scale (height, dimensions, and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

- (B) Structure height shall remain below the tree canopy level in wooded portions of this setting.
- (C) In portions of this setting visible from Key Viewing Areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development.
- (i) At least half of any tree species planted for screening purposes shall be species native to the setting. Such species include Oregon white oak, ponderosa pine, and Douglas-fir.
 - (ii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

For substantially wooded portions:

- (iii) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from Key Viewing Areas shall be retained.
- (iv) The exteriors of structures shall be either natural or earth-tone colors, unless specifically exempted pursuant to Commission Rule 350-80-520(2)(k) or (l).

For treeless portions or portions with scattered tree cover:

- (v) Structures shall be sited on portions of the property that provide maximum screening from Key Viewing Areas, using existing topographic features.
- (vi) Patterns of plantings for screening vegetation shall be in character with the surroundings. Residences in grassy, open areas or savannahs shall be partly screened with trees in small groupings and openings between groupings.
- (vii) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(viii) The exteriors of structures shall be dark and either natural or earth-tone colors, unless specifically exempted pursuant to Commission Rule 350-80-520(2)(k) or (l).

(D) Resource-based recreation uses of varying intensities may be compatible with this setting, although most are of low-intensity nature (such as trails or small scenic outlooks). More intensive recreation uses may be compatible where allowed pursuant to Commission Rule 350-80-610, although they are generally rare in this setting. As with Woodland settings, intensive recreation uses in Oak-Pine Woodlands may be compatible if widely scattered and not in large concentrations.

(d) Grassland

(A) New development shall be compatible with the general scale (height, dimensions, and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible. Exceptions to this guideline are permitted where necessary for farming operations.

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

(i) Structures shall be sited on portions of the property that provide maximum screening from Key Viewing Areas, using existing topographic features.

(ii) Lower structures that emphasize horizontal lines and blend with this sweeping landscape should be encouraged rather than very tall structures.

(iii) Planting of trees for screening shall not be extensive, in character with the openness of this setting. Where used, screening vegetation shall either tie in with nearby riparian vegetation in seasonal drainages or emulate windrows. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include

Oregon white oak, Lombardy poplar, black locust, black cottonwood (wet locations), Russian olive and ponderosa pine.

(iv) The exteriors of structures shall be dark and either natural or earth-tone colors, unless specifically exempted pursuant to Commission Rule 350-80-520(2)(k) or (l).

(D) Resource-based recreation uses of a very low-intensity or low-intensity nature that occur infrequently are compatible with this setting, and include hiking, hunting and wildlife viewing.

(e) Rural Residential

(A) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

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

(C) In portions of this setting visible from Key Viewing Areas, and not exempt from visual subordination guidelines (pursuant to the "Developed Settings and Visual Subordination Policies" Section in Part I, Chapter 1 of the Management Plan) the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

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

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

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

- (iv) Structures' exteriors shall be dark and either natural or earth-tone colors unless specifically exempted by Commission Rule 350-80-520(2)(k) or (l).
- (D) Compatible recreation uses should be limited to small community park facilities, but may occasionally include low-intensity resource-based recreation uses (such as small scenic overlooks).
- (f) Rural Residential/Pastoral, Rural Residential/Coniferous Woodland, and Rural Residential/Oak-Pine Woodland
 - (A) New development in this setting shall meet the design guidelines for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral, Coniferous Woodland or Oak-Pine Woodland), unless it can be demonstrated that compliance with the guidelines for the more rural setting is impracticable. Expansion of existing development shall comply with this guideline to the maximum extent practicable.
 - (B) In the event of a possible conflict between the guidelines, the guidelines for the more rural setting (Coniferous Woodland, Oak-Pine Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such guidelines would not be practicable.
 - (C) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.
- (g) Residential
 - (A) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.
 - (B) In portions of this setting visible from Key Viewing Areas and not exempt from visual subordination guidelines (pursuant to the "Developed Settings and Visual Subordination Policies" section of Part I, Chapter 1 of the Management Plan), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

- (i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.
- (ii) Structures' exteriors shall be non-reflective unless fully screened from Key Viewing Areas with existing vegetation and/or topography.
- (iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.
- (iv) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.
- (v) The exteriors of structures shall be dark and either natural or earth-tone colors unless specifically exempted by Commission Rule 350-80-520(2)(k) or (l).

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

(h) Village

- (A) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.
- (B) New commercial buildings shall be limited in size to a total floor area of 5,000 square feet or less, and shall be limited in height to 2 and 1/2 stories or less.
- (C) For new commercial, institutional (churches, schools, government buildings) or multi-family residential uses on parcels fronting a Scenic Travel Corridor (Washington State Route 14 or the Historic Columbia River Highway) and expansion of existing development for such uses, parking shall be limited to rear or side yards of buildings to the maximum extent practicable.
- (D) New vehicular access points to the Scenic Travel Corridors shall be limited to the maximum extent practicable, and access consolidation shall be required where feasible.

- (E) New development proposals and expansion of existing development shall be encouraged to follow planned unit development approaches, featuring consolidated access, commonly-shared landscaped open areas, etc.
- (F) New commercial, institutional or multi-family residential uses fronting a Scenic Travel Corridor shall comply with the following landscape requirements:
 - (i) Parking or loading areas for 10 or more spaces shall include a landscaped strip at least 5 feet in width between the new use and the Scenic Travel Corridor roadway.
 - (ii) The landscape strip required in guideline (F)(i) above shall include shrubs, vegetative ground cover and, at minimum, one tree spaced as appropriate to the species and not to exceed 25 feet apart on the average.
- (G) The use of building materials that reinforce the Village Setting's character, such as wood, logs or stone, and that reflect community desires, should be encouraged.
- (H) Architectural styles characteristic of the area (such as 1 and 1/2 story dormer roof styles in Corbett), and that reflect community desires, should be encouraged. Entry signs should be consistent with such architectural styles.
- (I) Design features which create a "pedestrian friendly" atmosphere, such as large shop windows on the ground floor of commercial buildings, porches along ground floors with street frontage, etc. should be encouraged.
- (J) Pedestrian walkways and bicycle paths should be encouraged and integrated into new developments wherever feasible.
- (K) Where feasible, existing tree cover of species native to the region or commonly found in the area shall be retained when designing new development or expanding existing development.
- (L) Compatible recreation uses may include community parks serving the recreation needs of local residents, and varying intensities of other recreation uses.

(i) River Bottomlands

- (A) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.
- (B) In portions of this setting visible from Key Viewing Areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:
- (i) Except as is necessary for site development or safety purposes, existing tree cover screening the development from Key Viewing Areas shall be retained.
 - (ii) At least half of any trees planted for screening purposes shall be species native to the River Bottomland setting. Public recreation developments are encouraged to maximize the percentage of planted screening vegetation native to this setting. Such species include: black cottonwood, big leaf maple, red alder, Oregon white ash, Douglas fir, western red cedar and western hemlock (west Gorge) and various native willow species.
 - (iii) At least one-quarter of any trees planted for screening purposes shall be coniferous for winter screening.
 - (iv) The exteriors of structures shall be dark and either natural or earth-tone colors unless specifically exempted by Commission Rule 350-80-520(2)(k) or (l).
- (C) Compatible recreation uses depend on the degree of natural resource sensitivity of a particular site. In the most critically sensitive River Bottomlands, very low-intensity uses which do not impair wetlands or special habitat requirements may be compatible.

In other River Bottomland areas, nodes of moderate-intensity and/or high-intensity recreation uses may be compatible, provided that:

- (i) their designs emphasize retention and/or enhancement of native riparian communities,

- (ii) structures and parking areas are visually subordinate, and
- (iii) they are separated from other areas of concentrated recreation usage by stretches of natural-appearing shoreline and adjacent uplands.

(j) Gorge Walls, Canyons and Wildlands

- (A) New development and expansion of existing development shall be screened so it is not seen from Key Viewing Areas, to the maximum extent practicable.
- (B) All trees planted to screen permitted development and uses from Key Viewing Areas shall be native to the area.
- (C) Existing tree cover shall be retained to the maximum extent practicable, except for the minimum removal necessary to accommodate facilities otherwise permitted in the underlying land use designation or for safety purposes.
- (D) All structures shall be limited in height to a maximum of 1 and 1/2 stories.
- (E) All structures' exteriors shall be non-reflective.
- (F) Signage shall be limited to natural materials such as wood or stone, with natural or earth-tone colors, unless public safety concerns or federal or state highway guidelines require otherwise.
- (G) Compatible recreation uses are limited to very low or low-intensity, resource-based activities which focus on enjoyment and appreciation of sensitive resources. Such compatible uses (such as trails) are generally associated with minimal facility development, if any.

(4) All Review Uses within Scenic Travel Corridors shall comply with the following applicable guidelines:

- (a) For the purposes of implementing this section, the foreground of a Scenic Travel Corridor shall include those lands within one-quarter mile of the edge of pavement of the Scenic Travel Corridor roadway.

- (b) All new buildings and alterations to existing buildings, except in a Rural Center designation (village landscape setting), shall be set back at least 100 feet from the edge of pavement of the Scenic Travel Corridor roadway. A variance to this setback requirement may be granted pursuant to Commission Rule 350-80-150(7). All new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the Scenic Travel Corridor roadway, to the maximum extent practicable.
- (c) Additions to existing buildings or expansion of existing parking lots located within 100 feet of the edge of pavement of a Scenic Travel Corridor roadway except in a Rural Center designation (village landscape setting), shall comply with guideline (4)(b) above to the maximum extent practicable.
- (d) All proposed vegetation management projects in public rights-of-way to provide or improve views shall include the following:
- (A) An evaluation of potential visual impacts of the proposed project as seen from any Key Viewing Area;
 - (B) An inventory of any rare plants, sensitive wildlife habitat, wetlands or riparian areas on the project site. If such resources are determined to be present, the project shall comply with applicable guidelines to protect the resources.
- (e) When evaluating possible locations for undergrounding of signal wires or powerlines, railroads and utility companies shall prioritize those areas specifically recommended as extreme or high priorities for undergrounding in the Columbia River Gorge National Scenic Area Corridor Visual Inventory prepared in April, 1990.
- (f) New production and/or development of mineral resources proposed within one-quarter mile of the edge of pavement of a Scenic Travel Corridor may be allowed upon a demonstration that full visual screening of the site from the Scenic Travel Corridor can be achieved by use of existing topographic features or existing vegetation designed to be retained through the planned duration of the proposed project. An exception to this may be granted if planting of new vegetation in the vicinity of the access road to the mining area would achieve full screening. If existing vegetation is partly or fully employed to achieve visual screening, over 75 percent of the tree canopy area shall be coniferous species providing adequate winter screening. Mining and associated primary processing of mineral resources is prohibited within 100 feet of a Scenic Travel Corridor, as

measured from the edge of pavement, except for access roads. Compliance with full screening requirements shall be achieved within time frames specified in Commission Rule 350-80-520(2)(y).

- (g) Expansion of existing quarries may be allowed pursuant to Commission Rule 350-80-520(2)(v). Compliance with visual subordination requirements shall be achieved within time frames specified in Commission Rule 350-80-520(2)(x).

350-80-530. Special Management Area Scenic Review Criteria.

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

- (1) All Review Uses in the Special Management Area regardless of location or landscape setting shall comply with the following applicable guidelines:
 - (a) Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from Key Viewing Areas.
 - (b) Size, scale, shape, color, texture, siting, height, building materials, lighting, or other features of a proposed structure shall be visually subordinate in the landscape and have low contrast in the landscape.
 - (c) Colors shall be used in a manner so that developments are visually subordinate to the natural and cultural patterns in the landscape setting. Colors for structures and signs should be slightly darker than the surrounding background.
 - (d) Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that meeting this guideline is not feasible considering the function of the structure.
 - (e) Proposed developments or land use shall be aligned, designed and sited to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics.
 - (f) Any exterior lighting shall be sited, limited in intensity, shielded or hooded in a manner that prevents lights from being highly visible from Key Viewing Areas

and from noticeably contrasting with the surrounding landscape setting except for road lighting necessary for safety purposes.

- (h) Seasonal lighting displays shall be permitted on a temporary basis, not to exceed three months duration.
- (i) Reflectivity of structures and site improvements shall be minimized.
- (j) Right-of-way vegetation shall be managed to minimize visual impact of clearing and other vegetation removal as seen from Key Viewing Areas. Roadside vegetation management (vista clearing, planting, etc.) should enhance views from the highway.
- (k) Encourage existing and require new road maintenance warehouse and stockpile areas to be screened from view from Key Viewing Areas.

(2) New developments and land uses shall be evaluated to ensure that scenic resources are not adversely affected, including cumulative effects, based on visibility from Key Viewing Areas.

(3) All new developments and land uses immediately adjacent to scenic routes shall be in conformance with state or county scenic route guidelines.

(4) New land uses or developments shall comply with the following applicable design guidelines:

- (a) Pastoral: Pastoral areas shall retain the overall appearance of an agricultural landscape.
 - (A) New developments and forest practices shall meet the Visual Quality Objective of partial retention.
 - (B) The use of plant species common to the landscape setting shall be encouraged. The use of plant species in rows as commonly found in the landscape setting is encouraged.
 - (C) Exterior colors of structures shall be earth-tone colors which will result in low contrast with the surrounding landscape.

- (D) Exterior colors of structures may be white, except for the roof, only in the Mt. Pleasant and Dodson-Warrendale areas where other white structures are evident in the setting.
- (b) Coniferous Woodlands and Oak-Pine Woodland: Woodland areas shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the overall visual character of the natural appearance of the Coniferous and Oak/Pine Woodland landscape.
- (A) New developments and land uses in lands designated Federal Forest or Open Space shall meet the Visual Quality Objective of retention; all other land use designations shall meet the Visual Quality Objective of partial retention as seen from Key Viewing Areas.
 - (B) Forest practices on National Forest lands included in the Mt. Hood National Forest Plans shall meet the Visual Quality Objective identified for those lands in those plans.
 - (C) Buildings in the Coniferous Woodland landscape setting shall be encouraged to have a vertical overall appearance and a horizontal overall appearance in the Oak-Pine Woodland landscape setting.
 - (D) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.
 - (E) The exteriors of structures in the Coniferous Woodland landscape setting shall be dark earth-tone colors which will result in low contrast with the surrounding landscape as seen from the Key Viewing Areas.
 - (F) Exterior colors of structures in Oak-Pine Woodland landscape setting shall be earth-tone colors which will result in low contrast with the surrounding landscape as seen from the Key Viewing Areas.
- (c) Residential: The Residential setting is characterized by concentrations of dwellings.
- (A) New developments and land uses shall meet the Visual Quality Objective of partial retention.

- (B) At Rowena Dell, new buildings shall have a rustic appearance and use natural materials and earth-tone colors.
 - (C) At Latourell Falls, new buildings shall have an appearance consistent with the predominant historical architectural style.
 - (D) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native appearing characteristics.
- (d) River Bottomlands: River bottomland shall retain the overall visual character of a floodplain and associated islands.
- (A) New developments and land uses shall meet the Visual Quality Objective of partial retention, except in areas designated Open Space which shall meet the Visual Quality Objective of retention.
 - (B) Buildings shall have an overall horizontal appearance in areas with little tree cover.
 - (C) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.
 - (D) Exterior colors of structures shall be earth-tone or water-tone colors which will result in low contrast with surrounding landscape.
- (e) Gorge Walls, and Canyonlands and Wildlands: New developments and land uses shall retain the overall visual character of the natural appearing landscape.
- (A) New developments and land uses shall meet the Visual Quality Objective of retention as seen from Key Viewing Areas.
 - (B) Structures, including signs, shall have a rustic appearance, use non-reflective materials, and have low contrast with the surrounding landscape and be of a Cascadian architectural style.
 - (C) Temporary roads shall be promptly closed and revegetated.
 - (D) New utilities shall be below ground surface, where feasible.

- (E) Use of plant species non-native to the Columbia River Gorge shall not be allowed.
 - (F) Exterior colors of structures shall be dark earth tones that will result in the structure having low contrast with the surrounding landscape.
- (5) For forest practices the following guidelines shall apply:
- (a) Forest practices must meet the design guidelines and Visual Quality Objective for the landscape setting designated for the management area.
 - (b) Not more than 16 percent of each total ownership within a viewshed shall be in created openings at any one time. The viewshed boundaries shall be delineated by the Forest Service.
 - (c) Size, shape, and dispersal of created openings shall maintain the natural patterns in the landscape.
 - (d) The maximum size of any created opening is 15 acres. In the foreground of Key Viewing Areas, the maximum size of created openings shall be five acres.
 - (e) Clearcutting shall not be used as a harvest practice on land designated Federal Forest Lands.
 - (f) Created openings shall not create a break or opening in the vegetation in the skyline as viewed from a Key Viewing Area.
 - (g) Created openings shall be dispersed to maintain at least 400 feet of closed canopy between openings. Closed canopy shall be at least 20 feet tall.

350-80-540. General Management Area Cultural Resource Review Criteria.

- (1) General Provisions for Implementing the Cultural Resources Protection Process.
 - (a) All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 Code of Federal Regulations (CFR) Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).

- (b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal governments do not have to be consulted.
- (c) Reconnaissance and Historic Surveys and Survey Reports.
 - (A) Reconnaissance survey requirements and exceptions.
 - (i) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in Commission Rule 350-80-504(1)(c)(A)(ii) below.
 - (ii) A reconnaissance survey shall be required for all proposed uses, except:
 - (I) The modification, expansion, replacement, or reconstruction of existing buildings and structures.
 - (II) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.
 - (III) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

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

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

The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

- (VI) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:
- Residential development that involves two or more new dwellings for the same project applicant.
 - Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.
 - Public transportation facilities that are outside improved rights-of-way.
 - Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.

- Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

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

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

- (B) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.
- (C) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant.

For Commission Rule 350-80-540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and

natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

(D) Reconnaissance Surveys for Small-Scale Uses.

Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:

- (i) A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.
- (ii) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

(E) Reconnaissance Survey Reports for Small-Scale Uses

The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:

- (i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.
- (ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.
- (iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

(F) Reconnaissance Surveys for Large-Scale Uses

- (i) Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.

- (ii) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:
 - (I) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.
 - (II) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.
 - (III) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.
 - (IV) Archaeological site inventory forms shall be submitted to the State Historic Preservation Officer whenever cultural resources are discovered.

(G) Reconnaissance Survey Reports for Large-Scale Uses

The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:

- (i) A description of the proposed use, including drawings and maps.
- (ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.
- (iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.
- (iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The

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

- (v) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
- (vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.
- (vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

(H) Historic Surveys and Reports

- (i) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.
- (ii) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.
- (iii) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

- (d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.

- (e) Cultural resources are significant if one of the following criteria is satisfied:
- (A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).
 - (B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.
- (f) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Development Review Officer as to whether affected cultural resources are significant.

(2) Cultural Resource Reconnaissance and Historic Surveys

(a) Consultation and Ethnographic Research

- (A) When written comments are submitted to the Development Review Officer within the comment period provided in Commission Rule 350-80-120, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons.

Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.

All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

- (B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.

All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

(b) Notice of Survey Results

- (A) The Development Review Officer shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.
- (B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Development Review Officer. The Development Review Officer shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

- (A) The Development Review Officer shall make a final decision on whether the proposed use would be consistent with Commission Rule 350-80-540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Development Review Officer shall justify how it reached an opposing conclusion.
- (B) The cultural resource protection process may conclude when one of the following conditions exists:
 - (i) The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested

persons within 21 calendar days of the date that a notice was mailed.

- (ii) A reconnaissance survey demonstrates that cultural resources do not exist in the project area and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.
- (iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone.

Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected.

An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

- (C) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:
 - (i) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or
 - (ii) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of

the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.

The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Development Review Officer question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

(3) Evaluation of Significance

(a) Evaluation Criteria and Information Needs

If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:

- (A) Evaluations of significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, no date) and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.
- (B) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.
- (C) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be

undertaken as necessary to fully evaluate the significance of the cultural resources.

- (D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.
- (E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.

(b) Notice of Evaluation Results

- (A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Development Review Officer shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.
- (B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Development Review Officer. The Development Review Officer shall record and address all written comments in the development review order.

(c) Cultural Resources are Culturally Significant

- (A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.

(B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Development Review Officer, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Development Review Officer within 30 calendar days from the date the evaluation of significance is mailed.

(d) Conclusion of the Cultural Resource Protection Process

(A) The Development Review Officer shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Development Review Officer shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the affected cultural resources are not significant.

(C) If the project applicant or the Development Review Officer determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

(4) Assessment of Effect

(a) Assessment Criteria and Information Needs

If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:

(A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.9) 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 800.8.

(i) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR 800.9(a)].

- (ii) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR 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.
- (B) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.
- (C) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:
 - (i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.
 - (ii) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the*

Interior's Standards for Rehabilitation (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

(b) Notice of Assessment Results

- (A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Development Review Officer shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.
- (B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the assessment of effect is mailed to submit written comments to the Development Review Officer. The Development Review Officer shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

- (A) The Development Review Officer shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Development Review Officer shall justify how an opposing conclusion was reached.
- (B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.
- (C) A mitigation plan shall be prepared if a project applicant or the Development Review Officer determines that the proposed use would have an adverse effect on significant cultural resources.

(5) Mitigation Plans

(a) Mitigation Plan Criteria and Information Needs

Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect

to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:

- (A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.
- (B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.

Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.

- (C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.8(d), including, but not limited to:
 - (i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.
 - (ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.
 - (iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.
 - (iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Development Review Officer.

- (v) Copies of any written recommendations submitted to the Development Review Officer or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.
- (b) Notice of Mitigation Plan Results
- (A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Development Review Officer shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.
 - (B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Development Review Officer. The Development Review Officer shall record and address all written comments in the development review order.
- (c) Conclusion of the Cultural Resource Protection Process
- (A) The Development Review Officer shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Development Review Officer shall justify how an opposing conclusion was reached.
 - (B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.
 - (C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.
- (6) Cultural Resources Discovered After Construction Begins

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

- (a) **Halt of Construction.** All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
- (b) **Notification.** The project applicant shall notify the Development Review Officer 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.
- (c) **Survey and Evaluation.** The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute [ORS] 273.705, ORS 358.905 to 358.955, and Revised Code of Washington [RCW] 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" [Commission Rule 350-80-540(1)(c)(G)] and "Evaluation of Significance: Evaluation Criteria and Information Needs" [Commission Rule 350-80-540(3)(a)].

Based on the survey and evaluation report and any written comments, the Development Review Officer shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant.

A mitigation plan shall be prepared if the affected cultural resources are significant.

- (d) **Mitigation Plan.** Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.
- (7) **Discovery of Human Remains**

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

- (a) **Halt of Activities.** All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
- (b) **Notification.** Local law enforcement officials, the Development Review Officer, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.
- (c) **Inspection.** The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
- (d) **Jurisdiction.** If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.
- (e) **Treatment.** In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic.

If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs" [Commission Rule 350-80-540(5)(a)].

The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" [Commission Rule 350-80-540(5)(c)] are met and the mitigation plan is executed.

350-80-550. Special Management Area Cultural Resource Review Criteria.

- (1) **General Guidelines for Implementing the Cultural Resources Protection Process**
 - (a) All cultural resource information shall remain confidential, according to Section 6(a)(1)(A) of the Scenic Area Act. Federal agency cultural resource information is also exempt by statute from the Freedom of Information Act under 16 USC 470 hh and 36 CFR 296.18.

(b) All cultural resources surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 CFR 61.

(c) The Forest Service will be responsible for performing the literature review and consultation, inventory, evaluations of significance, assessments of effect, and mitigation requirements in Commission Rule 350-80-550(4) for forest practices and National Forest System lands.

(d) New developments or land uses shall not adversely affect significant cultural resources.

(2) The procedures and guidelines in Commission Rule 350-80-540 shall be used to review all proposed developments and land uses other than those on all federal lands, federally assisted projects and forest practices.

(3) The procedures and guidelines in 36 CFR 800 and Commission Rule 350-80-550(4) shall be used by the Development Review Officer and federal agencies to evaluate new developments or land uses on federal lands, federally assisted projects, and forest practices.

(4) The following procedures as well as the provisions in 36 CFR 800 shall be used to assess potential effects to cultural resources.

(a) Literature Review and Consultation

(A) An assessment shall be made to determine if any cultural resources listed on the National Register of Historic Places at the national, state or county level exist on or within the area of potential direct and indirect impacts.

(B) A search shall be made of state and county government, National Scenic Area/Forest Service and any other pertinent inventories, such as archives and photographs, to identify cultural resources, including consultation with the State Historic Preservation Office and tribal governments. State and tribal government response to the consultation request shall be allowed for 30 days.

(C) Consultation with cultural resource professionals knowledgeable about the area.

- (D) A field inventory by a cultural resource professional shall be required if the Forest Service or the Development Review Officer determines that a recorded or known cultural resource exists on or within the immediate vicinity of a new development or land use, including those reported in consultation with the Tribal governments.

(b) Field Inventory

- (A) Tribal representatives shall be invited to participate in the field inventory.
- (B) The field inventory shall consist of one or the other of the following guidelines, as determined by the cultural resource professional:

- (i) Complete survey: the systematic examination of the ground surface through a controlled procedure, such as walking an area in evenly-spaced transects. A complete survey may also require techniques such as clearing of vegetation, augering or shovel probing of subsurface soils for the presence of buried cultural resources.

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

Under this method, statistically valid samples are selected and surveyed to indicate the probability of presence, numbers and types of cultural resources throughout the sampling strata. Depending on the results of the sample, a complete survey may or may not subsequently be recommended.

- (C) A field inventory report shall be prepared, and shall include the following:
 - (i) A narrative integrating the literature review of section (4)(a) above with the field inventory of section (4)(b) above.

- (ii) A description of the field inventory methodology used, including the type and extent of field inventory, supplemented by maps which graphically illustrate the areas surveyed, not surveyed, and the rationale for each.
 - (iii) A statement of the presence or absence of cultural resources within the area of the new development or land use.
 - (iv) When cultural resources are not located, a statement of the likelihood of buried or otherwise concealed cultural resources shall be included. Recommendations and standards for monitoring, if appropriate, shall be included.
- (D) The report shall follow the format specified by the Washington Office of Archaeology and Historic Preservation for inventories conducted in the State of Washington. Reports for inventories conducted in the State of Oregon shall follow the format specified by the Oregon State Historic Preservation Office.
- (E) The field inventory report shall be presented to the Forest Service or the Development Review Officer for review.
- (c) Evaluations of Significance
- (A) When cultural resources are found within the area of the new development or land use, an evaluation of significance shall be completed for each cultural resource in accordance with to the criteria of the National Register of Historic Places (36 CFR 60.4).
 - (B) Evaluations of cultural resource significance shall be guided by previous and current research designs relevant to specific research questions for the area.
 - (C) Evaluations of the significance of traditional cultural properties shall follow National Register Bulletin 38, Guidelines for the Evaluation and Documentation of Traditional Cultural Properties, within local and regional contexts.
 - (D) Recommendations for eligibility to the National Register shall be completed for each identified resource, in accordance with National

Register criteria A through D (36 CFR 60.4). The Forest Service or the Development Review Officer shall review evaluations for adequacy.

- (E) Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources in the project area, and documentation of their concerns, shall be included as part of the evaluation of significance.
- (F) An assessment of effect shall be required if the Forest Service or the Development Review Officer determines that the inventoried cultural resources are significant.

(d) Assessment of Effect

- (A) For each significant (i.e., National Register eligible) cultural resource inventoried within the area of the proposed development or change in use, assessments of effect shall be completed, using the criteria outlined in 36 CFR 800.9 ("Assessing Effects"). Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources of the project area shall be included for sections (4)(d)(B) through (4)(d)(D) below. The Forest Service or Development Review Officer shall review each determination for adequacy.
- (B) If the proposed development or change in use will have "No Adverse Effect," as defined by 36 CFR 800.8, 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 significant cultural resource, the type and extent of "adverse effect" upon the qualities of the property that make it eligible for the National Register shall be documented. 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 cultural resource that make it eligible to the National Register. This documentation shall follow the process outlined under 36 CFR 800.8 ("Documentation Requirements").

(e) Mitigation

- (A) If there will be an effect on cultural resources, measures shall be provided for mitigation of effects. These measures shall address factors such as avoidance of the property through project design or modification and subsequent protection, burial under fill, data recovery excavations, or other measures which are proposed to mitigate effects.
- (B) Evidence of consultation with tribal governments and individuals with knowledge of the resources to be affected, and documentation of their concerns, shall be included for all mitigation proposals.
- (C) The Forest Service or the Development Review Officer shall review all mitigation proposals for adequacy.

(5) Discovery During Construction

All authorizations for new developments or land uses shall be conditioned to require the immediate notification of the Forest Service or the Development Review Officer if cultural resources are discovered during construction or development.

- (a) If cultural resources are discovered, particularly human bone or burials, work in the immediate area of discovery shall be suspended until a cultural resource professional can evaluate the potential significance of the discovery and recommend measures to protect and/or recover the resources.
- (b) If the discovered material is suspected to be human bone or a burial, the following procedure shall be used:
 - (A) The applicant shall stop all work in the vicinity of the discovery.
 - (B) The applicant shall immediately notify the Development Review Officer, the Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.
 - (C) The Forest Service or the Development Review Officer shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.
 - (D) A cultural resource professional shall evaluate the potential significance of the resource pursuant to Commission Rule 350-80-550(4)(c) and

report the results to the Forest Service or the Development Review Officer.

- (c) The cultural resource review process shall be complete and work may continue if the Forest Service or the Development Review Officer determines that the cultural resource is not significant.
- (d) The cultural resource professional shall recommend measures to protect and/or recover the resource pursuant to Commission Rule 350-80-550(4)(e) if the Forest Service or the Development Review Officer determines that the cultural resource is significant.

350-80-560. General Management Area Wetland Review Criteria.

- (1) Wetlands Boundaries and Site Plans for Review Uses in Wetlands
 - (a) If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary.
 - (A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Wetlands boundaries shall be delineated using the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (Federal Interagency Committee for Wetland Delineation, 1989), and any subsequent amendments.
 - (B) All wetlands delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.
 - (C) The Development Review Officer may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Development Review Officer shall, at the applicant's expense, obtain professional services to render a final delineation.
 - (b) In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include:

- (A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;
 - (B) the exact boundary of the wetland and the wetlands buffer zone; and
 - (C) a description of actions that would alter or destroy the wetland.
- (2) Uses allowed outright in wetlands and wetlands buffer zones.
- (a) Commission Rule 350-80-560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 350-80, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.
 - (b) The following uses are allowed in wetlands and wetlands buffer zones without review, if they:
 - (A) Are conducted using best management practices;
 - (B) Do not require structures, grading, draining, flooding, ditching, vegetation removal, or dredging beyond the extent specified below; and
 - (C) Comply 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, hiking, 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. For this guideline 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.

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in Commission Rule 350-80-560(5), and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620:

- (a) The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not:
 - (A) Increase the size of an existing structure by more than 100 percent,
 - (B) Result in a loss of wetlands acreage or functions, or

- (C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located to the wetland or wetlands buffer zone than the existing structure.
- (b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.
- (c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.
- (4) Uses not listed in Commission Rule 350-80-560(2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to Commission Rule 350-80-560(6) and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620.
- (5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:
 - (a) Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;
 - (b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;
 - (c) The structure will be constructed using best management practices;
 - (d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and
 - (e) The structure complies with all applicable federal, state, and county laws.
- (6) Applications for all other Review Uses in wetlands shall demonstrate that:

- (a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:
- (A) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands;
 - (B) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and
 - (C) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

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

- (b) The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:
- (A) The extent of public need for the proposed use.
 - (B) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.
 - (C) The functions and size of the wetland that may be affected.
 - (D) The economic value of the proposed use to the general area.
 - (E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.

- (c) Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.
- (d) Groundwater and surface-water quality will not be degraded by the proposed use.
- (e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.
- (f) The proposed use complies with all applicable federal, state, and county laws.
- (g) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.
- (h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts.

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

- (A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.
- (B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.
- (C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.
- (D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):

- (i) Restoration: 2:1
- (ii) Creation: 3:1
- (iii) Enhancement: 4:1

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

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

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

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

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

(7) Wetlands Buffer Zones

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

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

- (A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.
 - (B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.
 - (C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.
- (c) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:
- (A) Forest communities: 75 feet
 - (B) Shrub communities: 100 feet
 - (C) Herbaceous communities: 150 feet
- (d) Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(8) Wetlands Compensation Plans

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

- (a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.
- (b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

- (c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.
- (d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:
 - (A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.
 - (B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.
 - (C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.
- (e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.
- (f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

350-80-570. General Management Area Stream, Pond, Lake and Riparian Area Review Criteria.

- (1) Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas
 - (a) If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be responsible for determining the exact location of the ordinary high watermark or normal pool elevation.

- (b) In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes, and their buffer zones shall include:
 - (A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;
 - (B) the exact boundary of the ordinary high watermark or normal pool elevation and prescribed buffer zone; and
 - (C) a description of actions that would alter or destroy the stream, pond, lake, or riparian area.
- (2) Uses allowed outright in streams, ponds, lakes, and their buffer zones.
 - (a) Commission Rule 350-80-670 shall not apply to proposed uses that would occur in those portions of the main stem of the Columbia River that adjoin the Urban Area.
 - (b) The following uses are allowed in streams, ponds, lakes, and their buffer zones without review, if they:
 - (A) Are conducted using best management practices;
 - (B) Do not require structures, grading, draining, flooding, ditching, vegetation removal, or dredging beyond the extent specified below; and
 - (C) Comply 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 water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas.
 - (iii) Low-intensity recreation uses, including hunting, fishing, trapping, bird watching, hiking, 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 and shall require a review use permit. For this guideline 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.

(3) The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant Commission Rule 350-80-570(5), and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620:

- (a) The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not:
 - (A) Increase the size of an existing structure by more than 100 percent,
 - (B) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or

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

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

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

(4) Uses not listed in Commission Rule 350-80-570(2) and (3) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to Commission Rule 350-80-570(6) and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620.

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

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

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

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

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

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

- (6) Applications for all other Review Uses in wetlands shall demonstrate that:
- (a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by Commission Rule 350-80-560(6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.
 - (b) The proposed use is in the public interest as determined by Commission Rule 350-80-560(6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.
 - (c) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

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

- (A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 1986). In Washington, the Washington Department of Wildlife and Washington Department of Fisheries shall evaluate specific proposals and specify periods for in-water work.
- (B) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.
- (C) Nonstructural controls and natural processes shall be used to the greatest extent practicable.
- (D) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.
- (E) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.

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

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

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

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

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

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

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

The following rehabilitation and enhancement guidelines shall apply:

(A) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.

(B) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.

(C) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.

(D) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.

- (E) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.
- (F) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.
- (G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.
- (H) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.
- (I) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.

(7) Stream, Pond, and Lake Buffer Zones

- (a) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:
 - (A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet
 - (B) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet
 - (C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by Commission Rule 350-80-560(7)(b), substituting the term pond or lake as appropriate.

- (b) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.
 - (c) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Development Review Officer may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Development Review Officer shall, at the project applicant's expense, obtain professional services to render a final delineation.
- (8) Rehabilitation and Enhancement Plans

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

- (a) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.
- (b) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.
- (c) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:
 - (A) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.
 - (B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

- (C) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.
- (d) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.
- (e) A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

350-80-580. General Management Area Sensitive Wildlife Review Criteria.

- (1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife
 - (a) Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:
 - (A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission:
 - Bald eagle habitat
 - Deer and elk winter range
 - Elk habitat
 - Mountain goat habitat
 - Peregrine falcon habitat
 - Pika colony area
 - Pileated woodpecker habitat
 - Pine marten habitat
 - Shallow water fish habitat (Columbia R.)
 - Special streams
 - Special habitat area
 - Spotted owl habitat
 - Sturgeon spawning area
 - Tributary fish habitat

Turkey habitat
Waterfowl area
Western pond turtle habitat

- (B) "Sensitive wildlife sites" means sites that are used by animal species that are
- (i) listed as endangered or threatened pursuant to federal or state endangered species acts,
 - (ii) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,
 - (iii) listed as sensitive by the Oregon Fish and Wildlife Commission, or
 - (iv) considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, and prairie falcon).

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(2) 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:

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

(e) Fish and wildlife management uses conducted by federal, state, or Indian tribal resource agencies.

(3) Field Survey

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

(a) Land divisions that create four or more parcels;

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;

(c) Public transportation facilities that are outside improved rights-of-way;

(d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

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.

(4) Uses not listed in Commission Rule 350-80-580(2) may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to Commission Rule 350-80-580(5) and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620.

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

(a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:

(A) Identify/verify the precise location of the wildlife area or site,

- (B) Ascertain whether the wildlife area or site is active or abandoned, and
 - (C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.
- (b) The following factors may be considered when site plans are reviewed:
- (A) Biology of the affected wildlife species.
 - (B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).
 - (C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.
 - (D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.
 - (E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.
- (c) The wildlife protection process may terminate if the Development Review Officer, in consultation with the state wildlife agency, determines:
- (A) The sensitive wildlife area or site is not active, or
 - (B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.
- (d) If the Development Review Officer, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the

wildlife area or site that could be eliminated 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 Development Review Officer will incorporate them into the development review order and the wildlife protection process may conclude.

- (e) The project applicant shall prepare a wildlife management plan if the Development Review Officer, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.
- (f) The Development Review Officer shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Wildlife. The state wildlife agency will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Development Review Officer.

The Development Review Officer shall record and address any written comments submitted by the state wildlife agency in the land use review order.

Based on the comments from the state wildlife agency, the Development Review Officer will make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Development Review Officer shall justify how the opposing conclusion was reached.

The Development Review Officer shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(6) Wildlife Management Plans

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

Wildlife management plans shall meet the following guidelines:

- (a) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.
- (b) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.
- (c) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.
- (d) A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall be delineated on the site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.
- (e) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:
 - (A) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.
 - (B) Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns.
- (f) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer zones. When a buffer zone has been altered or

degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site.

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

- (g) The applicant shall prepare and implement a 3-year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions.

At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances where rehabilitation and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement guidelines.

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

- (C) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.
- (D) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.
- (c) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

350-80-590. General Management Areas Rare Plant Review Criteria.

- (1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants
 - (a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are
 - (A) endemic to the Columbia River Gorge and vicinity,
 - (B) listed as endangered or threatened pursuant to federal or state endangered species acts, or
 - (C) listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program.
 - (b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
- (2) 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:
 - (a) 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.

- (b) 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.
 - (c) 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.
 - (d) Forest practices that do not violate conditions of approval for other approved uses.
 - (e) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads and utility facilities.
- (3) Field Survey

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

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

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

(4) Uses not listed in Commission Rule 350-80-590(2) may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to Commission Rule 350-80-590(5), and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620.

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

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

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

- (b) The rare plant protection process may conclude if the Development Review Officer, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone.
- (c) New uses shall be prohibited within sensitive plant species buffer zones, except those listed in Commission Rule 350-80-590(2).
- (d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with Commission Rule 350-80-150(7), the project applicant shall prepare a protection and rehabilitation plan pursuant to Commission Rule 350-80-590(6).
- (e) The Development Review Officer shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Development Review Officer.

The Development Review Officer shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order.

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

(6) Protection and Rehabilitation Plans

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

Protection and rehabilitation plans shall meet the following guidelines:

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

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

- (d) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.
- (e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.

- (f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.
- (g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:
 - (A) Describe the biology of sensitive plant species that will be affected by a proposed use.
 - (B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.
 - (C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.
 - (D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Development Review Officer an annual report that documents milestones, successes, problems, and contingency actions.
- (7) Sensitive Plant Buffer Zones
 - (a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.
 - (b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.
 - (c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:
 - (A) Identifies the precise location of the sensitive plants,
 - (B) Describes the biology of the sensitive plants, and
 - (C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival.

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

- (d) The Development Review Officer shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Development Review Officer.

The Development Review Officer shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order.

Based on the comments from the Oregon or Washington Natural Heritage Program, the Development Review Officer 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 Development Review Officer shall justify how the opposing conclusion was reached.

350-80-600. Special Management Areas Natural Resource Review Criteria.

All new developments and land uses shall be evaluated to ensure that the natural resources on a site, or natural resources in danger of degradation or destruction from individual or cumulative off-site impacts, are protected from adverse effects. The Forest Service will provide the natural resource site evaluation and project analysis and evaluation for new uses and developments, except those sponsored by non-Forest Service federal and state agencies.

- (1) Buffer zones shall be undisturbed unless it has been shown that no practicable alternatives exist, pursuant to Commission Rule 350-80-560(6(a)(A) through (C), 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 that no adverse effects would result.
- (2) The applicant's site plan shall include the following additional information to facilitate evaluation for compliance with minimum natural resource protection guidelines:
 - (a) Location of the following sites and areas. The Forest Service will provide this information to the applicant.

- (A) Sites of sensitive wildlife and sensitive plant species.
 - (B) Location of riparian and wetland areas. The exact location of the 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 manual shall not apply to wetlands in the Special Management Area unless the Management Plan has been amended.
- (b) A description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.
- (3) Site plans shall be submitted to the Forest Service, and the Oregon Department of Fish and Wildlife or Washington Department of Wildlife. The site plan shall be reviewed by the Forest Service in consultation with the appropriate state or federal agency and reviewed and approved by the Development Review Officer.
- (4) Review of the site plan shall consider the following:
- (a) Biology and habitat requirements of the flora or fauna of concern.
 - (b) Historic, current, and proposed uses in the vicinity of sensitive species, including cumulative effects.
 - (c) Existing condition of the site and the surrounding habitat and the useful life of the site.
 - (d) Physical characteristics of the subject parcel and vicinity, including topography, vegetation, and soil and hydrological characteristics.
 - (e) Minimum natural resource protection guidelines including buffer zones.
 - (f) Closure of forest practice roads necessary to protect natural resources.
 - (g) Comments from state and federal agencies.
- (5) Minimum natural resource protection guidelines include:
- (a) Sites of sensitive wildlife and sensitive plan species.
 - (A) A 200-foot buffer zone shall be created for sensitive plant species.

- (B) 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 a Forest Service biologist in consultation with other state or federal agency biologists.
- (b) Riparian areas, wetlands, parks, and lakes.
- (A) Wetlands shall not be destroyed except within roads and railroad rights-of-way as provided in guideline 6. Riparian areas shall not be destroyed, except for water-dependent uses, such as boat ramps, and road construction and reconstruction. The above-stated exceptions to riparian destruction policy shall meet minimum natural resource protection standards and be reviewed for meeting resource protection guidelines.
 - (B) Adding any fill or draining of wetlands is prohibited.
 - (C) 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;
 - (D) A 200 foot buffer zone shall be created along each fish-bearing and perennial stream.
 - (E) A 50-foot buffer zone shall be created along intermittent streams.
 - (F) 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.
 - (G) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all the following:
 - (i) The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way;
 - (ii) The wetland is not critical habitat; and

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

(c) Fish and wildlife habitat:

- (A) Structures such as bridges, culverts, and utility corridors shall be designed so as not to impede the passage of fish and wildlife.
- (B) New developments and uses shall not interfere with fish passage.
- (C) Filling of shallow-water fishery habitat shall be allowed only after an analysis shows that no other practicable sites exist. Filling shall only be considered for water-dependent uses, and mitigation shall be required.
- (D) New developments and uses shall occur during periods when fish and wildlife are least sensitive to activities. This would include, among others, nesting and brooding periods (from nest building to fledgling of young), and those periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Dept. of Fish and Wildlife 1986).
- (E) In areas of big game winter range, adequate thermal cover shall be maintained as determined by the appropriate state wildlife agency.
- (F) Forest practices shall maintain the following:
 - (i) Six live trees per acre, three of which shall be of the largest tree size available and three of which shall be of various sizes to provide replacements as snags and wildlife trees; and three dead trees per acre, of the largest tree size available; and three down trees per acre in the largest tree size available. All trees shall be unburned.

In areas with mixed oak and conifer stands, at least one of the three dead trees per acre shall be an oak snag of the largest tree size and one additional live conifer per acre of 16-inch diameter at breast height (dbh) or greater, preferably with limbs down to the ground, shall be maintained.

- (ii) Snags and wildlife trees shall be maintained either as clumps or evenly distributed over the forest practice area.

- (iii) Down logs shall be relatively solid and no area greater than two acres in size and capable of supporting forested conditions shall be without a minimum of two down logs.

(d) Bio-diversity.

- (A) New uses shall avoid disturbance to old-growth forests.
- (B) Forest practices shall maintain species composition at existing proportions in the activity area.
- (C) Forest practices in areas with existing oak species, shall maintain a minimum of 25 square feet basal area per acre of oak in areas with predominantly oak trees of 1-foot dbh or more, or maintain a minimum forty percent oak canopy cover per 40 acres in which 10 trees per acre must be of the largest tree size, in areas with predominantly oak trees less than 1-foot dbh. No area greater than 10 acres in size and supporting existing oak species shall be devoid of oak trees.
- (D) A mix in age and size of hardwoods shall be maintained to provide vertical diversity and replacement.
- (E) For revegetation purposes, only plants species native to the Columbia River Gorge shall be encouraged.

(e) Soil productivity.

- (A) New developments and land uses shall control all soil movement within the area shown on the site plan.
- (B) The soil area disturbed by new development or land uses shall not exceed 15 percent of the project area.
- (C) Within one year of project completion 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.
- (D) Forest practices shall maintain the following:

- (i) Soil organic matter shall be provided at a minimum of 15 tons per acre and 25 tons per acre of dead and down woody material in the east and west side vegetation communities, respectively.
 - (ii) Potential ground disturbance activities shall be designed to minimize disturbance to the soil organic horizon.
- (f) Air and water quality.
 - (A) Streambank and shoreline stability shall be maintained or restored with natural revegetation.
 - (B) All new developments shall be carried out to comply with state water quality requirements.
 - (C) County, state, and federal regulations for air and water quality and for pesticide use shall be followed.
 - (D) Existing levels of air visibility shall not be degraded.
- (g) The applicant shall develop a natural resource mitigation plan for all new developments or uses proposed within a buffer zone. The applicant's mitigation plan shall:
 - (A) Include existing natural and cultural features.
 - (B) Include proposed actions within and adjacent to the buffer zone.
 - (C) Include mitigation measures as necessary to comply with the minimum natural resource protection guidelines and protect natural resources from adverse effects.
 - (D) Be prepared by a natural resource specialist as defined.
 - (E) Demonstrate mitigation measures that would offset the adverse effects of the proposed new use or developments and that would ensure protection, long-term viability, and function of the resource being protected by the buffer zone.
 - (F) Be reviewed to ensure the proposed mitigation measures are adequate and comply with minimum natural resource protection guidelines. The

mitigation plan shall be reviewed by the Forest Service in consultation with appropriate state or federal agencies, and reviewed and approved by the Development Review Officer.

350-80-610. General Management Areas Recreation Resource Review Criteria.

The following uses may be allowed, subject to compliance with Commission Rule 350-80-610(5) and (6).

- (1) Recreation Intensity Class 1 - Very Low Intensity
 - (a) Parking areas for a maximum of 10 cars for any allowed uses in Recreation Intensity Class 1.
 - (b) Trails for hiking, equestrian and mountain biking use.
 - (c) Pathways for pedestrian and bicycling use.
 - (d) Trailheads (with provisions for hitching rails and equestrian trailers at trailheads accommodating equestrian use).
 - (e) Scenic viewpoints and overlooks.
 - (f) Wildlife/botanical viewing and nature study areas.
 - (g) River access areas.
 - (h) Simple interpretive signs and/or displays, not to exceed a total of 50 square feet.
 - (i) Entry name signs not to exceed 10 square feet per sign.
 - (j) Boat docks, piers or wharfs.
 - (k) Picnic areas.
 - (l) Rest-rooms/comfort facilities.
- (2) Recreation Intensity Class 2 - Low Intensity
 - (a) All uses permitted in Recreation Intensity Class 1.

- (b) Parking areas for a maximum of 25 cars, including spaces for campground units, to serve any allowed uses in Recreation Intensity Class 2.
 - (c) Simple interpretive signs and displays, not to exceed a total of 100 square feet.
 - (d) Entry name signs not to exceed 20 square feet per sign.
 - (e) Boat ramps, not to exceed two lanes.
 - (f) Campgrounds for 20 units or less, tent sites only.
- (3) Recreation Intensity Class 3 - Moderate Intensity
- (a) All uses permitted in Recreation Intensity Classes 1 and 2.
 - (b) Parking areas for a maximum of 75 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 3.
 - (c) Interpretive signs, displays and/or facilities.
 - (d) Visitor information and environmental education signs, displays or facilities.
 - (e) Entry name signs not to exceed 32 square feet per sign.
 - (f) Boat ramps, not to exceed three lanes.
 - (g) Concessions stands, pursuant to applicable policies in Chapter 4, Part I of the Management Plan.
 - (h) Campgrounds for 50 individual units or less for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 3 campgrounds may also include one group campsite area, in addition to the individual campground units or parking area maximums allowed as described herein.
- (4) Recreation Intensity Class 4 - High Intensity
- (a) All uses permitted in Recreation Intensity Classes 1, 2, and 3.

- (b) Parking areas for a maximum of 250 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 4.
 - (c) Horseback riding stables and associated facilities.
 - (d) Entry name signs, not to exceed 40 square feet per sign.
 - (e) Boat ramps.
 - (f) Campgrounds for 175 individual units or less for tents and/or recreation vehicles with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 4 campgrounds may also include up to 3 group campsite areas, in addition to individual campsite units or parking area maximums allowed as described herein.
- (5) Approval Criteria for Recreation Uses

All proposed recreation projects outside of Public Recreation or Commercial Recreation land use designations shall comply with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620) and shall satisfy the following:

- (a) Compliance with Commission Rule 350-80-520 through 610.
- (b) Cumulative effects of proposed recreation projects on landscape settings shall be based on the "compatible recreation use" guideline for the landscape setting in which the use is located.
- (c) For proposed recreation projects in or adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land or Large or Small Woodland:
 - (A) The use would not seriously interfere with accepted forest or agricultural practices on surrounding lands devoted to forest or farm uses. Provision of on-site buffers may be used to partially or fully comply with this criterion, depending upon project design and/or site conditions.
 - (B) A declaration has been signed by the project applicant or owner and recorded with county deeds and records specifying that the applicant or owner is aware that operators are entitled to carry on accepted forest or

farm practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land or Large or Small Woodland.

- (d) For proposed projects including facilities for outdoor fires for cooking or other purposes or proposed campgrounds:

The project applicant shall demonstrate that a sufficient quantity of water necessary for fire suppression (as determined pursuant to applicable fire codes or the county fire marshal) is readily available to the proposed facility, either through connection to a community water system or on-site wells, storage tanks, sumps, ponds or similar storage devices. If connection to a community water system is proposed, the project applicant shall demonstrate that the water system has adequate capacity to meet the facility's emergency fire suppression needs without adversely affecting the remainder of the water system with respect to fire suppression capabilities. In addition, in order to provide access for fire-fighting equipment, access drives shall be constructed to a minimum of 12 feet in width and a maximum grade of 12 percent. Access drives shall be maintained to a level that is passable to fire-fighting equipment.

- (e) Trail or trailhead projects shall comply with applicable trails policies in the Management Plan.

- (f) For proposed projects providing boating or windsurfing access to the Columbia River or its tributaries: compliance with applicable "River Access and Protection of Treaty Rights" objectives in the Management Plan.

- (g) For proposed projects on public lands or proposed projects providing access to the Columbia River or its tributaries: compliance with guidelines for protection of tribal treaty rights in Part IV, Chapter 3, Indian Tribal Treaty Rights and Consultation in the Management Plan.

- (h) For proposed projects which include interpretation of natural or cultural resources:

A demonstration that the interpretive facilities will not adversely affect natural or cultural resources and that appropriate and necessary resource protection measures shall be employed.

- (i) For proposed Recreation Intensity Class 4 projects (except for projects predominantly devoted to boat access):

A demonstration that the project accommodates provision of mass transportation access to the site. The number and size of the mass transportation facilities shall reflect the physical capacity of the site. This requirement may be waived upon a demonstration that provision of such facilities would result in overuse of the site, either degrading the quality of the recreation experience or adversely affecting other resources at the site.

(6) Facility Design Guidelines for All Recreation Projects

- (a) Recreation facilities which are not resource-based in nature may be included at sites providing resource-based recreation uses consistent with the guidelines contained herein, as long as such facilities comprise no more than one-third of the total land area dedicated to recreation uses and/or facilities. Required landscaped buffers may be included in calculations of total land area dedicated to recreation uses and/or facilities.
- (b) The facility design guidelines contained herein are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another.

To be considered a separate facility from other developments or improvements within the same Recreation Intensity Class, recreation developments or improvements must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).

- (c) Parking areas, access roads, and campsites shall be sited and designed to fit into the existing natural contours as much as possible, both to minimize ground-disturbing grading activities and utilize topography to screen parking areas and associated structures. Parking areas, access roads, and campsites shall be sited and set back sufficiently from bluffs so as to be visually subordinate as seen from Key Viewing Areas.
- (d) Existing vegetation, particularly mature trees, shall be maintained to the maximum extent practicable, and utilized to screen parking areas and campsites from Key Viewing Areas and satisfy requirements for perimeter and interior landscaped buffers.
- (e) Parking areas providing over 50 spaces shall be divided into discrete "islands" separated by unpaved, landscaped buffer areas.

- (f) Lineal frontage of parking areas and campsite loops to Scenic Travel Corridors shall be minimized to the greatest extent practicable.
- (g) Ingress/egress points shall be consolidated to the maximum extent practicable providing for adequate emergency access pursuant to applicable fire and safety codes.
- (h) Signage shall be limited to that necessary to provide relevant recreation or facility information, interpretive information, vehicular and pedestrian direction, and for safety purposes.
- (i) Exterior lighting shall be shielded, designed and sited in a manner which prevents such lighting from projecting off-site or being highly visible from Key Viewing Areas.
- (j) Innovative designs and materials which reduce visual impacts (such as "turf blocks" instead of conventional asphalt paving) shall be encouraged through incentives such as additional allowable parking spaces and reduce required minimum interior or perimeter landscaped buffers. Upon determination that potential visual impacts have been substantially reduced by use of such designs and materials, the Development Review Officer may allow either reductions in required minimum interior or perimeter landscape buffers up to 50 percent of what would otherwise be required, or additional parking spaces not to exceed 10 percent of what would otherwise be permitted.
- (k) A majority of trees, shrubs and other plants in landscaped areas shall be species native or naturalized to the landscape setting in which they occur (landscape setting design guidelines specify lists of appropriate species).
- (l) All structures shall be designed such that height, exterior colors, reflectivity, mass and siting result in the structures blending with and not noticeably contrasting with their setting.
- (m) Landscape buffers around the perimeter of parking areas accommodating more than 10 vehicles shall be provided. Minimum required widths are 5 feet for 20 vehicles or less, 20 feet for 50 vehicles or less, 30 feet for 100 vehicles or less, and 40 feet for 250 vehicles or less.
- (n) Interior landscaped buffers breaking up continuous areas of parking shall be provided for any parking areas over 50 spaces in size. The minimum width of

interior landscaped buffers between each parking lot of 50 spaces or less shall be 20 feet.

- (o) Within required perimeter and interior landscaped buffer areas, a minimum of one tree of at least 6 feet in height shall be planted for every 10 lineal feet as averaged for the entire perimeter width. A minimum of 25 percent of planted species in perimeter buffers shall be coniferous to provide screening during the winter. Project applicants are encouraged to place such trees in random groupings approximating natural conditions. In addition to the required trees, landscaping shall include appropriate shrubs, groundcover and other plant materials.
- (p) Minimum required perimeter landscape buffer widths for parking areas or campgrounds may be reduced by as much as 50 percent, at the discretion of the Development Review Officer, if existing vegetation stands and/or existing topography are utilized such that the development is not visible from any Key Viewing Area.
- (q) Grading or soil compaction within the drip line of existing mature trees shall be avoided to the maximum extent practicable, to reduce risk of root damage and associated tree mortality.
- (r) All parking areas and campsites shall be set back from Scenic Travel Corridors, and the Columbia River and its major tributaries at least 100 feet. Required perimeter landscaped buffers may be included when calculating such setbacks. Setbacks from rivers shall be measured from the ordinary high water mark. Setbacks from Scenic Travel Corridors shall be measured from the edge of road pavements.
- (s) Project applicants shall utilize measures and equipment necessary for the proper maintenance and survival of all vegetation utilized to meet the landscape guidelines contained herein, and shall be responsible for such maintenance and survival.
- (t) All parking areas shall be set back from property boundaries by at least 50 feet. All campsites and associated facilities shall be set back from property boundaries by at least 100 feet.
- (u) All proposed projects at levels consistent with Recreation Intensity Class 4 on lands classified Recreation Intensity Class 4 (except for proposals predominantly

devoted to boat access) shall comply with Commission Rule 350-80-610(5)(i) regarding provision of mass transportation access.

350-80-620. Special Management Area Recreation Resource Review Criteria.

(l) The following shall apply to all new recreation developments and land uses in the Special Management Area:

- (a) New developments and land uses shall not displace existing recreational use.
- (b) Only natural resource-based recreation shall be allowed.
- (c) Recreation resources shall be protected from adverse effects by evaluating new developments and land uses as proposed in the site plan. An analysis of both on and off site cumulative effects shall be required.
- (d) New pedestrian or equestrian trails shall not have motorized uses, except for emergency services.
- (e) Mitigation measures shall be provided to preclude adverse effects on the recreation resource.
- (f) The facility guidelines contained in Commission Rule 350-80-620(1) are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another. Recreation developments or improvements to be considered a separate facility from other developments or improvements within the same Recreation Intensity Class must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).
- (g) New development and reconstruction of scenic routes (see Part III, Chapter 1 of the Management Plan) shall include provisions for bicycle lanes.
- (h) The Development Review Officer may grant a variance of up to 10 percent to the guidelines of Recreation Intensity Class 4 for parking and campground units upon demonstration that:
 - (A) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan

(SCORP) data and data from National Scenic Area recreation demand studies shall be relied upon to meet the criterion in the absence of current applicable studies.

- (B) The proposed use is dependent on resources present at the site.
 - (C) Reasonable alternative sites, including those in Urban Areas, offering similar opportunities have been evaluated and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.
 - (D) The proposed use is consistent with the goals, objectives, and policies in Chapter 4, Part I of the Management Plan.
 - (E) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural or cultural resources, and adjacent land uses.
 - (F) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.
 - (G) Mass transportation shall be considered and implemented, if feasible, for all proposed variances to Recreation Intensity Class 4.
- (i) Accommodations of facilities for mass transportation (bus parking, etc.) shall be required for all new high-intensity (Recreation Class 3 and 4) day-use recreation sites, except for sites predominantly devoted to boat access.
- (2) Special Management Areas Recreation Intensity Class Guidelines
- (a) Recreation Intensity Class 1 - Very Low Intensity

Emphasis is to provide opportunities for semi-primitive recreation opportunities.

- (A) Permitted uses are those in which people participate in outdoor activities to realize experiences such as solitude, tension reduction, and nature appreciation.
- (B) The maximum site design capacity shall not exceed 35 people at one time on the site. The maximum design capacity for parking areas shall be 10 vehicles.

(C) The following uses may be permitted:

- (i) Trails and trailheads.
- (ii) Parking areas.
- (iii) Dispersed campsites accessible only by a trail.
- (iv) Viewpoints and overlooks.
- (v) Picnic areas.
- (vi) Signs.
- (vii) Interpretive exhibits and displays.
- (viii) Rest-rooms.

(b) Recreation Intensity Class 2 - Low Intensity

Emphasis is to provide semi-primitive recreation opportunities.

(A) Permitted uses are those that provide settings where people can participate in activities such as physical fitness, outdoor learning, relaxation, and escape from noise and crowds.

(B) The maximum site design capacity shall not exceed 70 people at one time on the site. The maximum design capacity shall be 25 vehicles.

(C) All uses permitted in Recreation Intensity Class 1 are permitted in Recreation Intensity Class 2. The following uses may also be permitted:

- (i) Campground with vehicle access.
- (ii) Boat anchorages designed for no more than 10 boats at one time.
- (iii) Swimming areas.

(c) Recreation Intensity Class 3 - Moderate Intensity

Emphasis is on facilities with design themes emphasizing the natural qualities of the area. Developments are complementary to the natural landscape, yet can accommodate moderate numbers of people.

- (A) Permitted uses are those in which people can participate in activities to realize experiences such as group socialization, nature appreciation, relaxation, cultural learning, and physical activity.
- (B) Maximum site design capacity shall not exceed 250 people at on the site. The maximum design capacity shall be 50 vehicles. The General Management vehicle capacity level of 75 vehicles shall be allowed if enhancement or mitigation measures for scenic, cultural, or natural resources are approved for at least 10% of the site.
- (C) All uses permitted in Recreation Intensity Classes 1 and 2 are permitted in Recreation Intensity Class 3. The following uses may also be permitted:
 - (i) Campgrounds improvement may include water, power, sewer, and sewage dump stations.
 - (ii) Boat anchorages designed for not more than 15 boats.
 - (iii) Public visitor, interpretive, historic, and environmental education facilities.
 - (iv) Full service rest-rooms, may include showers.
 - (v) Boat ramps.
 - (vi) Riding stables.

(d) Recreation Intensity Class 4 - High Intensity

Emphasis is for providing road natural, rural, and suburban recreation opportunities with a high level of social interaction.

- (A) Permitted uses are those in which people can participate in activities to realize experiences such as socialization, cultural and natural history appreciation, and physical activity.

- (B) The maximum design capacity shall not exceed 1000 people at one time on the site. The maximum design capacity for parking areas shall be 200 vehicles. The General Management Area vehicle capacity of 250 vehicles shall be allowed if enhancement or mitigation measures for scenic, cultural, or natural resources are approved for at least 20 percent of the site.

- (C) All uses permitted in Recreation Intensity Classes 1, 2, and 3 are permitted in Recreation Intensity Class 4.

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GENERAL MANAGEMENT AREA	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Residential LUD - Review uses except SFDs located adjacent to Agriculture & Forest LUDs, and those uses within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X			
Residential LUD - SFDs adjacent to Agriculture & Forest LUDs except those within 1000' of sensitive wildlife area or site, or a rare plant	X	X	X	X		X		
Residential LUD - Review uses within 1000' of a sensitive wildlife area or site except SFDs located adjacent to Agriculture or Forest LUDs	X	X	X	X	X		X	
Residential LUD - SFDs adjacent to Agriculture & Forest LUDs within 1000' of a sensitive wildlife area or site	X	X	X	X		X	X	
Residential LUD - Review uses within 1000' of a rare plant except SFDs located adjacent to Agriculture or Forest LUDs	X	X	X	X	X			X
Residential LUD - SFDs adjacent to Agriculture & Forest LUDs within 1000' of rare plant	X	X	X	X		X		X

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Agriculture LUD - Review uses except non-farm SFD in Large-Scale Agriculture LUD and uses within 1000' of sensitive wildlife area or site, or rare plant	X	X	X	X	X			
Agriculture LUD - Review uses within 1000' of sensitive wildlife area or site except non-farm SFD in Large-Scale Agriculture LUD	X	X	X	X	X		X	
Agriculture LUD - Review uses within 1000' of a rare plant except non-farm SFD in Large-Scale Agriculture LUD	X	X	X	X	X			X
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture LUD, except those within 1000' of sensitive wildlife area or site, or rare plant	X	X	X	X		X		
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture within 1000' of sensitive wildlife area or site	X	X	X	X		X	X	
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture within 1000' of rare plant	X	X	X	X		X		X

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Forest LUD - Review uses except utility facilities, railroads, home occupations, cottage industries, wineries, ag. produce process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities, and those review uses within 1000' feet of a sensitive wildlife area or site, or rare plant	X	X	X	X	X			
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities, and not within 1000' feet of a sensitive wildlife area or site, or rare plant	X	X	X	X		X		
Forest LUD - Review uses within 1000' of a sensitive wildlife area or site, except utility facilities, railroads, home occupations, wineries, ag. produce process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities	X	X	X	X	X		X	

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Forest LUD - Review uses within 1000' of a rare plant except utility facilities, railroads, home occupations, wineries, ag. produce process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities	X	X	X	X	X			X
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities within 1000' of a sensitive wildlife area or site	X	X	X	X		X	X	
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities within 1000' of a rare plant	X	X	X	X		X		X
Commercial LUD - Review uses except those within 1000' of a sensitive wildlife area or site, or rare plant	X	X	X	X	X			

COLUMBIA RIVER GORGE COMMISSION

Chapter 350

Division 90

Clark County Land Use Ordinance

350-90-010. Purposes.

The purposes of the Land Use Ordinance are to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge, and to protect and support the economy of the Columbia River Gorge by allowing future economic development in a manner that enhances the scenic, cultural, recreational, and natural resources of the Gorge.

350-90-020. Area Affected.

Commission Rule 350-90 shall apply to all lands in Clark County, Washington within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act.

Commission Rule 350-90 becomes effective 30 days after adoption and filing by the Columbia River Gorge Commission with the exception of those portions of Commission Rule 350-90 pertaining to the Special Management Areas, which become effective upon concurrence by the Secretary of Agriculture.

Those portions of Commission Rule 350-90 pertaining to the General Management Area are no longer effective once Clark County has submitted a land use ordinance and the Columbia River Gorge Commission finds it consistent with the Management Plan. Those portions of Commission Rule 350-90 pertaining to the Special Management Area remain effective until the Secretary of Agriculture concurs on the ordinances adopted by Clark County.

350-90-030. Review and Approval Required.

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged, including those proposed by state or federal agencies, in the Columbia River Gorge National Scenic Area except for the uses listed in Commission Rule 350-90, when considered under the applicable procedural and substantive guidelines of this Rule.

350-90-040. Definitions.

As used in Commission Rule 350-90, unless otherwise noted, the following words and their derivations shall have the following meanings:

(1) **Accepted agricultural practice:** A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.

(2) **Accessory building:** A building or structure whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use.

(3) **Active wildlife site:** A wildlife site that has been used within the past 5 years by a sensitive wildlife species.

(4) **Agency official:** The federal, state, or local agency head or designee who has authority over a proposed project.

(5) **Agricultural structure:** A structure located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.

(6) **Agricultural use:** The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, livestock, poultry, fur-bearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes:

- (a) The operation or use of farmland subject to any agriculture-related government program.
- (b) Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.
- (c) Land planted in orchards or other perennials prior to maturity.

(d) Land under buildings supporting accepted agricultural practices.

Agricultural use does not include livestock feedlots.

(7) **Anadromous fish:** Species of fish that migrate upstream to freshwater after spending part of their life in the ocean (saltwater).

(8) **Anaerobic:** A condition in which molecular oxygen is absent (or effectively so) from the environment.

(9) **Aquaculture:** The cultivation, maintenance, and harvesting of aquatic species.

(10) **Aquatic area:** The water area of a stream, pond, or lake measured at the ordinary high water mark.

(11) **Archaeological resources:** See cultural resource.

(12) **Archival research:** Research in primary documents that is likely to yield information regarding human occupation of the area in question, including but not limited to deed, census, cartographic, and judicial records.

(13) **Bed and breakfast inn:** An establishment located in a structure designed as a single-family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single-family dwelling and are owner occupied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.

(14) **Best management practices:** Conservation techniques and management measures that

(a) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;

(b) minimize adverse effects to groundwater and surface-water flow and circulation patterns; and

(c) maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.

(15) **Biodiversity (SMA):** A diversity of biological organisms at the genetic, species, ecosystem, and landscape levels.

(16) **Boat landing:** Cleared area or developed structure used to facilitate launching or retrieving watercraft.

(17) **Buffer zone:** An area adjacent to a wetland, stream, pond, or other sensitive area that is established and managed to protect sensitive natural resources from human disturbance. In instances that involve a wetland, stream, or pond, the buffer zone includes all or a portion of the riparian area.

(18) **Building:** Any structure used or intended for supporting or sheltering any use or occupancy.

(19) **Camping or recreational vehicle:** A vacation trailer, camper, self-propelled vehicle, or structure equipped with wheels for highway use that is intended for recreational purposes, but not for residential purposes, and is equipped with plumbing, sink, or toilet. A camping or recreational vehicle shall be considered a dwelling unit if it is connected to a sewer system (including septic tank), water, and electrical lines or is occupied on the same parcel for more than 60 days in any consecutive 12-month period.

(20) **Campsite:** Single camping unit, that usually consists of a cleared, level area for a tent, and may include a parking spur, fire ring, table, and other amenities.

(21) **Capability:** The ability of land to produce forest or agricultural products due to characteristics of the land itself, such as soil, slope, exposure, or other natural factors.

(22) **Cascadian architecture (SMA):** Architectural style using native rock work, large timber, and steeply pitched roofs in a rustic manner.

(23) **Catastrophic situations (SMA):** Forces such as fire, insect and disease infestations, and earth movements.

(24) **Childcare center:** A facility providing daycare to three or more children, but not including:

(a) The provision of care that is primarily educational, unless provided to a preschool child for more than 4 hours a day.

(b) The provision of care that is primarily supervised training in a specific subject, including but not limited to dancing, gymnastics, drama, music or religion.

(c) The provision of short-term care related to or associated with group athletic or social activities.

(d) The provision of daycare in the provider's home in the family living quarters for less than 13 children.

(25) **Clearcut:** A created opening of 1 acre or more.

(26) **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.

(27) **Commercial development/use:** Any facility or use of land or water whose function is primarily retail buying or selling of goods or services or both. This does not include fruit or produce stands.

(28) **Commercial forest products:** These include timber for lumber, pulp, and firewood for commercial purposes.

(29) **Commercial recreation:** Any private (non-governmental) recreational activity or facility on privately owned land, excluding nonprofit facilities. This does not include operation of a public recreation facility by a private vendor.

(29) **Community facility:** Basic utilities and services necessary to support public service needs, including but not limited to water and power utilities, sanitation facilities, public microwave stations and communication facilities, schools, roads and highways. This does not include sanitary landfills.

(30) **Consulting parties (cultural resources):** Organizations or individuals who submit substantive written comments to the Development Review Officer in a timely manner because they are concerned with the effects of a proposed use on cultural resources.

(31) **Contiguous land:** Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether or not portions of the parcels have separate tax lot numbers, lie in different counties, lie in different sections or government lots, lie in different land use or zoning designations, or are separated by public or private roads. Contiguous land does not include parcels that meet only at a single point.

(32) **Counties:** The six counties within the Scenic Area: Hood River, Multnomah, and Wasco in Oregon, and Clark, Skamania, and Klickitat in Washington.

(33) **Created opening (SMA):** A created forest opening with less than 80 percent crown cover closure of trees averaging less than 20 feet tall.

(34) **Creation (wetlands):** A human activity that converts an upland into a wetland. This definition presumes that the area to be converted has not been a wetland in recent times (100 to 200 years).

(35) **Cultivation:** Any activity that prepares land for raising crops by turning, breaking, or loosening the soil. Cultivation includes plowing, harrowing, leveling, and tilling.

(36) **Cultural resource:** Evidence of human occupation or activity that is important in the history, architecture, archaeology or culture of a community or region. Cultural resources include, but are not limited to, the following:

- (a) Archaeological resources. Physical evidence or ruins of human occupation or activity that are located on or below the surface of the ground and are at least 50 years old.

Archaeological resources include, but are not limited to, the remains of houses, villages, camp and fishing sites, and cave shelters; rock art such as petroglyphs and pictographs; artifacts such as arrowheads, utensils, tools, fragments of tools and utensils, obsidian flakes or other material by-products from tool and utensil-making activities; and graves, human remains, and associated artifacts.

- (b) Historic buildings and structures. Standing or above-ground buildings and structures that are at least 50 years old.

Historic buildings and structures include, but are not limited to, log cabins, barns, canals, flumes, pipelines, highways, and tunnels.

- (c) Traditional cultural properties. Locations, buildings, structures, and objects that are associated with cultural beliefs, customs, or practices of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community.

Traditional cultural properties include, but are not limited to, a location associated with the traditional beliefs of a Native American group about its origins or its cultural history; a location where a community has traditionally carried out artistic or other cultural practices important in maintaining its historical identity; and a location where Native American religious practitioners have historically gone, and go today, to perform ceremonial activities. Objects may include petroglyphs, pictographs, rock cairns or other rock structures, trees, and rock outcrops.

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

(38) **Cut:** An area where soil or earth is excavated or removed in conjunction with development activities.

(39) **Dedicated site:** An area actively devoted to the current use and as delineated on the site plan.

(40) **Deer and elk winter range:** Areas normally used, or capable of being used, by deer and elk from December through April.

(41) **Destruction of wetlands:** Loss of the wetlands or any of its component parts, including the filling, draining, or other adverse effect to the sustainable functioning of the wetland.

(42) **Developed recreation:** Recreational opportunities characterized by high-density use on specific sites and requiring facilities installation. Density of use, amount of site development, and type of recreation site can vary widely across the spectrum of recreation activities.

(43) **Development:** Any land division or structure, including but not limited to, new construction of buildings and structures, and mining, dredging, filling, grading, paving, and excavation.

(44) **Diameter at breast height (dbh):** The diameter of a tree as measured at breast height.

(45) **Duplex:** A building containing two dwelling units and designed for occupancy by two families.

(46) **Dwelling, single-family:** A detached building containing one dwelling unit and designed for occupancy by one family only.

(47) **Dwelling unit:** A single unit designed for occupancy by one family and having not more than one cooking area or kitchen.

(48) **Effect on treaty rights:** To bring about a change in, to influence, to modify, or to have a consequence to Indian treaty or treaty-related rights in the Treaties of 1855 with

the Nez Perce, Umatilla, Warm Springs and Yakima tribes executed between the individual Indian tribes and the Congress of the United States and as adjudicated by the Federal courts.

(49) **Endemic:** Plant and animal species that are found only in the vicinity of the Columbia River Gorge area.

(50) **Enhancement (natural resources):** A human activity that increases one or more functions of an existing wetland, stream, lake, riparian area, or other sensitive area. Enhancement is generally limited to a wetland, stream, lake, riparian area, or other sensitive area that is degraded. Enhancing an area that is in good or excellent condition may reduce biological diversity and eliminate other natural functions and may not be desirable.

(51) **Ethnography:** The descriptive and analytic study of the culture of particular groups. An ethnographer seeks to understand a group through interviews with its members and often through living in and observing it.

(52) **Existing use or structure:** A legally established use that existed before the effective date of the Scenic Area Act, the Management Plan, or a land use ordinance established pursuant to the Scenic Area Act. "Legally-established" means established in accordance with the law in effect at the time of establishment of the use.

(53) **Exploration, development (extraction and excavation), and production of mineral resources:** Includes all or any part of the process of surface, underground, or submerged mining of mineral resources. Minerals include soil, coal, clay, stone, sand, gravel, metallic ore, oil and gases and any other material or substance excavated for commercial, industrial or construction use. For the Management Plan, this definition includes all exploration and mining, regardless of area disturbed or volume mined. Production of mineral resources means the use of portable crushing, onsite stockpiling, washing, milling, screening, or sorting equipment or other similar methods of initial treatment of a mineral resource to transport to another site for use or further processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.

(54) **Fill:** The placement, deposition, or stockpiling of sand, sediment, or other earth materials to create new uplands or create an elevation above the existing surface.

(55) **Fire break:** A break in ground cover fuels, adjacent to and surrounding buildings.

(56) **Forbs:** Broad-leaved herbs, in contrast to ferns, fern allies, and grasses and grasslike plants.

(57) **Foreground (SMA):** One-half mile on either side of a traveled road or trail.

(58) **Forest products:** Commodities produced from a forest, including, but not limited to, timber products, boughs, mushrooms, pine cones, and huckleberries.

(59) **Forest practices:** Those activities related to the growing and harvesting of forest tree species, as defined by the Oregon Forest Practices Act or the Washington Forest Practices Act.

(60) **Forest use:** The growing, propagation, and harvesting of forest tree species and other forest products.

(61) **Fully screened:** A description of the relative visibility of a structure where that structure is not visible as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan).

(62) **Grade (ground level):** The average elevation of the finished ground elevation as defined by the Uniform Building Code.

(63) **Grading:** Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

(64) **Height of building:** The vertical distance from the grade to the highest point of the roof.

(65) **Herbaceous:** A plant with no persistent woody stem above the ground, with characteristics of an herb.

(66) **Herbs:** Nonwoody (herbaceous) plants, including grasses and grasslike plants, forbs, ferns, fern allies, and nonwoody vines. (Note: Seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(67) **Historic buildings and structures:** See cultural resource.

(68) **Historic survey:** Actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs.

(69) **Horses, boarding of:** The stabling, feeding, and grooming for a fee, or the renting of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals, and exercise tracks.

(70) **Hydric soil:** A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

(71) **In-lieu sites:** Sites acquired by the Army Corps of Engineers and transferred to the Bureau of Indian Affairs for treaty fishing, in lieu of those usual and accustomed fishing areas lost by inundation from reservoir construction. These sites were acquired under the provisions of Public Law 14 and Public Law 100-581, Section 401. Additional in-lieu sites will be provided for.

(72) **Indian tribal government:** The governing bodies of the Nez Perce Tribe (Nez Perce Tribal Executive Committee), the Confederated Tribes of the Umatilla Indian Reservation (Board of Trustees), the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribal Council), and the Confederated Tribes and Bands of the Yakima Indian Nation (Tribal Council).

(73) **Indian tribes:** The Nez Perce Tribe, the Confederated Tribes and Bands of the Yakima Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(74) **Industrial uses:** Any use of land or water primarily involved in:

(a) Assembly or manufacture of goods or products;

(b) Processing or reprocessing of raw materials, processing of recyclable materials or agricultural products not produced within a constituent farm unit;

(c) Storage or warehousing, handling or distribution of manufactured goods or products, raw materials, agricultural products, forest products, or recyclable materials for purposes other than retail sale and service; or

(d) Production of electric power for commercial purposes.

(75) **Interpretive displays:** Signs and structures that provide for the convenience, education, and enjoyment of visitors, helping visitors understand and appreciate natural and cultural resources and their relationship to them.

(76) **Key components:** The attributes that are essential to maintain the long-term use and productivity of a wildlife site. The key components vary by species and wildlife site. Examples include fledgling and perching trees, watering sites, and foraging habitat.

(77) **Key viewing areas:** Those portions of important public roads, parks, or other vantage points within the Scenic Area from which the public views Scenic Area landscapes. These include:

Historic Columbia River Highway
Crown Point
Highway I-84, including rest stops
Multnomah Falls
Washington State Route 14
Beacon Rock
Panorama Point Park
Cape Horn
Dog Mountain Trail
Cook-Underwood Road
Rowena Plateau and Nature Conservancy Viewpoint
Portland Women's Forum State Park
Bridal Veil State Park
Larch Mountain
Rooster Rock State Park
Bonneville Dam Visitor Centers
Columbia River
Washington State Route 141
Washington State Route 142
Oregon Highway 35
Sandy River
Pacific Crest Trail

SMA only:

Old Washington State Route 14 (County Road 1230)
Wyeth Bench Road
Larch Mountain Road
Sherrard Point on Larch Mountain

(78) **Land division:** The division or redivision of contiguous land(s) into tracts, parcels, sites or divisions, regardless of the proposed parcel or tract size or use. A land division includes, but is not limited to, short subdivisions, partitions, and subdivisions.

(79) **Landscape setting:** The combination of land use, landform, and vegetation patterns that distinguish an area in appearance and character from other portions of the Scenic Area.

(80) **Livestock feedlot:** Stockyards and commercial livestock finishing yards for cattle, sheep, swine, and fur bearers. Feedlots do not include winter pasture or winter hay-feeding grounds.

(81) **Lot line adjustment:** Transfer of a portion of a parcel from one owner to the owner of an adjacent parcel resulting in no increase in the number of parcels.

(82) **Management plan:** The document entitled Management Plan for the Columbia River Gorge National Scenic Area adopted October 14, 1991. The Management Plan becomes effective upon approval of land use ordinances by the Commission for the General Management Area and concurrence of land use ordinances by the Secretary of Agriculture for the Special Management Area.

(83) **Mitigation:** The use of any or all of the following actions:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(84) **Multifamily dwelling:** A dwelling constructed or modified into two or more single-family units.

(85) **Native species:** Species that naturally inhabit an area.

(86) **Natural resources:** Naturally occurring features including land, water, air, plants, animals (including fish), plant and animal habitat, and scenery.

(87) **Natural resource specialist:** A person with professional qualifications, including an academic degree or sufficient professional experience, in the subject matter the specialist is being asked to analyze or evaluate.

(88) **Natural resource-based recreation (SMA):** Recreation activities, uses, or facilities that essentially depend on the unique natural, scenic, or cultural resources found

within the Scenic Area. Campgrounds, trails, boating and windsurfing facilities, swimming beaches, picnic sites, viewpoints, interpretive parks, and similar outdoor recreation facilities are considered resource-based; golf courses, tennis courts, and rental cabins are not.

(89) **Nonprofit organization:** An organization whose nonprofit status has been approved by the U.S. Internal Revenue Service.

(90) **Old growth:** Any stand of trees 10 acres or greater generally containing the following characteristics:

- (a) contain mature and overmature trees in the overstory and are well into the mature growth state;
- (b) in coniferous forests, will usually contain a multilayered canopy and trees of several age classes;
- (c) in coniferous forests, standing dead trees and down material are present; and
- (d) evidences of man's activities may be present, but do not significantly alter the other characteristics and would be a subordinate factor in description of such a stand.

(91) **Open Spaces:** Unimproved lands not designated as agricultural lands or forest lands by the Management Plan and designated as open space by the Management Plan. Open spaces include:

- (a) Scenic, cultural, and historic areas;
- (b) Fish and wildlife habitat;
- (c) Lands which support plant species that are endemic to the Scenic Area or which are listed as rare, threatened or endangered species pursuant to State or Federal Endangered Species Acts;
- (d) Ecologically and scientifically significant natural areas;
- (e) Outstanding scenic views and sites;
- (f) Water areas and wetlands;

- (g) Archaeological sites, Indian burial grounds and village sites, historic trails and roads and other areas which are culturally or historically significant;
- (h) Potential and existing recreation resources; and
- (i) Federal and state wild, scenic, and recreation waterways.

(92) **Ordinary high water mark:** The mark on all streams, ponds, and lakes that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting upland. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute.

(93) **Parcel:**

- (a) Any parcel legally created by a short division, partition, or subdivision.
- (b) Any unit of land legally created and separately described by deed or sales contract prior to November 17, 1986, if there were no applicable planning, zoning, and land division ordinances or regulations.
- (c) In the state of Washington, a unit of land created and separately described by deed or sales contract after November 17, 1986 if the unit created was approved by the Gorge Commission or the Forest Service Scenic Area Office.
- (d) A unit of land shall not be considered a separate parcel simply because the subject tract of land:
 - (A) Is a unit of land created solely to establish a separate tax account;
 - (B) Lies in different counties;
 - (C) Lies in different sections or government lots;
 - (D) Lies in different land use or zoning designations; or
 - (E) Is dissected by a public or private road.

(94) **Partial retention:** A visual quality objective that provides for management activities that may be evident but must remain visually subordinate to the characteristic

landscape. Activities may repeat form, line, color, or texture common to the characteristic landscape, but changes in their qualities of size, amount, intensity, direction, pattern, etc., shall remain visually subordinate to the characteristic landscape.

(95) **Practicable:** Able to be done, considering technology and cost.

(96) **Preexisting:** Existing prior to the adoption of the Columbia River Gorge National Scenic Area Management Plan.

(97) **Primarily:** A clear majority as measured by volume, weight, or value.

(98) **Project area:** The geographic area or areas within which new development and uses may cause changes in the character or use of cultural resources, if any such resources exist.

(99) **Public use facility:** Recreation development(s) that meet the definition of "recreation facility" in the Management Plan and are open for use by the general public. Private clubs and other facilities limited to members or otherwise restricted in availability shall not be considered public use facilities.

(100) **Rare plant species:** Used in a generic sense to refer to various categories of sensitive plants cited in federal and state programs.

(101) **Recreation facility:** A cluster or grouping of recreational developments or improvements located in relatively close proximity to one another, and that are not separated in distance by more than 1/4 mile of land that does not contain any such developments or improvements, except for roads and/or pathways.

(102) **Reconnaissance survey:** Actions conducted to determine if archaeological resources are present in an area that would be affected by a proposed use. Reconnaissance surveys may include archival research, surface surveys, subsurface testing, and ethnographic research.

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

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

- (b) **Semiprimitive:** Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.
- (c) **Roaded Natural:** Roaded areas with moderately frequent human encounters and with resource modifications evident.
- (d) **Rural:** Roaded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.
- (e) **Suburban:** Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent human encounters, and dominant resource modifications encroaching into the rural landscape.
- (f) **Urban:** Highly accessible, roaded areas dominated by human encounters and human-related structures.

(104) **Recreation resources:** Areas and facilities that provide recreation opportunities and experiences. Recreation resources include semiprimitive areas with few facilities and developed sites.

(105) **Rehabilitation (natural resources):** A human activity that returns a wetland, stream, buffer zone, or other sensitive area that was disturbed during construction of a permitted use to its natural or preconstruction condition.

(106) **Repair and maintenance:** An activity that restores the size, scope, configuration, and design of a serviceable structure to its previously authorized and undamaged condition. Activities that change the size, scope, and configuration of a structure beyond its original design are not included in this definition.

(107) **Resource-based recreation:** Those recreation uses that are essentially dependent upon the natural, scenic, or cultural resources of the Scenic Area and that do not adversely affect those resources upon which they depend.

(108) **Restoration (wetlands):** A human activity that converts an area that was formerly a wetland back into a wetland. This definition presumes that the area to be restored no longer qualifies as a wetland because of past activities, alterations, or catastrophic events.

(109) **Retention:** A visual quality objective that provides for management activities that are not visually evident to the casual visitor. Management activities may only repeat form,

line, color, and texture that are frequently found in the characteristic landscape. Changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not be evident.

(110) **Review uses:** Proposed uses and developments that must be reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they comply with the policies and guidelines in the Management Plan.

(111) **Riparian area:** The area immediately adjacent to streams, ponds, lakes, and wetlands that directly contributes to the water quality and habitat components of the water body. This may include areas that have high water tables and soils and vegetation that exhibit characteristics of wetness, as well as upland areas immediately adjacent to the water body that directly contribute shade, nutrients, cover, or debris, or that directly enhance water quality within the water body.

(112) **Road:** The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:

- (a) Ways described as streets, highways, throughways, or alleys.
- (b) Road-related structures that are in the right-of-way, such as tunnels, culverts, or similar structures.
- (c) Structures that provide for continuity of the right-of-way, such as bridges.

(113) **Scenic Area:** The Columbia River Gorge National Scenic Area.

(114) **Scenic travel corridor:** Those portions of Interstate 84, the Historic Columbia River Highway, Oregon Highway 35, and Washington State Routes 14, 141, and 142 located in the Scenic Area and specifically designated to be managed as scenic and recreational travel routes.

(115) **Secretary:** The Secretary of Agriculture.

(116) **Sensitive plant species:** Plant species that are

- (a) endemic to the Columbia River Gorge and vicinity;
- (b) listed as endangered or threatened pursuant to federal or state endangered species acts; or

- (c) listed as endangered, threatened or sensitive by the Oregon or Washington Natural Heritage Program.

In the Special Management Area, sensitive plant species also include plant species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(117) **Sensitive wildlife species:** Animal species that are

- (a) listed as endangered or threatened pursuant to federal or state endangered species acts;
- (b) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission;
- (c) listed as sensitive by the Oregon Fish and Wildlife Commission; or
- (d) considered to be of special interest to the public, limited to great blue heron, osprey, mountain goat, golden eagle, and prairie falcon.

In the Special Management Area, sensitive wildlife species also include animal species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(118) **Service station:** A business operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(119) **Serviceable:** Presently useable.

(120) **Shall:** Action is mandatory.

(121) **Should:** Action is encouraged.

(122) **Shrub:** A woody plant usually greater than 3 feet but less than 20 feet tall that generally exhibits several erect, spreading, or prostrate stems and has a bushy appearance. (Note: For the Management Plan, seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(123) **Sign:** Any placard, poster, billboard, advertising structure or inscribed surface, pattern or artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure, or other visually communicative or

expressive device that is visible from an out-of-doors position and is used to advertise or call the public's attention to any public, business, commercial, industrial, recreational or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name, text, device, signal, ornament, logotype, or advertising matters is made visible. The meaning of "sign" shall also include any sign currently in disuse, but still visible from an out-of-doors position, and any frame or support structure erected specifically to bear or uphold a sign.

(124) **Significant cultural resource (SMA):** A cultural resource that is included in, or eligible for inclusion in, the National Register of Historic Places. (The criteria for evaluating the eligibility of properties for the National Register of Historic Places appear in "National Register Criteria for Evaluation" [36 CFR 60].)

(125) **Skyline:** The line that represents the place at which a landform, such as a cliff, bluff or ridge, meets the sky, as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). In areas with thick, unbroken tree cover, the skyline is generally formed by the top of the vegetative canopy. In treeless areas or areas with more open tree cover, the skyline is generally formed by the surface of the ground.

(126) **Soil Capability Class:** A classification system developed by the U.S. Department of Agriculture Soil Conservation Service to group soils as to their capability for agricultural use.

(127) **Special habitat area:** Wetlands, mudflats, shallow water, and riparian vegetation that have high values for waterfowl, shorebirds, raptors, songbirds, upland game, and reptiles.

(128) **Special streams:** Streams that are primary water supplies for fish hatcheries and rearing ponds.

(129) **Stand:** A group of trees possessing uniformity in regard to type, age, vigor, or size.

(130) **Story:** A single floor level of a structure, as defined by the Uniform Building Code.

(131) **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. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff structures, or other artificial

watercourses unless they are used to convey streams naturally occurring prior to construction of such watercourses.

For the Management Plan, streams are categorized into two classes: perennial streams and intermittent streams. Perennial stream means a stream that flows year-round during years of normal precipitation. Intermittent stream means a stream that flows only part of the year, or seasonally, during years of normal precipitation.

(132) **Structure:** That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to, buildings, walls, fences, roads, parking lots, signs, and additions/alterations to structures.

(133) **Subsurface testing:** Any procedure that removes material from beneath the ground surface for the purpose of identifying cultural resources, such as shovel tests, posthole digger tests, and auger borings.

(134) **Suitability:** The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibility among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.

(135) **Travelers accommodations:** Any establishment having rooms rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental use or use of facilities.

(136) **Treaty rights or other rights:** Rights reserved by the Indian tribes through the Treaties of 1855. These include the right of fishing at all usual and accustomed places, as well as the privilege of pasturing livestock and hunting and gathering on open and unclaimed lands in common with the citizens of the states.

(137) **Tributary fish habitat:** Streams that are used by anadromous or resident fish for spawning, rearing and/or migration.

(138) **Undertaking:** Any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resources are located in the area of potential effects. For federal undertakings, the project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements [36 CFR 800.2(o)].

(139) **Unimproved lands:** Lands that generally do not have developments such as buildings or structures.

(140) **Upland:** Any area that does not qualify as a wetland because the associated hydrologic regime is not sufficiently wet to elicit development of vegetation, soils, and/or hydrologic characteristics associated with wetlands.

(141) **Uses allowed outright:** New uses and developments that may occur without being reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they are consistent with the Management Plan.

(142) **Utility facility:** Any structure that provides for the transmission or distribution of water, sewer, fuel, electricity, or communications.

(143) **Viewshed:** A landscape unit seen from a key viewing area.

(144) **Visual Quality Objective (VQO):** A set of visual management goals established by the Forest Service to achieve a desired visual objective. These objectives include retention and partial retention, and others in the Mt. Hood and Gifford Pinchot National Forest Plans.

(145) **Visually subordinate:** A description of the relative visibility of a structure where that structure does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually dominant in relation to their surroundings.

(146) **Water-dependent:** Uses that absolutely require, and cannot exist without, access or proximity to, or siting within, a water body to fulfill their basic purpose. Water-dependent uses include, but are not limited to, docks, wharfs, piers, dolphins, certain fish and wildlife structures, boat launch facilities, and marinas. Dwellings, parking lots, spoil and dump sites, roads, restaurants, trails and paths, trailer parks, resorts, and motels are not water-dependent.

(147) **Water-related:** Uses not directly dependent upon access to a water body, but whose presence facilitates public access to and enjoyment of a water body. In the GMA, water-related uses shall be limited to boardwalks, trails and paths, observation decks, and interpretative aids, such as kiosks and signs.

(148) **Wetlands:** Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do

support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include riparian areas, rivers, streams, and lakes.

(149) **Wetlands functions:** The beneficial roles that wetlands serve, including storage, conveyance, and attenuation of floodwaters and stormwaters; groundwater recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game and nongame birds, mammals, and other living resources; protection of habitat for endangered, threatened, and sensitive species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

(150) **Woody plant:** A seed plant (gymnosperm or angiosperm) that develops persistent, hard, fibrous tissues.

350-90-050. Exempt Land Uses and Activities.

Commission Rule 350-90 shall not apply to:

(1) Any treaty or other rights of any Indian tribes.

(2) Lands held in trust by the Secretary of the Interior for Indian tribes or for individual members of Indian tribes, and lands acquired by the U.S. Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes or of individual members of Indian tribes. This exemption shall extend to lands selected by the U.S. Army Corps of Engineers as "in lieu" fishing sites pursuant to Public Law 100-581 before or after the effective date of the Management Plan. For those "in lieu" sites chosen after the effective date of the Management Plan, the exemption shall commence upon selection by the U.S. Army Corps of Engineers.

(3) Rights to surface or ground water.

(4) Water transportation activities on the Columbia River or its tributaries. The term "activities" includes those facilities necessary for navigation.

(5) The operation, maintenance and modification of existing transmission facilities of the Bonneville Power Administration.

(6) Laws, rules or regulations pertaining to hunting or fishing.

(7) The operation, maintenance and improvement of navigation facilities at Bonneville Dam pursuant to federal law, except for the offsite disposal of excavation material.

(8) In the General Management Area, the rights and responsibilities of non-federal timber landowners under the Washington and Oregon Forest Practices Acts, or under county regulations that supersede those acts.

350-90-060. Prohibited Land Uses and Activities.

The following land uses and activities shall not be allowed within the Columbia River Gorge National Scenic Area:

- (1) Solid waste disposal sites or sanitary landfills within the Special Management Area.
- (2) New industrial development in the Scenic Area outside of the Urban Areas.
- (3) Except for uses allowed outright and review uses, new uses shall be prohibited on lands designated Agriculture-Special. Prohibited uses include, but are not limited to:
 - (a) Cultivation, including plowing, harrowing, leveling, tilling, or any activity that prepares land for raising crops by turning, breaking up, or loosening soil.
 - (b) Removal or clearing of native grasses, shrubs, and trees.
 - (c) Single-family dwellings and accessory structures, other than non-agricultural dwellings allowed as a review use.
 - (d) Barns, silos, and other agricultural buildings.
 - (e) Irrigation systems.
 - (f) Exploration, development, and production of mineral resources.
 - (g) Utility facilities, public use facilities, and roads.

350-90-070. Existing Uses.

Except as otherwise provided below, existing uses in the Scenic Area may continue, notwithstanding the provisions of Commission Rule 350-90.

- (1) Except as otherwise provided, any use or structure existing on the effective date of the Management Plan, may continue so long as it is used in the same manner and for the same purpose as on that date.

(2) Any use or structure damaged or destroyed by fire shall be treated as an existing use or structure if an application for replacement in kind and in the same location is filed within one year of such damage or destruction. Such uses or structures shall be subject to compliance with guidelines for protection of scenic resources involving color, reflectivity and landscaping. Replacement of an existing use or structure by a use or structure different in purpose, size or scope shall be subject to Commission Rule 350-90.

(3) Replacement or reestablishment of a use or structure discontinued for more than one year shall be subject to Commission Rule 350-90. Except as otherwise provided, an existing use or structure may be replaced within one year of discontinuation if used for the same purpose at the same location. This includes replacing an existing mobile home with a framed residence.

(4) In the Special Management Area, existing commercial and multi-family residential uses may expand as necessary for successful operation on the dedicated site, subject to Commission Rule 350-90-520 through 350-90-620 to minimize adverse effects on scenic, cultural, natural and recreation resources. Expansion beyond the dedicated site is prohibited. Commercial uses discontinued for 1 year or more shall no longer be considered as an existing use and shall no longer be permitted, in accordance with the provisions this rule.

(5) Existing industrial uses in the General Management Area may expand as necessary for successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.

(6) In the General Management Area, existing industrial uses may convert to less intensive uses. A less intensive use is a commercial, recreation or residential use with fewer adverse effects upon scenic, cultural, natural and recreation resources.

(7) In the General Management Area, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to Commission Rule 350-90 if any of the following conditions exist:

- (a) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as grazing. Mined land shall not include terrain which was merely leveled or cleared of vegetation.
- (b) The site has not maintained a required state permit.

(c) The site has not operated legally within 5 years before the date of adoption of the Management Plan.

(8) Uses involving the exploration, development or production of sand, gravel or crushed rock in the Special Management Area may continue when:

(a) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the Special Management Area.

(b) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural or recreation resources.

(9) Except as otherwise provided, whether a use has a vested right to continue will be determined by the law on vested rights in the appropriate state.

350-90-080. Application for Review and Approval.

(1) Prior to initiating any use or development which requires review and approval by the Development Review Officer, an application shall be completed pursuant to Commission Rule 350-90-080. The Development Review Officer shall accept and review the application pursuant to Commission Rule 350-90-100 through 350-90-170 for consistency with the appropriate guidelines of this rule. Review of a proposed use or development shall commence upon the acceptance of an application by the Development Review Officer. The Commission may charge a fee for review of applications.

(2) Standard application forms shall be available at county and city planning offices, the offices of the Columbia River Gorge Commission and the Forest Service.

(3) Applications for the review and approval of a proposed use or development shall provide the following information:

(a) The applicant's name, address and telephone number;

(b) The land owner's name, address and telephone number (if different from applicant's);

(c) The county in which the proposed use or development would be located;

(d) The section, quarter section, township and range in which the proposed development would be located;

- (e) The street address of the proposed use or development;
- (f) The tax lot number(s) and size in acres of the parcel(s) involved;
- (g) A description of the current land use for the parcel(s) involved and adjoining lands;
- (h) A written description of the proposed use or development, including details on the height, exterior color(s), and construction materials of the proposed structures.
- (i) A list of Key Viewing Areas from which the proposed use would be visible.
- (j) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the Development Review Officer to determine the location and extent of the proposed use or development and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail. If a parcel is very large, the map does not need to show the entire parcel. Rather, it can show only those portions of the parcel affected by the proposed use. The map shall include the following elements:
 - (A) North arrow.
 - (B) Map scale.
 - (C) Boundaries, dimensions, and size of the subject parcel.
 - (D) Significant terrain features or landforms.
 - (E) Groupings and species of trees or other vegetation on the parcel.
 - (F) Location and species of vegetation that would be removed or planted.
 - (G) Bodies of water and watercourses.
 - (H) Location and width of existing and proposed roads, driveways, and trails.
 - (I) Location and size of existing and proposed structures.

(J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting.

(K) Location and depth of all proposed grading and ditching.

(k) In the Special Management Area, applications and/or site plans shall contain the natural resources information required in Commission Rule 350-90-600(2).

(l) Any additional information which the applicant feels will assist in the evaluation of the proposal including, but not limited to, maps, drawings, and development plans.

(m) The signature of the applicant and property owner or a statement from the property owner indicating that he is aware of the application being made on his property.

(n) The signature of the property owner on a statement that authorizes the Development Review Officer or the Development Review Officer's designee reasonable access to the site in order to evaluate the application.

(4) Applications for the following uses or developments shall include additional information as required by the appropriate guidelines in Commission Rule 350-90 or by the Development Review Officer:

(a) All buildings, roads, or mining and associated activities proposed on lands visible from Key Viewing Areas, pursuant to 350-90-520(2)(d).

(b) In the General Management Area, production and/or development of mineral resources and expansion of existing quarries pursuant to 350-90-520(1)(e), 350-90-520(2)(d), (2)(e), (2)(v), and (2)(w).

(c) In the General Management Area, any structural development involving more than 100 cubic yards of grading on sites visible from key viewing areas and which slope is between 10 and 30 percent, pursuant to 350-90-520(2)(u)

(d) In the General Management Area, vegetation management projects in public rights of way along Scenic Travel Corridors, pursuant to 350-90-520(4)(d).

(e) Large-scale uses as defined by guideline 350-90-540(1)(c)(C) shall include reconnaissance survey reports, pursuant to 350-90-540(1)(c)(F) and (G).

- (f) Proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings that are 50 years old or older, pursuant to 350-90-540(1)(c)(H)(iii).
- (g) In the General Management Area, new uses located in, or providing recreational access to the Columbia River or its fishbearing tributaries, pursuant to 350-90-150(8)(a)(A).
- (h) In the General Management Area, any review use in a wetland or within a wetland buffer zone, pursuant to Commission Rule 350-90-560(1)(b).
- (i) In the General Management Area, any review use in a stream, pond, lake, or within their buffer zones, pursuant to Commission Rule 350-90-570(1)(b).
- (j) In the General Management Area, any review use within 1000 feet of a sensitive wildlife area or site, pursuant to 350-90-580(1)(b). Large-scale uses as defined by 350-90-580(3) shall also include field survey information, pursuant to 350-90-580(3)(e).
- (k) In the General Management Area, any review use within 1000 feet of a sensitive plant, pursuant to Commission Rule 350-90-590(b). Large-scale uses as defined by 350-90-590(3) shall also include field survey information, pursuant to Commission Rule 350-90-590(3)(e).
- (l) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, pursuant to Commission Rule 350-90-190(1)(e), and if applicable, 350-90-190(1)(f).
- (m) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling not in conjunction with agricultural use, pursuant to Commission Rule 350-90-190(1)(n).
- (n) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative, pursuant to Commission Rule 350-90-190(1)(h).
- (o) In the General Management Area, on lands designated Large-Woodland, a single-family dwelling, pursuant to Commission Rule 350-90-270(1)(a),(c), and (l).

- (p) In the Special Management Area, on lands designated Forest, a single-family dwelling, pursuant to Commission Rule 350-90-270(2)(j).
- (q) In the Special Management Area, on lands designated Forest, forest practices, pursuant to Commission Rule 350-90-270(2)(b).
- (r) In the Special Management Area, on lands designated Open Space, any new use or development, pursuant to Commission Rule 350-90-340(11).
- (s) In the General Management Area, on lands designated Agriculture-Special, a single-family dwelling pursuant to 350-90-190(1)(h).
- (t) In the Special Management Area, on lands designated Agriculture, a single-family dwelling necessary and accessory to agricultural use, pursuant to Commission Rule 350-90-190(2)(b).
- (u) In the Special Management Area, on lands designated Agriculture, farm labor housing and agricultural buildings, pursuant to Commission Rule 350-90-190(2)(d).
- (v) In the General Management Area, on lands designated Small Woodland, a single-family dwelling pursuant to Commission Rule 350-90-270(1)(b).
- (w) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, a single-family dwelling in conjunction with agricultural use pursuant to Commission Rule 350-90-190(1)(e).
- (x) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, agricultural labor housing, pursuant to Commission Rule 350-90-270(1)(o).
- (y) In the General Management Area, on lands designated Agriculture-Special, new livestock grazing, new fences, livestock watering facilities, and corrals; or soil, water, and vegetation conservation activities, pursuant to Commission Rule 350-90-240.
- (z) Other uses as deemed necessary by the Development Review Officer.

(5) Completed application forms shall be submitted directly to the office of the Columbia River Gorge Commission.

350-90-090. Pre-Application Conference.

An applicant may request a pre-application conference prior to submitting an application for development review. The purposes of the conference shall be to acquaint the applicant with the substantive and procedural requirements of Commission Rule 350-90, to discuss the principle elements of the proposed action, and to identify guidelines that create opportunities or pose constraints for the proposed action.

350-90-100. Acceptance of Application.

Within 14 days of the receipt of an application, the Development Review Officer shall review the application for completeness and adequacy. The Development Review Officer shall accept a complete and adequate application within 14 days of receipt of the application.

(1) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Development Review Officer shall notify the applicant of all omissions and deficiencies in writing within 14 days of receipt of the application.

(2) No application shall be accepted which the Development Review Officer deems cannot be acted upon reasonably within 72 days, pursuant to 350-90-130(3), except when the applicant consents to a longer period for action.

(3) No application shall be accepted unless accompanied by a list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in Commission Rule 350-90-630. A statement from the County Assessor or appropriate agency confirming the accuracy of the list shall accompany the list.

(4) No application for a proposed use which is explicitly prohibited by Commission Rule 350-90-060 shall be accepted.

- (a) The application shall be returned to the applicant.
- (b) A letter, signed by the Development Review Officer, stating that the proposed use is prohibited and citing the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.
- (c) Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to 350-70.

350-90-110. Notice of Development Review.

(1) Within 7 days of the acceptance of an application, the Development Review Officer shall issue notice of a proposed development review. The notice shall provide the following information:

- (a) The name of the applicant;
- (b) The general and specific location of the subject property;
- (c) A brief description of the proposed action;
- (d) The deadline for rendering a decision; and
- (e) The deadline for filing comments on the proposed action.

(2) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(3) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(4) The notice shall be mailed to:

- (a) The Forest Service, the applicable state, Indian Tribes and the applicable county and/or city; and
- (b) Owners of property within a radius of the subject parcel(s) as determined by 350-90-630; and
- (c) Other agencies and interested parties which request a notice which the Development Review Officer determines should be notified.

(4) The notice shall be posted at the Commission and Forest Service offices and shall be made available for posting at the applicable county or city planning office(s) and applicable library or libraries.

(5) For all development, notice shall be published in a newspaper of general circulation nearest to the site of the proposed action.

(6) A copy of the notice shall be filed in the records of the Commission.

350-90-120. Comment Period

Interested persons shall have 21 days from the date which the notice is sent to submit written comments to the Development Review Officer relative to the consistency of the proposed actions with the guidelines of Commission Rule 350-90:

(1) Within 7 days of the close of the comment period, the Development Review Officer shall determine if a wildlife management plan pursuant to Commission Rules 350-90-580(6), or a rare plant protection and rehabilitation plan pursuant to Commission Rules 350-90-590(6) is required.

(2) For proposed uses or developments where a cultural resources survey (reconnaissance or historic) is required and where the Commission is performing the survey, the survey shall be completed by the close of the comment period. Upon receipt of the completed survey, the Development Review Officer shall forward the survey to the State Historic Preservation Officers, and Indian Tribes pursuant to Commission Rules 350-90-540(1)(b) and (2)(b)(A).

(3) Within 7 days of the close of the 30 day reconnaissance survey comment period for State Historic Preservation Officers and Indian Tribes, the Development Review Officer shall determine if an evaluation of significance pursuant to Commission Rules 350-90-540(3) is required.

350-90-130. Decision of the Development Review Officer.

(1) In making a decision on a proposed use or development the Development Review Officer shall:

- (a) Consult with the applicant and such agencies as the Development Review Officer deems appropriate;
- (b) Consider information submitted by the applicant and all other relevant information available;
- (c) Consider all comments submitted pursuant to Commission Rule 350-90-120; and
- (d) Solicit and consider the comments of the Forest Service.

(2) The Development Review Officer shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-90. In approving a proposed development action, the Development

Review Officer may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-90.

(3) The Development Review Officer shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-90 within 72 days after acceptance of the application except in one or more of the following situations:

- (a) The applicant consents to an extension of time.
- (b) The Development Review Officer determines that additional information is required pursuant to Commission Rule 350-90-120.
- (c) The Development Review Officer determines that additional information is necessary to evaluate the impacts of the proposed use to scenic, cultural, natural, and recreation resources.
- (d) Unforeseen circumstances including, but not limited to, weather, illness, etc.

(4) The Development Review Officer shall mail a copy of the decision to the applicant, the Commission, the Forest Service, the applicable state, the Indian Tribes, the applicable county and/or city and each person who submitted comments under Commission Rule 350-90-150. The decision shall set forth the rights of appeal under Commission Rule 350-70.

(5) The decision of the Development Review Officer shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70.

(6) The decision of the Development Review Officer approving a proposed development action shall become void

- (a) when the development action is not undertaken within two years of the decision, or
- (b) when the development action is discontinued for any reason for one year or more.

(7) An applicant may request an extension of the validity of a development approval. Such request shall be considered an administrative action and shall be submitted to the Development Review Officer prior to the expiration of such approval, in writing, stating the

reason why an extension should be granted.

The Development Review Officer may grant an extension of up to 12 months in the validity of a development approval if it is determined that conditions, for which the applicant was not responsible, would prevent the applicant from commencing his operation within the original time limitation.

The Development Review Officer shall not grant an extension if the site characteristics and/or new information indicates that the proposed use may adversely affect scenic, cultural, natural or recreation resources in the National Scenic Area.

350-90-140. Changes or Alterations to an Approved Action.

Any change or alteration to a development action approved by the Commission or Development Review Officer pursuant to this rule shall be processed as new action, except that the Development Review Officer may approve minor changes or alterations deemed to be consistent with the guidelines of Commission Rule 350-90 and the findings and conclusions for the original action.

350-90-150. General Guidelines.

The following uses may be permitted when allowed by the land use designation, subject to compliance with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-90-520 through 350-90-620):

(1) Land Divisions and Cluster Development

Land Divisions within the Columbia River Gorge National Scenic Area may be allowed subject to the following:

- (a) New land divisions are not allowed in the Special Management Area, unless the creation of a new parcel will facilitate land acquisition by the federal government to achieve the policies and guidelines of the Management Plan.
- (b) Unless otherwise specified, creation of a parcel, regardless of size, or any division of land except a lot-line adjustment shall be subject to the guidelines in Commission Rule 350-90.

- (c) At the time of creation of one or more new parcels, consolidation of access shall be considered in order to reduce adverse effects on scenic, cultural, natural and recreation resources.
- (d) Adjustment of the boundary between two or more contiguous parcels that 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) The minimum size for new parcels created for commercial uses within a Rural Center shall be based upon the site requirements (sewerage, parking, building, size, etc.) for the proposed use. Parcel size shall be determined by the Development Review Officer on a case-by-case basis.
- (f) The minimum size for new parcels created for residential uses within a Rural Center shall be 1 acre.

To encourage the efficient use of land, provide public amenities and standards for quality developments, and reduce the cost of providing services within Rural Centers, the Development Review Officer may allow a minimum parcel size of less than 1 acre within Rural Centers if a planned unit development approach is used for the subject parcel, incorporating features such as consolidated access and commonly shared open areas.

- (g) When allowed by a land use designation, a land division in the General Management Area may create parcels smaller than the designated minimum size and may include a bonus, as specified below, in order to cluster new dwellings. Approval of cluster development shall be contingent upon submission of plans specifying dwelling sites and areas of permanent, undeveloped open land. To approve a cluster development, the Development Review Office must find that clustering new dwellings will provide an opportunity not available through conventional parcel-by-parcel development to site new dwellings to:
 - (A) Be located in areas with screening vegetation or other features which reduce visibility of development as seen from Key Viewing Areas.
 - (B) Avoid significant landscape features.
 - (C) Protect the existing character of the landscape setting.
 - (D) Reduce interference with movement of deer or elk in winter range.

- (E) Avoid areas of known cultural resources.
 - (F) Consolidate road access, septic drainfields or other development features in order to reduce impacts associated with grading or ground disturbance.
 - (G) Reduce adverse effects to riparian areas, wetlands, natural areas, rare plants, sensitive wildlife sites or other natural resources.
 - (H) Increase the likelihood of agricultural or forest management on the undeveloped land left by the cluster development.
- (h) In the General Management Area, following cluster development, there may be no further division of any resulting parcel for residential purposes until the subject parcel is included within the boundary of an Urban Area. Approval of a cluster development shall include provisions for the permanent protection of open areas. No parcel in a cluster development may be smaller than 1 acre in a 5-acre Residential or a 10-acre Residential designation or 2 acres in a Small-Scale Agriculture or Small Woodland designation.
 - (i) In the General Management Area, cluster development may create up to 25 percent more parcels than otherwise allowed by the minimum parcel size on lands designated 5-acre Residential or 10-acre Residential and up to 50 percent more parcels on lands designated Small-Scale Agriculture or Small Woodland. Any division in a cluster development under this guideline may create at least one additional parcel.
 - (j) In the General Management Area, at least 75 percent of land subject to a cluster development shall be permanently protected as undeveloped land.
 - (k) In the General Management Area, contiguous parcels in the same ownership or in separate ownership may be consolidated and redivided to take advantage of cluster development bonuses.
- (2) Agricultural Buffer Zones

All new buildings shall comply with the following guidelines when proposed to be located on a parcel adjacent to lands designated Large-Scale or Small-Scale Agriculture and which are currently used for or are suitable for agricultural use:

(a) Setback Guidelines

Type of Buffer (size in feet)

Type of <u>Agriculture</u>	Open or <u>Fenced</u>	Natural or Created <u>Vegetation Barrier</u>	8-foot Berm or <u>Terrain</u> <u>Barrier</u>
Orchards	250'	100'	75'
Row crops/ vegetables	300'	100'	75'
Livestock grazing pasture, haying	100'	15'	20'
Grains	200'	75'	50'
Berries, vineyards	150'	50'	30'
Other	100'	50'	30'

- (b) Earth berms may be used to satisfy, in part, the setback guidelines. Berms shall be a minimum of 8 feet in height, and contoured at 3:1 slopes to look natural. Shrubs, trees and/or grasses shall be planted on the berm to control erosion and achieve a finished height of 15 feet.
- (c) The planting of a continuous vegetative screen may be used to satisfy, in part, the setback guidelines. Trees shall be at least 6 feet high when planted and reach an ultimate height of at least 15 feet. The vegetation screen shall be planted along the appropriate parcel line(s), and be continuous.
- (d) The necessary berming and/or planting must be completed during the first phase of development and maintained in good condition.
- (e) If several crops or crop rotation is involved in the adjacent operation, the greater setback shall apply.
- (f) A variance to buffer setbacks may be granted upon a demonstration that the guidelines of Commission Rule 350-90-150(7) have been satisfied.

(3) Temporary Use Hardship Dwelling

(a) The temporary placement of a mobile home in the General Management Area may be granted under the following circumstances:

(A) A family hardship exists where conditions relate to the necessary care for a member of the family occupying the principal dwelling and where medical conditions relate to the infirm or aged.

(B) The hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling, if the system is adequate to accommodate the additional dwelling, unless the additional dwelling can use an existing public sanitary sewer system.

(C) The hardship dwelling is found to be consistent with the guidelines for protection of scenic, cultural, natural and recreation resources of Commission Rule 350-90-520 through 350-90-620.

(b) A permit may be issued for a 2-year period, subject to annual review for compliance with the provisions of this rule and any other conditions of approval.

(c) Upon expiration of the permit or cessation of the hardship, whichever comes first, the mobile home shall be removed within 30 days.

(d) A new permit may be granted upon a finding that a family hardship continues to exist.

(4) Home Occupations and Cottage Industries

Home occupations and cottage industries may be established as specified in various land use designations consistent with the following conditions:

(a) A home occupation may employ only residents of the home.

(b) A cottage industry may employ up to three outside employees.

(c) No more than 25 percent of the total actual living space of the dwelling may be utilized for the home occupation or cottage industry.

(d) No more than 500 square feet of an accessory structure may be used for a home occupation or cottage industry.

- (e) There shall be no outside, visible evidence of the home occupation or cottage industry, including outside storage.
 - (f) Exterior structural alterations to the residence for the home occupation or cottage industry shall not be permitted. New structures shall not be constructed for the primary purpose of housing a home occupation or cottage industry.
 - (g) No retail sales may occur on the premises, except incidental sales at lodging establishments authorized in Commission rule 350-90-150(5).
 - (h) One non-animated, non-illuminated sign, not exceeding 2 square feet in area may be permitted on the subject structure or within the yard containing the home occupation or cottage industry.
 - (i) Parking not associated with residential use shall be screened so it is not visible from Key Viewing Areas.
 - (j) In the General Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of Commission Rules 350-90-150(4) and (5).
 - (k) In the Special Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of Commission Rules 350-90-150(4) and (5), except Commission Rule 350-90-150(5)(a).
- (5) Bed and Breakfast Inns

Bed and breakfast inns may be established as authorized in specified land use designations subject to the following:

- (a) Guests may not occupy a facility for more than 14 consecutive days.
- (b) One non-animated, non-illuminated sign not exceeding 4 square feet in area may be permitted on the structure or within the yard containing the structure.
- (c) Parking areas shall be screened so as to not be visible from Key Viewing Areas.
- (d) In the Special Management Area, bed and breakfast inns associated with residential use shall be allowed only in structures that are included in, or eligible for inclusion in, the National Register of Historic Places.

- (6) Docks
 - (a) New private docks and boathouses serving only one family and one property shall be limited to a maximum of 120 square feet in size.
 - (b) New private docks and boathouses serving more than one family and property shall be limited to a maximum of 200 square feet in size.
 - (c) Public docks open and available for public use shall be allowed.
- (7) Variances from Setbacks and Buffers within the General Management Area.

Variances from setbacks and buffers within the General Management Area may be allowed subject to the following approval criteria:

- (a) When setbacks or buffers for the protection of scenic, cultural, natural, recreation, agricultural or forestry resources overlap or conflict, the setbacks or buffers may be varied upon a demonstration that:
 - (A) A setback or buffer to protect one resource would cause the proposed use to fall within a setback or buffer to protect another resource; and
 - (B) Variation from the specified setbacks or buffers would, on balance, best achieve the protection of the affected resources.
- (b) A setback or buffer for protection of scenic, cultural, natural, recreation, agricultural or forestry resources may be varied to allow a residence to be built on a parcel of land upon a demonstration that:
 - (A) The land use designation otherwise authorizes a residence on the tract;
 - (B) No site exists on the tract (all contiguous parcels under the same ownership) on which a residence could practicably be placed in full compliance with the setback or buffer;
 - (C) The variance from the specified setback or buffer is the minimum necessary to allow the residence.
- (c) The Development Review Officer may grant a variance to the setback and buffer requirements in Commission Rule 350-90-610, upon a finding that the following conditions exist:

- (A) The proposed project is a public use, resource-based recreation facility providing or supporting either recreational access to the Columbia River and its tributaries, or recreational opportunities associated with a Scenic Travel Corridor.
 - (B) All reasonable measures to redesign the proposed project to comply with required setbacks and buffers have been explored, and application of those setbacks and buffers would prohibit a viable recreation use of the site as proposed.
 - (C) Resource impacts have been mitigated to less than adverse levels through design provisions and mitigation measures.
 - (D) The variance is the minimum necessary to accommodate the use.
- (d) The Development Review Officer may grant a variance of up to 10 percent to the guidelines of General Management Area and Special Management Area Recreation Intensity Class 4 for parking and campground units upon demonstration that:
- (A) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from Scenic Area recreation demand studies shall be relied upon to meet this criterion in the absence of current applicable studies.
 - (B) The proposed use is dependent on resources present at the site.
 - (C) Reasonable alternative sites, including those in nearby Urban Areas, offering similar opportunities have been evaluated and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.
 - (D) The proposed use is consistent with the goals, objectives and policies in Chapter 4, Part I of the Management Plan.
 - (E) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural or cultural resources, and adjacent land uses.

(F) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

(8) Indian Tribal Treaty Rights and Consultation

(a) Tribal Government Notice

(A) New uses located in, or providing recreation river access to, the Columbia River or its fishbearing tributaries shall include the following supplemental information:

(i) The site plan map shall show adjacent river areas at least 1/2 mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.

(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:

(I) Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use (people, boats, and other uses) during peak-use periods.

(II) List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.

(III) List tribal ceremonial fishing seasons in the project vicinity.

(IV) Based on the above factors, assess the potential effects that the proposed uses may have on Indian treaty rights.

(B) Notices shall include a treaty rights protection plan if new uses may affect Indian treaty rights. The protection plan shall specify measures that will be used to avoid effects to Indian treaty rights. These measures may include reducing the size and modifying the location or design of the proposed uses, seasonal closures, stringent onsite monitoring, information signs, and highly visible buoys or other markers delineating fishing net locations.

- (C) Indian tribal governments shall have 20 calendar days from the date a notice is mailed to submit substantive written comments to the Development Review Officer. Indian tribal governments must identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the new uses.

(b) Tribal Government Consultation

- (A) When substantive written comments are submitted to a Development Review Officer in a timely manner, the project applicant shall offer to meet with the Development Review Officer and the Indian tribal government that submitted comments within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the Indian tribal government.

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

- (B) Any substantive comments, recommendations, or concerns expressed by Indian tribal governments during the consultation meeting shall be recorded and addressed by the project applicant in a treaty rights protection plan. The protection plan shall include measures to avoid effects to treaty and other rights of any Indian tribe.
- (C) The Development Review Officer shall submit all protection plans to the Indian tribal governments. Indian tribal governments shall have 30 calendar days from the date a protection plan is mailed to submit written comments to the Development Review Officer.

(c) Conclusion of the Treaty Rights Protection Process

- (A) The Development Review Officer shall decide whether the proposed uses would affect or modify any treaty or other rights of any Indian tribe.

The final decision shall integrate findings of fact that address any substantive comments, recommendations, or concerns expressed by Indian tribal governments. If the final decision contradicts the comments, recommendations, or concerns of Indian tribal governments,

the Development Review Officer must justify how it reached an opposing conclusion.

- (B) The treaty rights protection process may conclude if the Development Review Officer determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.
- (C) A finding by the Development Review Officer that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as provided in these guidelines, in no way shall be interpreted as a waiver by the Indian tribe of a claim that such uses adversely affect or modify treaty or other tribal rights.

(9) If new buildings or structures may detract from the use and enjoyment of established recreation sites on adjacent parcels, an appropriate buffer shall be established between the building/structure and the parcel.

(10) Section 8(o) of the National Scenic Act (16 USC § 544f(o)) is hereby incorporated by reference.

350-90-160. Signs.

(1) Signs may be allowed pursuant in all land use designations in the General Management Area to the following provisions:

- (a) Except for signs along public highways necessary for public safety, traffic control or road construction which are consistent with the Manual for Uniform Traffic Control Devices, the following signs are prohibited:
 - (A) Luminous signs or those with intermittent or flashing lights. These include neon signs, fluorescent signs, light displays and other signs which are internally illuminated, exclusive of seasonal holiday light displays.
 - (B) New billboards.
 - (C) Signs with moving elements.
 - (D) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle.

- (b) Any sign which does not conform with a provision of 350-90-160 and has existed prior to adoption of the Management Plan, shall be considered non-conforming and subject to the following:
- (A) Alteration of existing non-conforming signs shall comply with Commission Rule 350-90-160.
 - (B) Any non-conforming sign used by a business must be brought into conformance concurrent with any expansion or change in use which requires a development permit.
- (c) The following may be permitted without review, subject to consistency with Commission Rule 350-90-160(1)(a):
- (A) Ordinary repair and maintenance of signs.
 - (B) Election signs which are not displayed for more than 60 days. Removal shall be accomplished within 30 days of election day.
 - (C) "For Sale" signs not greater than 12 square feet. Removal shall be accomplished within 30 days of close of sale.
 - (D) Temporary construction site identification, public service company, safety or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the *Manual for Uniform Traffic Control Devices*. Removal shall be accomplished within 30 days of project completion.
 - (E) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet.
 - (F) Temporary signs advertising civil, social, or political gatherings and activities not exceeding 12 square feet. Removal shall be accomplished within 30 days of the close of the event.
 - (G) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the message intended.