



RULE-MAKING ORDER  
(RCW 34.05.360)

CR-103 (7/10/97)

Agency: COLUMBIA RIVER GORGE COMMISSION

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: JULY 13, 2000

(2) Purpose: TO IMPLEMENT DISASTER GUIDELINES FOR THE SCENIC AREA OF KLUCKITAN COUNTY, WASHINGTON.

(3) Citation of existing rules affected by this order:

Repealed:  
 Amended: 350-80-040, 350-80-070, 350-80-075, 350-80-340.  
 Suspended: WAL land

(4) Statutory authority for adoption:

Other authority:

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR ~~00-07-049~~ on APRIL 20, 2000 (date). <sup>leave date</sup>

Describe any changes other than editing from proposed to adopted version:  
00-10-004, 00-10-006, 00-10-007, and 00-10-008

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR 00-07-049 on APRIL 20, 2000 (date).

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes  No If Yes, explain:

(6) Effective date of rule:

CODE REVISER USE ONLY

Permanent Rules  
or Expedited Rule Making

Emergency Rules

31 days after filing

Immediately

Other (specify) 30 days

Later (specify) \_\_\_\_\_

\*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

NAME (TYPE OR PRINT)

ROBERT K. MCINTYRE

SIGNATURE

Robert K. McIntyre

TITLE

ADMINISTRATIVE ASSISTANT

DATE

8-17-2000

CODE REVISER'S OFFICE  
STATE OF WASHINGTON  
FILED

AUG 21 2000

TIME

10:17

WSR

00-17-132

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New _____	Amended _____	Repealed _____
<b>Federal rules or standards:</b>	New _____	Amended _____	Repealed _____
<b>Recently enacted state statutes:</b>	New <u>1</u>	Amended _____	Repealed _____

**The number of sections adopted at the request of a nongovernmental entity:**

New \_\_\_\_\_ Amended \_\_\_\_\_ Repealed \_\_\_\_\_

**The number of sections adopted on the agency's own initiative:**

New 1 Amended \_\_\_\_\_ Repealed \_\_\_\_\_

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New \_\_\_\_\_ Amended \_\_\_\_\_ Repealed \_\_\_\_\_

**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New <u>1</u>	Amended _____	Repealed _____
<b>Pilot rule making:</b>	New _____	Amended _____	Repealed _____
<b>Other alternative rule making:</b>	New _____	Amended _____	Repealed _____

## AMENDATORY SECTIONS

### 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 and subject to review for consistency with Commission Rule 350-80 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 and is not part of a legally operating designated campground.

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

(25) **Clear cut:** 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.

(30) **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.

(31) **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.

(32) **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.

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

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

(35) **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).

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

(37) **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.

(38) **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.

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

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

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

(42) **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.

(43) **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.

(44) **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.

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

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

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

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

(49) **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.

(50) **Emergency/Disaster: A sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.**

(51) **Emergency/Disaster Response: Actions involving any development (such as new structures, grading, or excavation) or vegetation removal that must be taken immediately in response to an emergency/disaster event (as defined above.) Emergency/disaster response actions not involving any structural development or ground-disturbance (such as use of emergency transport vehicles, communications activities or traffic control measures) are not included in this definition and are not affected by these provisions.**

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

(53) **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.

(54) **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.



(55) **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.

(56) **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.

(57) **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.

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

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

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

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

(62) **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.

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

(64) **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).

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

- (66) **Grading:** Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.
- (67) **Height of building:** The vertical distance from the grade to the highest point of the roof.
- (68) **Herbaceous:** A plant with no persistent woody stem above the ground, with characteristics of an herb.
- (69) **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.)
- (70) **Historic buildings and structures:** See cultural resource.
- (71) **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.
- (72) **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.
- (73) **Hydric soil:** A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.
- (74) **In-kind replacement:** A development or land use which is the same as or smaller than an existing or destroyed use or structure. An in-kind building or structure may be shorter in height, smaller mass, and contained entirely within the existing footprint of the existing use or destroyed use or structure.
- (75) **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.
- (76) **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).
- (77) **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.

(78) **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

Production of electric power for commercial purposes.

(79) **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.

(80) **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.

(81) **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. Key Viewing Areas include the entire feature, road, or place within the boundary of the National Scenic Area, including those portions of the feature, road, or place located in urban areas. Consideration of General Management Area viewsheds from urban areas does not constitute review of development located within urban areas. 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

(82) **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.

(83) **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.

(84) **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.

(85) **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.

(86) **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.

(87) **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.

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

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

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

(91) **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.

(92) **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.

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

(94) **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.

(95) **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.

(96) **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.

(97) **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.

(98) **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.

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

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

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

(102) **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.

(103) **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.

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

(105) **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.

(106) **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.

(107) **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.

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

(109) **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.

(110) **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.

(111) **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.

**(112) Restoration: A human activity that returns a resource from a disturbed or altered condition to a previous, less disturbed or less altered condition. This definition does not modify or eliminate the definition Restoration (wetlands) which applies only to wetlands.**

(113) **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.

(114) **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.

(115) **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.

(116) **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.

(117) **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.

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

(119) **Scenic travel corridor:** In the General Management Area, 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.

In addition to those Scenic Travel Corridors listed above, in the Special Management Area, those portions of Larch Mountain Road, Wyeth Bench Road, and Klickitat County Road 1230 which are located in the Special Management Area are Scenic Travel Corridors.

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

(121) **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.

- (122) **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.

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

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

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

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

(127) **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.)

(128) **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.

(129) **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].)

(130) **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.

(131) **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.

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

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

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

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

(136) **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.

(137) **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.

(138) **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.

(139) **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.

(140) **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.

(141) **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.

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

(143) **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)].

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

(145) **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.

(146) **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.

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

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

(149) **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.

(150) **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.

(151) **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.

(152) **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.

(153) **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.

(154) **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.

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

### **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] disaster or an emergency event** shall be treated as an existing use or structure if an application for replacement in kind and in the same location is filed within **[1 year] 2 years**. Such uses shall be subject to compliance with guidelines for protection of scenic resources involving color, reflectivity, and landscaping. Replacement of an existing use or structure, **including those damaged or destroyed by disaster or an emergency event, by [a use or structure different in purpose, size or scope] the same type of use or structure in a different location or with a different size** shall be subject to the policies and guidelines in the Management Plan to minimize adverse effects on scenic, cultural, natural and recreation resources.

The applicant shall be responsible for providing necessary information to demonstrate that the replacement structure is in-kind as defined by guideline .040(71). This may include photos and building plans.

(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.

## **350-80-075. Emergency /Disaster Response Actions.**

### **1. General Guidelines for Emergency/Disaster Response Actions**

- (a) Actions taken in response to an emergency/disaster event (as defined above) are allowed in all GMA/SMA land use designations, subject to the notification requirements of Commission Rule 350-80-075 (2).
- (b) Following emergency/disaster response actions, best management practices (BMPs) to prevent sedimentation and provide erosion control shall be utilized whenever disaster response actions necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute netting, etc.
- (c) Structures or development installed or erected for a temporary use (e.g. sandbags, check dams, plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following an emergency event. If it can be demonstrated that the continued use of these devices is necessary to protect life property, public services or the environment, an extension of no more than two years may be granted by the development review officer.
- (d) The new exploration, development (extraction or excavation), and production of mineral resources, used for commercial, private or public works projects, shall not be conducted as an emergency/disaster response activity.
- (e) No spoils resulting from grading or excavation activities shall be deliberately deposited into a wetland, stream, pond, lake or riparian area within the National Scenic Area (NSA) as a part of an emergency/disaster response action. The only exception to this is for construction of a fire line during a wildfire, where avoiding the aquatic area or its buffer zone has been considered and determine to not be possible without further jeopardizing life or property.

### **2. Notification Requirements for Emergency/Disaster Response Actions**

- (a) Actions taken in response to an emergency/disaster event, as defined in Commission Rule 350-80-40, are allowed in all GMA and SMA land use designations, subject to the following notification requirements.
  - (A) Notification of an emergency/disaster response activity shall be submitted either within 48 hours of the commencement of a response action, or by the next business day following the start of such an action, whichever is sooner. Notification shall be submitted by the party conducting an emergency/disaster response activity or their representatives. In the case of multiple responding parties, the first party to respond shall provide the required notification, unless, upon mutual agreement of responding parties, another responder elects to assume this responsibility.



- (B) Notification shall be submitted by mail, fax, telephone, e-mail or in person. If notification occurs by telephone, a hard copy of the notification shall be submitted by mail or in person within 7 days.
- (C) Notification shall be furnished to the Gorge Commission.
- (D) At a minimum, the following information shall be required at the time of notification:
  - (i) nature of emergency/disaster event.
  - (ii) description of emergency/disaster response activities and magnitude of response actions to be taken, if applicable (such as extent of earth movement, erection of structures, etc.).
  - (iii) location of emergency/disaster response activities.
  - (iv) estimated start and duration of emergency/disaster response activities.
  - (v) contact person and phone number for the parties conducting emergency/disaster response actions.
- (E) Repair and maintenance of an existing serviceable structure to its previously authorized and undamaged condition are not subject to the above referenced notification requirements.

- (b) Upon notification of an emergency/disaster response action, the Gorge Commission shall, as soon as possible:
  - (A) review its natural resource inventory data and notify the contact person for the emergency/disaster response actions of all inventoried natural resource sites and their buffers, that are within or adjacent to the response area or that may be adversely affected by response activities;
  - (B) notify the Washington Department of Fish and Wildlife of all noticed emergency/disaster response actions, to provide that agency an opportunity to consult with responding agencies during the event, and;
  - (C) notify the Forest Service, the Washington Office of Archeology and Historic Preservation, and the Tribal governments of all emergency/disaster response activities. The Forest Service will review their cultural resource inventory data and notify the contact person for the emergency/disaster response action as soon as possible of all inventoried cultural resource sites, or their buffers, that are within, or adjacent to, emergency/disaster response areas.

- (c) Upon notification of a response action, the Forest Service shall, as soon as possible, offer the services of a resource advisor to the agency(ies) conducting the response action. The resource advisor will provide on-site advice to minimize impacts to resources from emergency/disaster response actions.
- (3) Post-Emergency/Disaster Response Development Review Application Requirements.
- (a) Within 30 days following notification, a post-emergency/disaster response application shall be submitted by the party conducting the response action to the Gorge Commission. In the case of an event with multiple responding parties, the agency providing initial notification as required herein shall submit the application. An exception to this may occur if another responding party, by mutual agreement with the other respondents, elects to submit the application. Requests to extend this submittal deadline may be made in writing and shall include the reason why an extension is necessary. Extensions shall not exceed 30 days in duration and not more than two (2) extensions shall be granted.
- (b) Post-emergency/disaster response applications shall only address development activities conducted during an emergency/disaster response. Applications shall specify if development placed during an emergency/disaster event is permanent or temporary. Applicants shall be responsible for operations under their control and that of other responders, upon mutual agreement. Responders not agreeing to have another responder address their actions shall be responsible to submit an application for those actions.
- (c) Emergency/disaster response actions not involving structural development or ground disturbance with mechanized equipment are exempt from these requirements, except for those actions within 500 feet of a known cultural resource (as determined in the notification process).
- (d) Applications shall include the following information:
- (A) applicants name and address.
- (B) location of emergency/disaster response.
- (C) a written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.
- (D) a map of the project area drawn to scale, at a scale of 1"=200' or a scale providing greater detail. The map shall include:
- (i) north arrow and scale.

- (ii) boundaries, dimensions and size of subject parcel(s).
  - (iii) bodies of water, watercourses, and significant landforms.
  - (iv) existing roads and structures.
  - (v) new structures placed and any vegetation removal, excavation or grading resulting from the response actions.
- (E) An exception to the scale requirements of Commission Rule 350-80-075(2)(d)(D) for an event encompassing an area greater than one square mile. In such cases, a clear sketch map of the entire response action area shall be provided. In addition, a map of 1"=200' or a scale providing greater detail shall be provided that shows a section of the response area exemplifying the specific actions taken.

(e) Applications for post-emergency/disaster response development shall be subject to the following requirements:

- (A) provisions of Commission Rule 350-80-100, except for section 3.
- (B) notice of the application to landowners, except for section 3, within 200' of the perimeter of the subject parcel, the Forest Service, Gorge Commission, the four Tribal governments and interested parties.
- (C) provisions of Commission Rule 350-80-110, except section (4), substituting the phrase "post emergency/disaster response action development review" for the phrase "proposed action".
- (D) provisions of Commission Rule 350-80-130 (1) through (5).
- (E) interested persons shall have 21 days from the date which the notice is sent to submit written comments to the Gorge Commission relative to the consistency of the post-emergency/disaster actions with applicable guidelines in Commission Rule 350-80.

(4) Post-emergency/Disaster response Development Review: GMA/SMA Guidelines.

Actions taken in all land use designations within the GMA/SMA that are in response to an emergency/disaster event, as defined in Commission Rule 350-80-040.

(a) Scenic Resources

- (A) Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic resources are not adversely affected. Such actions shall be rendered visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable, except for actions located in areas exempted from visual subordination requirements, pursuant to Commission Rule 350-80-520(3)(k).
- (B) Vegetation shall be used to screen or cover road cuts, structural development, landform alteration, and areas denuded of vegetation, as a result of emergency/disaster response actions.
- (C) Areas denuded of vegetation as a result of emergency/disaster response actions shall be revegetated with native plant species, or species commonly found within the applicable landscape setting, to restore the affected areas to its pre-response condition to the greatest extent practicable. Revegetation shall occur as soon as practicable, but no later than one year after the emergency/disaster event. An exception to the one-year requirement may be granted upon demonstration of just cause, with an extension up to one year.
- (D) The painting, staining or use of other materials on new structural development shall be used to ensure that the structures are non-reflective, or of low reflectivity, and visually subordinate in their landscape setting as seen from key viewing areas, unless the structure is fully screened from key viewing areas by existing topographic features.
- (E) Additions to existing structures, resulting from an emergency/disaster response action, which are smaller in total height, bulk or area than the existing structures may be the same color as the existing development. Additions larger than the existing development shall be visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable.
- (F) Spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action, shall either be (1) removed from the NSA or deposited at a site within the NSA permitted by the agency administering a Scenic Area land use ordinance, or (2) (re)contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.

(b) Cultural Resources and Treaty Rights

- (A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources. Emergency/disaster response actions shall not affect Tribal treaty rights.
- (B) The USDA Forest Service shall determine if a reconnaissance survey or historic survey is necessary within three days after receiving notice that a post-emergency land use application has been received by the Gorge Commission.
- (i) Reconnaissance surveys shall be conducted by the USDA Forest Service and comply with the standards of Commission Rule 350-80-540(1)(c)(d). Reconnaissance survey reports shall comply with the standards of Commission Rule 350-80-540 (1)(c)(E).
  - (ii) Historic surveys shall be conducted by the USDA Forest Service and shall describe any adverse effects to historic resources resulting from an emergency/disaster response action. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. Such surveys shall also include original photographs, if available, and maps, and should use archival research, blueprints, and drawings as necessary.
- (C) Following the submittal of a post-emergency land use application, in addition to other public notice requirements that may exist, the Tribal governments shall be notified by the development review offer when (1) a reconnaissance survey is required or (2) cultural resources exist in the project area. Notices shall include a site plan. Tribal governments shall have 15 calendar days from the date a notice is sent to submit written comments. Written comments should describe the nature and extent of any cultural resources that exist in the project area or treaty rights that exist in the project area and how they have been affected, and identify individuals with specific knowledge about them.
- (D) When written comments are submitted in compliance with Guideline 3 above, the project applicant shall offer to meet within five calendar days with the interested persons. The five day consultation period may be extended upon agreement between the project applicant and the interested persons. A report shall be prepared by the development review officer following the consultation meeting. Consultation meetings and reports shall comply with the standards established in Commission Rule 350-80-540 (2) (a) and Commission Rule 350-80-150 (8) (b) (A) and (B).
- (E) If cultural resources are discovered within the area disturbed by emergency response actions, the project applicant shall have a qualified professional conduct a survey to gather enough information to evaluate the significance of the cultural resources and what effects the action had on such resources.

The survey and evaluation shall be documented in a report that generally follows the guidelines in Commission Rule 350-80-540 (5) (a).

- (G) The development review officer shall submit a copy of all reconnaissance and historic survey reports and treaty rights protection plans to the SHPO and the Tribal governments. Survey reports shall include measures to mitigate adverse effects to cultural resources resulting from emergency/disaster response actions. The SHPO and Tribal governments shall have 15 calendar days from the date a survey report is mailed to submit written comments to the Gorge Commission. The development review officer shall record and address all written comments in the development review order.
- (H) The development review offer shall make a final decision on whether the emergency/disaster response actions are consistent with the applicable cultural resource goals, policies, and guidelines. If the final decision contradicts the comments submitted by the SHPO, or those submitted by a Tribal government regarding treaty rights, the development review officer shall justify how it reached an opposing conclusion.
- (I) The cultural resource protection process may conclude when it has been determined that Tribal treaty rights have not been not affected and one of the following conditions exists:
  - (i) The emergency/disaster response action does not require a reconnaissance or historic survey, or a reconnaissance survey demonstrates that no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 15 calendar days of the date that a notice was mailed.
  - (ii) The emergency/disaster response action avoided cultural resources that exist in the project area.
  - (iii) Adequate mitigation measures to affected cultural resources have been developed and will be implemented.
  - (iv) A historic survey demonstrates that emergency/disaster response actions, and associated development, had no effect on historic buildings or structures because:
    - (I) The SHPO concluded that the historic buildings or structures are clearly not eligible, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

- (II) The emergency/disaster response actions did 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].

(c) Natural Resources

- (A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect natural resources.
- (B) Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas, and sites containing rare plants, shall be the same as those established in Commission Rule 350-80-560 through 600.
- (C) Wetlands, Streams, Ponds, Lakes, riparian Areas
  - (i) Emergency/disaster response actions occurring within a buffer zone of wetlands, streams, pond, lakes or riparian areas shall be reviewed by the Washington department of Fish and Wildlife. These areas are also referred to in this section as aquatic areas. State biologists will help determine if emergency/disaster response actions have affected or have a potential to affect these aquatic areas or their bigger zones. State biologists shall respond within 15 days of the date the application is mailed.
  - (ii) When emergency/disaster response activities occur within wetlands, streams, ponds, lakes, riparian areas, or the buffer zones of these areas, the applicant shall demonstrate the following:
    - (I) All reasonable measures have been applied to ensure that the response actions have resulted in the minimum feasible alteration or destruction of the functions, existing contours, vegetation, fish and wildlife resources, and hydrology of wetlands, streams, ponds, lakes or riparian areas.
    - (II) Areas disturbed by response activities and associated development will be rehabilitated to the maximum extent practicable.
  - (iii) Impacts to wetlands, streams, ponds, lakes and riparian areas, and their buffers will be offset through mitigation and restoration to the greatest extent practicable. Mitigation and restoration efforts shall

use native vegetation, and restore natural functions, contours, vegetation patterns, hydrology and fish and wildlife resources to the maximum extent practicable.

- (iv) If the development review officer, in consultation with the state wildlife agency, determines that the emergency/disaster response actions had minor effects on the aquatic area or its buffer zone that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state biologist, or a Forest Service natural resource advisor (as available) in consultation with the state biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Gorge Commission shall incorporate them into its development review order and the aquatic area protection process may conclude.
- (v) Unless addressed through guideline 4 of this section, mitigation and restoration efforts shall be delineated in a Rehabilitation Plan. Rehabilitation Plans shall satisfy Commission Rule 350-80-570 (8) (a) and (b). Rehabilitation plans shall also satisfy the following:
  - (I) Plans shall include a plan view and cross-sectional drawing at a scale that adequately depicts site rehabilitation efforts. Plans will illustrate final site topographic contours that emulate the surrounding natural landscape.
  - (II) Planting plans shall be included that specify native plant species to be used, specimen quantities and plant locations.
  - (III) The project applicant shall be responsible for the successful rehabilitation of all areas disturbed by emergency/disaster response activities.

#### (D) Wildlife Habitat

- (i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive wildlife area or site, shall be reviewed by the Washington Department of Fish and Wildlife. State wildlife biologists will help determine if emergency/disaster response actions have affected or have a potential to affect a sensitive wildlife area or site.
- (ii) Site plans for emergency/disaster response sites shall be submitted by the development review officer to the Washington Department of Fish and Wildlife for review as prescribed in Commission Rule 350-



80-580(5). The wildlife agency shall respond within 15 days of the date the application is mailed.

- (iii) The wildlife protection process may terminate if the development review officer, in consultation with the state wildlife agency, determines (1) the sensitive wildlife area or site was not active, or (2) the emergency/disaster response did not compromise the integrity of the wildlife area or site or occurred at a time when wildlife species are not sensitive to disturbance.
- (iv) If the development review officer, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had minor effects on the wildlife area or site that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state wildlife biologist, or a Forest Service natural resource advisor (as available) in consultation with the state wildlife biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Gorge Commission shall incorporate them into its development review order and the wildlife protection process may conclude.
- (v) If the development review officer, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had adverse effect on a sensitive wildlife area or site, the project applicant shall prepare a Wildlife Management Plan. Wildlife Management Plans shall comply with Commission Rule 350-80-580(6). Upon completion of the Wildlife Management Plan, the development review offer shall:
  - (I) submit a copy of the Wildlife Management Plan to the state wildlife agency for review. The state wildlife agency will have 15 days from the date that a management plan is mailed to submit written comments to the gorge commission;
  - (II) record any written comments submitted by the state wildlife agency in its development review order. Based on these comments, the development review officer shall 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 it reached an opposing conclusion.
  - (III) require the project 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.

(E) Deer and Elk Winter Range

- (i) Any fencing permanently erected within deer and elk winter range, as a result of an emergency/disaster response, shall comply with Commission Rule 350-80-580(7).

(F) Rare Plants

- (i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive plant, shall be reviewed by the Washington Natural Heritage Program. State heritage staff will help determine if emergency/disaster response actions have occurred within the buffer zone of a rare plant.
- (ii) Site plans for emergency/disaster response sites shall be submitted to the Washington Natural Heritage Program by the development review officer. State natural heritage staff will, within 15 days from the date the application is mailed, identify the location of the affected plants and delineate a 200 foot buffer zone on the applicant's site plan.
- (iii) The rare plant protection process may conclude if the development review officer, in consultation with the state natural heritage program, determines that emergency/disaster response activities occurred outside of a rare plant buffer zone.
- (iv) If the development review officer, in consultation with the state natural heritage program, determines that the emergency/disaster response activities had minor effects on rare plants or the rare plant buffer zone, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state natural heritage staff, or a forest Service natural resources advisor (as available) in consultation with the state natural heritage staff, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Gorge Commission shall incorporate them into its development review order and the rare plant protection process may conclude.
- (v) If emergency/disaster response activities occurred within a rare plant buffer zone that had adverse effects on rare plants or their buffer zone, the project applicant shall prepare a protection and rehabilitation plan, that meets the requirements provided in Commission rule 350-80-590(b)

- (vi) The development review officer shall submit a copy of all protection and rehabilitation plans to the state heritage program for review. The state natural heritage program will have 15 days from the date the protection and rehabilitation plan is mailed to submit written comments to the development review officer.

The development review officer shall record any written comments submitted by the state natural heritage program in its development review order. Based on these comments, the development review officer shall 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 state natural heritage program, the development review officer conducting the post-emergency development review shall justify how it reached an opposing conclusion.

- (vii) The development review officer shall require the project applicant to revise the protection and rehabilitation plan as necessary to ensure that the proposed use would not adversely affect a rate plant site.

(d) Recreational Resources

- (A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect recreational resources.
- (B) Mitigation measures shall be implemented to mitigate any adverse effects on existing recreation resources caused by emergency/disaster response activities to the maximum extent practicable.

(5) Post-Emergency Construction

- (a) The following review uses are allowed in all land use designations subject to compliance with Commission rules 350-80-100 through 130 and Commission Rule 350-80-520 through 620:
  - (A) Placement of structures necessary for continued public safety and the protection of private property and essential public services damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use applications shall be submitted within 12 months following an emergency/disaster event.

**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) Non-emergency repair and maintenance of existing structures, trails, roads, railroads, utility facilities, and hydroelectric facilities that involve new ground disturbing activities or those which differ in depth and extent from past ground disturbance.
- (d) Improvement of existing structures, trails, roads, railroads, utility facilities, and hydroelectric facilities.
- (e) Placement of structures for public safety.
- (f) Restoration and enhancement structures and/or activities including vegetation, scenic, soil, fish and wildlife habitat restoration and enhancements.

(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).

(3) The following uses may be allowed on lands 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.~~

Restoration and enhancement structures and/or activities including vegetation, scenic, soil, fish and wildlife habitat restoration and enhancements.

- (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.

(13) Treatment of noxious weeds on lands designated SMA-Open Space shall be permitted, subject to review, without completion of an SMA Open Space plan when the following criteria have been met:

- (a) Noxious weed infestation is new and eradication is still viable.
- (b) Delayed or deferred treatment could have widespread or major adverse impacts to one or more of the following resources:
  - (A) Displacement of native and traditionally gathered plants;
  - (B) Degradation of wildlife habitat and forage;
  - (C) Degradation or loss of agricultural uses of land, such as cropland or livestock forage;
  - (D) Limitation of recreational uses.

(c) For federal lands, treatment effects have been thoroughly evaluated in an environmental assessment.