

**WSR 21-20-120**  
**PROPOSED RULES**  
**COLUMBIA RIVER**  
**GORGE COMMISSION**  
 [Filed October 5, 2021, 10:48 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Chapter 350, Division 082, Land use ordinance.

Hearing Location(s): On December 14, 2021, at 9:00 a.m., remote via Zoom webinar. Persons who want to attend the rule-making hearing and give oral testimony on the proposed rule must register for the webinar at [https://us02web.zoom.us/webinar/register/WN\\_MwpLr\\_dWTV2kW8St9c-9rw](https://us02web.zoom.us/webinar/register/WN_MwpLr_dWTV2kW8St9c-9rw). A registration link will also be available on the commission's website approximately one week prior to the commission's meeting.

Date of Intended Adoption: December 14, 2021.

Submit Written Comments to: Krystyna Wolniakowski, Executive Director, Columbia River Gorge Commission, 57 N.E. Wauna Avenue, P.O. Box 730, White Salmon, WA 98672, email [PublicComment@gorgecommission.org](mailto:PublicComment@gorgecommission.org), by December 1, 2021.

Assistance for Persons with Disabilities: Contact Connie Acker, phone 509-493-3323 ext. 0, email [connie.acker@gorgecommission.org](mailto:connie.acker@gorgecommission.org), by December 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule adopts a land use ordinance for the Columbia River Gorge National Scenic Area as required by RCW 43.97.015, ORS 196.150, 16 U.S.C. §§ 544e(c) and 544f(l), incorporating the guidelines from the revised management plan for the Columbia River Gorge National Scenic Area, adopted by the Columbia River Gorge Commission on October 13, 2020, and concurred on by the United States Secretary of Agriculture on February 19, 2021.

On September 14, 2021, the Gorge Commission reviewed the differences in the application and decision process in this new land use ordinance compared to the current land use ordinance (division 350-81) and clarifications to provisions of the management plan. A copy of the staff report detailing those differences and clarifications is available on the Gorge Commission website at <http://www.gorgecommission.org/meeting/september-2021-monthly-crgc-meeting>. Since that September 14 meeting, the following additional clarifications were added to the draft rule:

350-082-0070(62) changed the definition of "dwelling unit" to use the term "sleeping area(s)" instead of "bedrooms" because some dwellings have lofts or other areas that are not technically bedrooms and to remove the word "full" when referring to bathrooms to recognize that bathrooms may not be considered "full" if they have only a stall shower and other variations on bathroom fixtures.

350-082-0070(183) clarified that committed to other uses means committed "by development." This is the phrase used in the forest land policies and ensures consistency with the standards in 16 USC § 544d(d) that require the plan to allow conversion of agricultural land to forest use and forest land to agricultural use. Without the term "by development,"

this definition could suggest that forest land is committed to another use and could not be suitable for agriculture.

350-082-0220 (2)(a)(B); 350-082-0600 (2)(k) changed "square area" to "area in square feet." This fixes a term that is not commonly used to a common term that needs no further interpretation.

350-082-0350 (3)(b); 350-082-0520 (3)(a); 350-082-0700 (3)(D)(E)(i) changed several instances of "shall be allowed" to "may be allowed" consistent with the same change made in other sections of the draft ordinance. In these instances, the use allowed is conditional upon meeting other required criteria.

350-082-0290 and 350-082-0300 were moved into 350-082-0270 (5) and (6) because the provisions in these sections apply only in the Growth Management Act and did not need separate rule numbers. All subsequent rules were renumbered and all cross-references were updated.

350-082-0410 (6) and (7) were added to include policies from the management plan that contain mandatory standards.

350-082-0430 (6)(b) and (c) were added. These provisions in the management plan were inadvertently left out of the draft presented to the Gorge Commission for its September 14, 2021, meeting. Subsection (b) was clarified relative to the management plan to reflect current practice, use consistent terms with 350-10, and for clarity. Subsection (c) was revised to use the same terms as subsection (b).

350-082-0650 (1)(a) added a new cross-reference to the Priority Habitat Table in 350-082-0690.

350-082-0660 (1)(b) added a new reference to the Endemic Plant Species Table in 350-082-0690 and noted that endemic plants are considered rare plants.

350-082-0690 added an introductory sentence necessary specifying that the tables in that section apply in the general and special management areas. This introductory sentence is necessary to comply with Oregon's rule drafting requirements, which do not permit a rule with only tables.

Reasons Supporting Proposal: This rule is required by federal law (16 U.S.C. §§ 544e(c) and 544f(l)) because Klickitat County does not adopt a National Scenic Area land use ordinance. The rule could also be used in any county that does not adopt revisions to its National Scenic Area land use ordinance or that repeals its ordinance in the future.

Statutory Authority for Adoption: RCW 43.97.015; ORS 196.150; 16 U.S.C. §§ 544e(c) and 544f(l).

Statute Being Implemented: RCW 43.97.015; ORS 196.150; 16 U.S.C. §§ 544e(c) and 544f(l).

Rule is necessary because of federal law, RCW 43.97.-015; ORS 196.150; 16 U.S.C. §§ 544e(c) and 544f(l).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Comments received by December 1, 2021, will be incorporated into a staff report to the commission. Staff will address comments received after December 1, 2021, at the hearing by oral report.

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Krystyna Wolniakowski, White Salmon, Washington, 509-493-3323.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt pursuant to RCW 34.05.328 (5)(b)(iii) and (v).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: RCW 43.97.015; ORS 196.150; 16 U.S.C. §§ 544e(c) and 544f(l). If this rule is not adopted, the state will be in violation of the Columbia River Gorge Compact and federal Columbia River Gorge National Scenic Area Act and no land use development within the National Scenic Area portion of Klickitat County will be permitted.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

October 5, 2021  
Connie L. Acker  
Rules Coordinator

**Columbia River Gorge Commission**  
**Chapter 350**  
**Division 082**  
**Land Use Ordinance**  
As Adopted on \_\_\_\_\_

**Purpose and Applicability**

**NEW SECTION**

**350-082-0010. Purpose**

The purpose of Commission Rule 350-082 is to implement the Revised Management Plan for the Columbia River Gorge National Scenic Area adopted on October 13, 2020, and concurred on February 19, 2021, and as subsequently amended.

**NEW SECTION**

**350-082-0020. Affected Area**

(1) Commission Rule 350-082 applies to all lands within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act and described in Commission Rule 350-10, for which a

county does not implement a land use ordinance consistent with the Management Plan.

(2) Commission Rule 350-082 becomes effective on May 1, 2022.

(3) Those portions of Commission Rule 350-082 pertaining to the General Management Area (GMA) shall no longer be effective in a county that has adopted and put into effect a land use ordinance that the Gorge Commission has found to be consistent with the Management Plan.

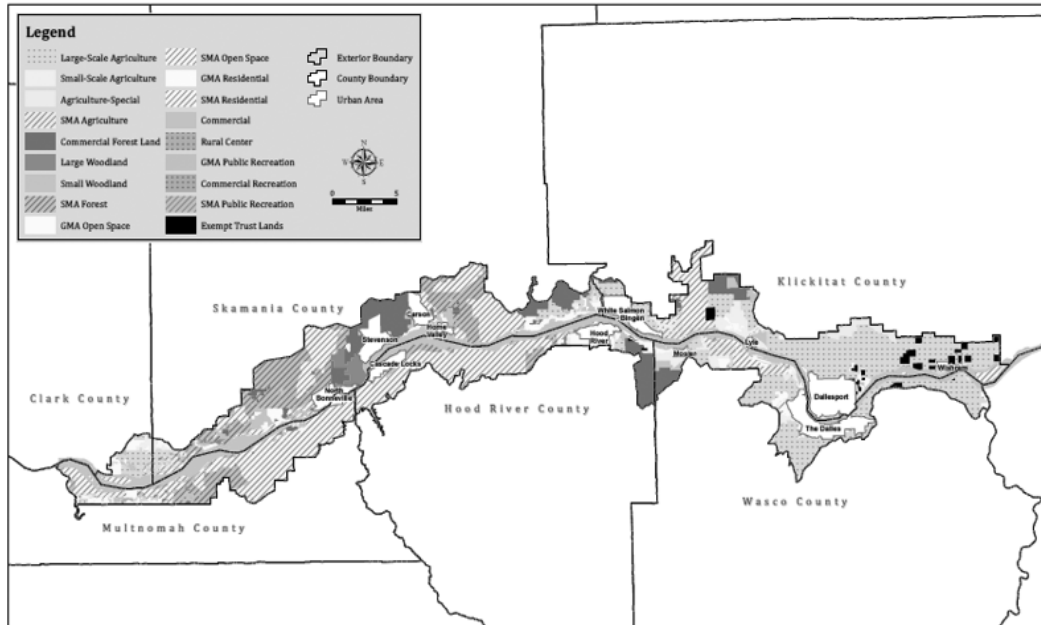
(4) Those portions of Commission Rule 350-082 pertaining to the Special Management Areas (SMAs) shall no longer be effective in a county that has adopted and put into effect a land use ordinance that the Gorge Commission has tentatively found to be consistent with the Management Plan and the Secretary of Agriculture has concurred.

**NEW SECTION**

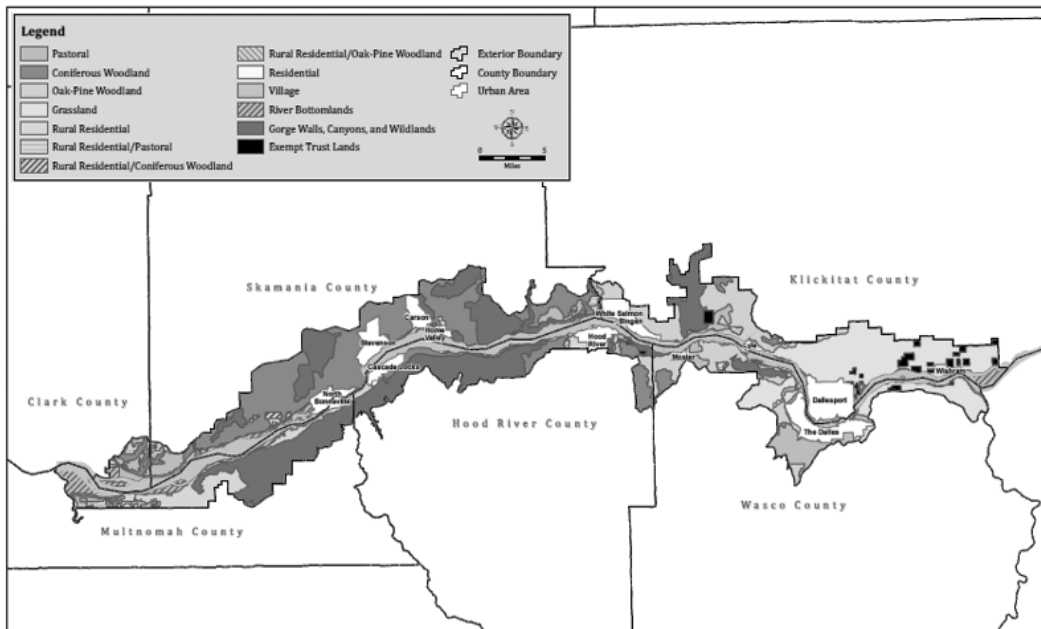
**350-082-0030. Maps**

The Land Use Designation, Landscape Settings, and Recreation Intensity Classes maps adopted by the Gorge Commission as part of the Management Plan for the Columbia River Gorge National Scenic Area are hereby incorporated by reference into this land use ordinance. Full-size paper maps and electronic maps are available at the Gorge Commission office. Electronic maps are also available on the Gorge Commission's website. Reduced-size copies of the maps are in 350-082-0030 Appendix.

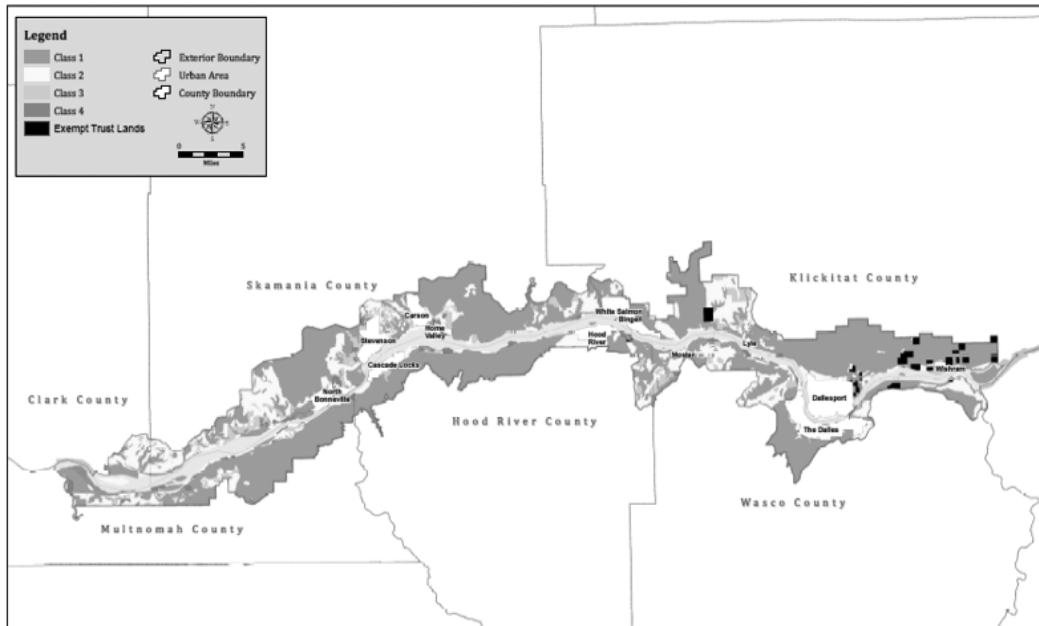
350-082-0030 Appendix 1 - Land Use Designations



350-082-0030 Appendix 2 - Landscape Settings



350-082-0030 Appendix 3 - Recreation Intensity Classes



**NEW SECTION**

**350-082-0040. Review and Approval Required**

No building, structure or land shall be used and no development shall occur, including, but not limited to erecting, altering, or enlarging any building or structure, or changing land boundaries through division, alteration or otherwise, including those proposed by local, state or federal agencies, in the Columbia River Gorge National Scenic Area except for uses and development listed in in this land use ordinance and approved under the applicable procedural and substantive guidelines in this land use ordinance.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**NEW SECTION**

**350-082-0050. Dates are Calendar Days**

All dates contained in this land use ordinance are "calendar days." When a deadline for accomplishing an act in this land use ordinance falls on a weekend or legal holiday, the deadline shall be the next business day, and all following deadlines shall be calculated from that deadline. A legal holiday is any day in which the United States Postal Service does not deliver mail or when the Gorge Commission is closed due to weather, natural disaster, or decision of the Executive Director.

**NEW SECTION**

**350-082-0060. Uniform Application**

- (1) This land use ordinance shall be applied consistent with and in the spirit of the National Scenic Area Act.
- (2) The Gorge Commission, Forest Service, and counties shall strive to apply Management Plan provisions uniformly

throughout the National Scenic Area, except when a county has adopted a more restrictive provision.

(3) In applying provisions of this land use ordinance, the Gorge Commission may consider, but shall not be constrained by, Forest Service interpretations, county interpretations, state interpretations and application of state law and administrative regulations, and judicial decisions that do not directly involve the Management Plan or this land use ordinance.

(4) In reviewing and revising the Management Plan in 2020, the Gorge Commission and Forest Service used *Webster's Third New International Dictionary*, unabridged (2002) for undefined terms. When interpreting and applying this land use ordinance, the Gorge Commission will use *Webster's Third New International Dictionary*, unabridged (2002) for undefined terms. For terms that do not appear in this dictionary, the Gorge Commission will consider the online (free) version of Merriam-Webster unabridged (available at <https://unabridged.merriam-webster.com/> as of the date of enactment of this land use ordinance). For terms that do not appear in the online (free) version, the Gorge Commission will consider other available dictionaries.

**Definitions**

**NEW SECTION**

**350-082-0070. Definitions**

As used in this land use ordinance, unless otherwise noted, the following words and their derivations have the following meanings. Unless otherwise noted, these definitions apply to both General Management Area (GMA) and Special Management Areas (SMAs).

- (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) Accessible: In compliance with the Federal accessibility guidelines and standards. Accessible sites and facilities do not contain barriers limiting their use by people with disabilities.

(3) Accessory structure or Accessory building: A structure or detached building 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. The term "detached" means that the main building and accessory building do not share a common wall. An accessory building connected to the main building by a breezeway is a detached building.

(4) Accessory renewable energy system: A system accessory to a primary structure or allowed use on the parcel that converts energy into a usable form such as electricity or heat and conveys that energy to the allowed structure or use. An Accessory Renewable Energy System is a solar thermal, photovoltaic, or wind turbine structure, or group of structures designed to offset all or part of the annual energy requirements of the primary use on the subject parcel.

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

(6) Addition: An extension or increase in the area or height of an existing building.

(7) Adversely affect or Adversely affecting: A reasonable likelihood of more than moderate adverse consequence for the scenic, cultural, recreation or natural resources of the scenic area, the determination of which is based on—

(a) the context of a proposed action;

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

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

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

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

(9) Agricultural building: A building 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 or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, and processing facilities.

(10) Agricultural specialist (SMA only): A person such as a county extension agent with a demonstrated knowledge of farming operations, and a demonstrated ability to interpret and recommend methods to implement regulations pertaining to agriculture. Such abilities are usually obtained through a combination of higher education and experience.

(11) Agricultural structure: A structure (not including buildings) located on a farm or ranch and used in the operation. These include, but are not limited to: wind machines (orchards), storage bins, fences, trellises, and irrigation systems.

(12) 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 one 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; and

(e) Agricultural use does not include livestock feedlots.

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

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

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

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

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

(18) Archaeological resources: See cultural resource.

(19) 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.

(20) Background: One of three main visibility distance zones used to determine relative sensitivity of a development, structure, or use based on its distance from the viewer. Background is represented in the space from four miles to the horizon.

(21) 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 traveler accommodations, not as rooming or boarding houses.

(22) Best Management Practices (BMPs): Conservation techniques and management measures that (1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; (2) minimize adverse effects to groundwater and surface-water flow and circulation patterns; and (3) maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.

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

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

(25) 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.

(26) **Building:** Any structure used or intended for supporting or sheltering any use or occupancy. Buildings have a roof supported by columns or walls. They include, but are not limited to, dwellings, garages, barns, sheds, and shop buildings.

(27) **Camping vehicle 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 vehicle or recreational vehicle shall be considered a dwelling unit if it is (1) connected to a sewer system (including septic tank), water, and electrical lines, or (2) occupied on the same parcel for more than 60 days in any consecutive 12-month period.

(28) **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.

(29) **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.

(30) **Canopy closure (SMA only):** For forest practices, the percentage measuring the degree to which one layer of a tree canopy blocks sunlight or obscures the sky as measured from below.

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

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

(33) **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 four 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; or

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

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

(35) **Columbia River treaty tribes:** See definition for Indian tribes.

(36) **Commercial event:** An organized gathering at an allowed commercial development. Such events include weddings, receptions, indoor concerts, and farm dinners, and are incidental and subordinate to the primary use on a parcel.

(37) **Commercial development or 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 and produce stands.

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

(39) **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.

(40) **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.

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

(42) **Contiguous land:** Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether 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.

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

(44) **Created opening (SMA only):** A created forest opening with less than 40 percent average canopy closure of overstory trees and less than 60 percent average canopy closure of understory trees averaging less than five inches diameter at breast height for coniferous forests and less than 25 percent total canopy cover for oak woodlands. This definition does not include agricultural fields.

(45) **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).

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

(47) **Cultural resource:** The objects, features, sites and places that have meaning and significance for specific human groups and cultures. Cultural resources support the cohesive bonds of the communities that recognize and comprehend their significance. Cultural resources can be divided into four types: archaeological resources, historic buildings and structures, traditional cultural properties, and traditional use areas.

(a) **Archaeological resources:** The artifacts and features left in the landscape of early American Indian activities and the historic activities of early settlers. Artifacts are human-manufactured items and the waste material from manufacture. Features are the human alterations in the landscape. Artifacts include arrowheads and the stone waste flakes from making them and historic cans, bottles, ceramics and wooden and metal objects left in dumps or scattered in the landscape. Features include human-made pits in talus slopes, stacked rocks, rock walls, blazed and scarred trees, ditches, railroad grades, wagon roads, cabin foundations and other human modifications of the natural landscape.

(b) **Historic buildings and structures:** Standing structures and their associated features. Often, they are still in use but

can be abandoned and deteriorating. They are distinct from historic archaeological resources by being above ground and not collapsed to the level of the surrounding landscape.

(c) Traditional cultural properties: Monumental sites, sacred places, legendary areas, mythical locations, traditional gathering areas, and landscapes and landscape features that are identified by the specific communities that hold meaning for them. They maintain and perpetuate values and practices of the group that attach significance to them. They provide spiritual cohesion to the community.

(d) Traditional use areas: Procurement and processing sites in the landscape for every kind of resource a society needs to perpetuate its specific culture. They are the sources for food, medicine, fibers and tools that provide subsistence for a specific group's culture.

(48) Culturally significant foods: Natural resources used by Native Americans for subsistence, medicine and ceremony, including, water, fish, big game, roots, and berries.

(49) Culturally significant plants and wildlife: native plant and animal species essential to the culture of a Native American group.

(50) 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.

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

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

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

(54) 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.

(55) 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.

(56) Developed road prism (SMA only): The area of the ground associated with a particular road and containing the road surface, ditch, shoulder, retaining walls, or other developed features. Does not include the natural appearing portions of cut and fill slopes.

(57) Development: Any land division or new construction or modification of buildings, structures and roads, and any earth-moving activity, including, but not limited to, mining, dredging, filling, grading, paving, and excavation.

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

(59) Distance zone: distance zones (see Background, Middleground, and Foreground) are used to determine relative sensitivity of a development, structure, or use based on its distance from the viewer. Generally, the closer a development is to the area it is being viewed from, the more attention will need to be given to site placement, design features, and

mitigations to ensure the development blends with the landscape

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

(61) Single-family dwelling: A detached building containing one dwelling unit and designed for occupancy by one family only.

(62) Dwelling unit: A single self-contained unit with basic facility needs for day-to-day living. Basic facility needs include, but are not limited to, a food preparation area or kitchen, sleeping area(s), and a bathroom.

(63) Earth materials: Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials, including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste), and industrial byproducts (e.g., slag, wood waste).

(64) 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 Yakama tribes executed between the individual Indian tribes and the Congress of the United States and as adjudicated by the Federal courts.

(65) 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.

(66) 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.

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

(68) Enhancement (natural and scenic resources): A human activity that increases or makes greater the value, desirability or attractiveness of one or more functions of an existing sensitive area. For riparian areas, such as wetlands, streams, and lakes, enhancement is generally limited to the area that is degraded. Enhancing a sensitive natural resource area that is in good or excellent condition may reduce biological diversity and eliminate other natural functions and may not be desirable.

(69) Ephemeral streams (SMA only): streams that contain flowing water only during, and for a short duration after, precipitation events.

(70) Equitable recreation: development and services that are equally accessible and available to all people regardless of income level, ethnicity, gender, ability, or age.

(71) 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.

(72) Existing industrial complex: Areas including some existing industrial use and where readily visible remnants of

past industrial activities exist. The complex includes buildings, including those abandoned or partially abandoned, paved areas, stockpiles, equipment storage areas, quarry areas, etc., and may include isolated patches of vegetation or rock outcroppings surrounded by areas described above. The complex does not extend to include areas where evidence of past activity is no longer readily evident in the landscape.

(73) Existing use or structure: Any use or structure that was legally established and that has continued to operate lawfully and has not been discontinued. "Legally established" means: (1) the landowner or developer obtained applicable land use and building permits and complied with land use regulations and other laws that were in effect at the time the use or structure was established, or that were in effect at the time the landowner or developer corrected an improperly established use or structure; (2) the use or structure was initially operated or constructed according to those applicable permits, land use regulations and other laws, or has been operated or constructed according to permits obtained to correct an improperly established use or structure; and (3) any changes to the original use or structure must comply with all applicable permit requirements, land use regulations and other laws that were in effect at the time the change was established.

(74) 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, and transportation of mineral resources from the site. 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 and transport to another site for use or further processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.

(75) 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.

(76) Finished grade: The final elevation of the ground level of a property after construction is completed.

(77) Footprint: The area that falls directly beneath and shares the same perimeter as a structure.

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

(79) Foreground: One of three main visibility distance zones used to determine relative sensitivity of a development, structure, or use based on its distance from the viewer. Foreground is represented in the space from zero (the viewer) up to one-half mile.

(80) Forest health (SMA only): A measure of the robustness of forest ecosystems. Forests are deemed healthy when they have capacity across the landscape for renewal, for the maintenance of wildlife habitats, for recovery from a wide range of disturbances, and for retention of their resilience.

(81) Forest practice (SMA only): Any activity conducted on or directly pertaining to forested land and relating to forest ecosystem management including but not limited to growing, thinning, or removing live or dead forest tree or shrub species, road and trail construction, reforestation, fertilizing, brush control, prevention of wildfire, and suppression of diseases and insects. The removal of hazardous trees is excluded. Uses that include establishment, management or harvest of Christmas trees, nursery stock, or fiber producing tree species requiring intensive cultivation (irrigation, fertilization, etc.) and a harvest rotation of 12 years or less are considered agricultural uses.

(82) Forest practice (GMA only): 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.

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

(84) Forest Service: The United States Department of Agriculture Forest Service - National Scenic Area Office.

(85) Forest stand structure (SMA only): The number, types and spacing of tree species, tree sizes, and canopy layers contained in a stand of trees.

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

(87) Fruit and produce stand: A venue on a farm or ranch selling produce and agricultural products primarily grown on the subject farm or ranch. Associated incidental agricultural products from the local region and associated incidental marketing materials shall not make up more than 25% of the sales at the stand. Incidental products may include processed foods like jams and jellies. Foods prepared for consumption on the premises are not permitted. Fruit and produce stands are not a commercial use.

(88) Fully screened: A description used when determining compliance with the scenic standards (visually subordinate and not visually evident), where a structure, development or use is not visible as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). See Scenic Resources Implementation Handbook for more information regarding screening for development in the National Scenic Area.

(89) General Management Area or GMA: The portion of the National Scenic Area that is not designated in the National Scenic Area Act as a special management area or an urban area. The National Scenic Area Act does not use the term "general management area."

(90) Gorge Commission: The Columbia River Gorge Commission.

(91) Grade (ground level): The average elevation of the finished ground elevation as defined by the International Building Code.

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

(93) Hazard tree (SMA only): A tree with a structural defect that will predictably result in whole or partial failure within 1.5 tree lengths of a road or maintained development. A defective tree is hazardous only when its failure could



result in danger to people or damage to structures, vehicles, or other property.

(94) Height of building: The greatest vertical distance between the point of lowest finished grade adjoining any exterior wall of a building and the highest point of the roof, such as the highest coping or parapet of a flat roof, the highest deck line of a mansard roof, or the highest ridge of a hip, gable, gambrel, shed or other pitched roof.

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

(96) Herbs: Non-woody (herbaceous) plants, including grasses and grasslike plants, forbs, ferns, fern allies, and non-woody vines. (Note: Seedlings of woody plants that are less than three feet tall shall be considered part of the herbaceous layer.)

(97) Historic buildings and structures: See cultural resource.

(98) 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.

(99) Home occupation: A small-scale commercial use conducted in a legal single-family dwelling or accessory structure, employing the residents of the dwelling and up to three outside employees. Periodic use of home offices, studios, and other work areas used only by the residents of the dwelling are not a home occupation.

(100) Horses, boarding of (GMA only): The stabling, feeding, and grooming, or the use 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. These facilities are either operated for a fee or by a nonprofit organization.

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

(102) Immediate foreground for scenic corridors: A subset of one of the three main visibility distance zones used to determine relative sensitivity of a development, structure, or use based on its distance from the viewer. Immediate foreground is represented in the space from zero (the viewer) up to one-quarter mile. For scenic travel corridors in the GMA, immediate foreground also includes lands within one-quarter mile of the edge of pavement. In the SMAs, immediate foreground includes the developed prism of a road or trail KVA or within the boundary of the developed area of KVAs (such as Crown Point or Multnomah Falls).

(103) In-lieu or treaty fishing access 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 79-14 and Public Law 100-581, Section 401. Additional in-lieu or treaty fishing access sites will be provided for.

(104) Indian tribes: The Nez Perce Tribe, the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Warm Springs, and the Confederated Tribes of the Umatilla Indian Reservation.

(105) 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.

(106) 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.

(107) 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.

(108) Key viewing area (KVA): Those portions of identified important public roads, parks, or other vantage points within the National Scenic Area from which the public views National Scenic Area landscapes. Such portions include gathering points, rest areas, roads and trails that provide primary access to the area, parking lots, and associated recreation areas. Identified areas include:

(a) For projects located in the GMA and SMAs:

(A) Historic Columbia River Highway (including the Historic Columbia River Highway State Trail)

(B) Crown Point

(C) Highway I-84, including rest stops

(D) Multnomah Falls

(E) Washington State Route 14

(F) Beacon Rock

(G) Panorama Point Park

(H) Cape Horn

(I) Dog Mountain Trail

(J) Cook-Underwood Road

(K) Rowena Plateau and Nature Conservancy Viewpoint

(L) Portland Women's Forum State Park

(M) Bridal Veil State Park

(N) Larch Mountain (including Sherrard Point)

(O) Rooster Rock State Park

(P) Bonneville Dam Visitor Centers

(Q) Columbia River

(R) Washington State Route 141

(S) Washington State Route 142

(T) Oregon Highway 35

(U) Sandy River

(V) Pacific Crest Trail

(b) For projects located in the SMAs only:

(A) Old Highway 8 (previously known as Old Washington State Route 14 and County Road 1230)

(B) Wyeth Bench Road (also known as Wyeth Road)

(C) Larch Mountain Road

(109) 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.

(110) Landscape setting: The combination of land use, cultural features, landform pattern and features, vegetation, and waterform that distinguish an area in appearance and character from other portions of the National Scenic Area.

(111) 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.

(112) Lot line adjustment: Relocation of one or more common boundary lines between two contiguous parcels that does not create additional parcels.

(113) Maintenance: Ordinary upkeep or preservation of a serviceable structure affected by wear or natural elements. Maintenance does not change the original size, scope, configuration, or design of a structure. Maintenance includes, but is not limited to, painting and refinishing, regrouting masonry, patching roofs, grading gravel roads and road shoulders, cleaning and armoring ditches and culverts, filling potholes, controlling vegetation within rights-of-way, removing trees and other roadside hazards within rights-of-way, and testing and treating utility poles.

(114) Managerial setting: the on-site controls (signs, regulations, or other regimentation) and types of facilities recreationists could expect when visiting recreation sites.

(115) Middleground: one of three main visibility distance zones used to determine relative sensitivity of a development, structure, or use based on its distance from the viewer. Middleground is represented in the space between the foreground and the background. The middleground is located from one-half mile up to four miles from the viewer.

(116) Mitigation: The use of any or all the following actions, in the following order of priority:

(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.

(e) Offsetting impacts by creating or enhancing affected resources.

(f) Monitoring the result of mitigation actions and taking appropriate corrective actions.

(117) Mosaic (SMA only): The dispersal of overstory and understory leave trees in irregularly spaced clumps of varying sizes throughout an irregularly shaped created forest opening.

(118) Multifamily dwelling: A dwelling constructed or modified into two or more dwelling units.

(119) National Scenic Area: The Columbia River Gorge National Scenic Area.

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

(121) Natural grade: The undisturbed elevation of the ground level of a property before any excavation or construction operations.

(122) Natural resources: Wetlands, streams, ponds and lakes, riparian areas, wildlife and wildlife habitat, rare plants, and natural areas. In the SMAs, natural resources also include soil productivity.

(123) 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.

(124) Natural resource-based recreation (SMA only): Recreation activities, uses, or facilities that essentially depend on the unique natural, scenic, or cultural resources found within the National 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.

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

(126) Not visually evident (SMA only): One of the two scenic standards applicable within the National Scenic Area. A description of the relative visibility of a development, structure or use that provides for developments, structures, or uses that are not visually noticeable to the casual visitor and the defining landscape setting characteristics appear intact. Deviations may be present but must repeat form, line, color, texture and pattern common to the natural landscape setting so completely and at such scale, proportion intensity, direction, pattern, etc., that it not be noticeable.

(127) Old growth (SMA only): A forest stand usually at least 180-220 years old with moderate to high canopy closure; a multi-layered, multi-species canopy dominated by large overstory trees; high incidence of large trees, some with broken tops and other indications of old and decaying wood (decay); numerous large snags, and heavy accumulations of wood, including large logs on the ground.

(128) Operational (SMA only): For new agricultural use, an agricultural use shall be deemed operational when the improvements and investments described in the Stewardship Plan are in place on the parcel.

(129) 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.

(130) Other related major structure (SMA only): A structure related to a dwelling on a parcel in an SMA that is less than 40 acres in size, which is not incidental and subordinate to the main use of the property. A building or structure that satisfies the definition of "accessory building" is not an "other related major structure" or a "major development action."

(131) Overnight accommodations (GMA only): The rental of one or more rooms located in legal single-family dwelling on a daily or weekly basis. Overnight accommodations are clearly incidental to the use of a structure as a single-family dwelling and are owner-operated.

(132) Overstory (SMA only): For forest practices, the tall or mature trees that rise above the shorter or immature understory trees.

(133) Parcel:

(a) Any unit of land legally created by a short division, partition, or subdivision that was legally recognized under all state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

(b) Any unit of land legally created and separately described by deed, sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986, if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the Forest Service prior to the Final Interim Guidelines.

(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 solely created 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.

(134) Physical setting: the physical quality of the landscape at a recreation site, and how rustic recreation facilities may appear. Physical setting is distinct and not to be confused with landscape settings and landscape setting character descriptions.

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

(136) Preexisting: Existing prior to the adoption of the first Columbia River Gorge National Scenic Area Management Plan on October 15, 1991.

(137) Previously disturbed: An area of land where the natural surface has been graded, excavated, paved, or gravelled.

(138) Priority Habitat: Areas that provide habitat for rare wildlife determined by the Forest Service, Oregon Department of Fish & Wildlife, or Washington Department of Fish & Wildlife.

(139) 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.

(140) Public dock: A dock constructed, maintained and operated by a federal, state, local, or tribal government entity to provide public access to a water body.

(141) 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.

(142) Rare plant species: Various categories of plants and plant communities cited in federal and state programs. Rare plants and rare plant ecosystems are:

(a) Endemic to the Columbia River Gorge and vicinity (see 350-082-0690 Table 2 - Columbia Gorge and Vicinity Endemic Species);

(b) Listed as endangered or threatened pursuant to federal or state endangered species acts; or

(c) Designated global or state status rank 1, 2, or 3 by the Oregon Biodiversity Information Center or Washington Natural Heritage Program.

(d) Additionally, in the SMAs, rare 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.

(143) Rare wildlife species: Wildlife 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 wildlife management authorities and the public (great blue heron, osprey, golden eagle, peregrine falcon, and prairie falcon).

(e) Additionally, in the SMAs, rare 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.

(144) 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 recreational developments or improvements, except for roads or pathways.

(145) Recreation resort: A master-planned development focused on accessing a range of resource-based recreational opportunities, consisting of predominately short-term visitor accommodations and supporting commercial uses.

(146) 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.

(147) 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.

(148) Recreation resources: Areas and facilities that provide recreation opportunities and experiences. Recreation resources include semi-primitive areas with few facilities and developed sites.

(149) Recreation setting: the tool for managing recreation development and opportunities based on the sites social, physical, and managerial setting.

(150) Reflective surface: providing a reflection; capable of reflecting light or other radiation.

(151) Regularly maintained: An area of land that has been previously disturbed and where periodic actions have been taken to (1) keep the area clear of vegetation (*e.g.*, shoulders, utility yards), (2) limit the height and type of vegetation (*e.g.*, utility rights-of-way), or (3) establish and retain non-native vegetation (*e.g.*, landscaped medians, rest area grounds).

(152) 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.

(153) Remnant old forest (SMA only): Large trees in the overstory that are well into the mature growth state (older than 180 years).

(154) Repair: Replacement or reconstruction of a part of a serviceable structure after damage, decay or wear. A repair returns a structure to its original and previously authorized and undamaged condition. It does not change the original size, scope, configuration or design of a structure, nor does it excavate beyond the depth of the original structure. Repair includes, but is not limited to, reroofing a building, replacing damaged guardrails, reconstructing a rotten deck or porch, replacing a broken window or door, replacing a utility pole and associated anchors, replacing a section of broken water or sewer line, replacing a damaged or defective utility line, reconstructing a portion of a building damaged by fire or a natural event, and replacing railroad ties or rails.

(155) Resort core: The portion of a recreation resort formerly occupied by the existing industrial complex.

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

(157) 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.

(158) 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.

(159) 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, 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.

(160) 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; and

(c) Structures that provide for continuity of the right-of-way, such as bridges.

(161) Scenery Management System: The overall framework for the orderly inventory, analysis, and management of scenery developed in coordination with the Forest Service.

(162) 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 National Scenic Area and specifically designated to be managed as scenic and recreational travel routes.

(163) Secretary: The U.S. Secretary of Agriculture.

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

(165) Serviceable: Presently useable.

(166) Shall: Action is mandatory.

(167) Should: Action is encouraged.

(168) Shrub: A woody plant usually greater than three feet but less than 20 feet tall that generally exhibits several erect, spreading, or prostrate stems and has a bushy appearance. For this land use ordinance, seedlings of woody plants that are less than three feet tall shall be considered part of the herbaceous layer.

(169) 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.

(170) Significant cultural resource (SMA only): 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 C.F.R. 60).

(171) Skyline: The line that represents the place at which a landform, such as a cliff, bluff, or ridge, meets the sky and is topographically visible from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). The skyline is formed where the surface of the earth meets the sky except in existing densely forested landscapes with thick, unbroken coniferous tree cover characteristic to its setting, the skyline may be formed by the top of the vegetative canopy.

(172) Social settings: identifies the opportunities for solitude as well as quantity and type of encounters visitors could experience when visiting a recreation site or area.

(173) 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.

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

(175) Special Management Areas, or SMA or SMAs: The portions of the National Scenic Area that Congress designated in section 4(b) of the National Scenic Area Act as special management areas. The legal descriptions of special management areas are contained in Commission Rule 350-10.

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

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

(178) Story: A single floor level of a structure, as defined by the International Building Code.

(179) Streams: Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, springs, 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 or ephemeral 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 (ephemeral), during years of normal precipitation.

(180) 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, patios, driveways, and additions or alterations to structures, including repaving or resurfacing roads, driveways, and patios.

(181) Submit: To deliver a document (e.g., land use application, written comment) to a reviewing agency's office

by personal delivery, commercial delivery, mail, fax, or E-mail. When a document must be submitted within a specified period, it must arrive at the reviewing agency's office by the close of business on the last day of the specified period.

(182) 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.

(183) Suitability: The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; whether the land is committed by development to another land use that does not allow for agricultural use; 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.

(184) Thinning (SMA only): A forest practice intended to create favorable conditions for the continued growth of trees within an existing stand of trees. A thinning becomes a forest opening in coniferous forests when the average canopy closure of the overstory layer is zero or less than 40 percent and the understory layer is less than 60 percent average canopy closure of trees averaging less than five inches diameter at breast height. A thinning becomes a forest opening in oak woodlands when the total average canopy closure is less than 25 percent.

(185) Topographic visibility: Refers to areas that can be seen (generally from a key viewing area, for the purpose of the Management Plan) if all vegetation were to be removed.

(186) Total canopy closure (SMA only): For forest practices, the percentage measuring the degree to which all layers of the tree canopy combine together to block sunlight or obscure the sky as measured from below.

(187) Traditional foods: natural and cultural resources that Native Americans rely on for sustenance, based on history, culture and tradition.

(188) Trail characteristics: tools to describe the types of trail conditions that recreationists should expect when visiting a recreation resource.

(189) Treatment (SMA only): For forest practices, a site-specific operation that carries out the forest management objectives for an area.

(190) 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.

(191) 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 (Tribal Council), and the Confederated Tribes and Bands of the Yakama Nation (Tribal Council).

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

(193) Unobtrusive: when a structure does not intrude or visually dominate the scene of a landscape and for which the

introduced forms, lines, colors, textures, and patterns mimic the native environment.

(194) Understory (SMA only): For forest practices, the shorter or immature trees below the tall or mature overstory trees.

(195) Undertaking: Any project, activity, program, 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 C.F.R. 800.16(y)).

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

(197) 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, or hydrologic characteristics associated with wetlands.

(198) 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.

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

(200) Vested right: The right to develop or continue to develop a use, development or structure that was reviewed and approved pursuant to this Management Plan.

(201) Viewshed: A landscape unit visible from a key viewing area.

(202) Visually subordinate: One of the two scenic standards applicable in the National Scenic Area. A description of the relative visibility of a development, structure, or use where that development, structure, or use does not noticeably contrast with the defining landscape setting characteristics, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan) and the setting appears only slightly altered (distinctive characteristics of that setting remain dominant). As opposed to development, structures, or uses that are fully screened, structures that are visually subordinate may be partially visible but would be difficult to discern to the common viewer. Visually subordinate development, structures, or uses as well as forest practices in the SMAs shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of scale, proportion, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.

(203) 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.

(204) 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 are limited to boardwalks, trails and paths, observation decks, and interpretative aids, such as kiosks and signs.

(205) 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.

(206) 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 non-game birds, mammals, and other living resources; protection of habitat for endangered, threatened, and rare species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

(207) Winery or cidery: An agricultural building used for processing fruit into wine or cider, including laboratories, processing areas, offices, and storage areas. A winery or cidery is distinct from a wine or cider sales and tasting room; each of these uses must be explicitly reviewed and approved.

(208) Wine or cider sales and tasting room: A facility that is accessory to a winery or cidery and used for tasting and retail sales of wine or cider, including interior space (*e.g.*, wine bar, sitting room) and exterior space (*e.g.*, patio, veranda). A wine or cider sales and tasting room shall not be used for preparing or serving meals or hosting weddings, receptions or other commercial events, unless allowed, reviewed and approved under the "Commercial Events" provisions in Part II, Chapter 7: General Policies and Guidelines of this Management Plan. A wine or cider sales and tasting room is distinct from a winery or cidery; each of these uses must be explicitly reviewed and approved.

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

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## Applications and Procedures

### NEW SECTION

#### **350-082-0080. Application for Review and Approval Required**

(1) The application form required for National Scenic Area review is available at the Gorge Commission Office and on the Gorge Commission's website.

(2) All proposed developments and land uses shall be reviewed according to the standards in effect on the date the applicant submits a complete application for National Scenic Area review.

(3) A complete application is one that the Executive Director determines meets the requirements in this land use ordinance for: (1) a complete application form; (2) a complete site plan showing the proposed site (site plans with alternative sites or building envelopes are not sufficient); (3)

all applicable information specified in the various sections of this land use ordinance; and (4) other information that the Executive Director requires to make findings based on substantial evidence in the whole record and conclusions for compliance with the guidelines in this land use ordinance.

(4) The Executive Director will not accept an incomplete application for review.

(5) Prior to accepting an application or at any time during review of an application, the Executive Director may require the applicant to amend an application or withdraw an application and file a new application to resolve violations of applicable National Scenic Area standards or a prior Executive Director decision at the same time as the current application.

(6) The Executive Director shall accept and review the application pursuant to the procedures and requirements in 350-082-0080 through 350-082-0170 for consistency with the appropriate guidelines of this land use ordinance.

(7) The Executive Director may charge a fee for review of applications. The Gorge Commission shall set the fee after a public hearing.

(8) Applications for National Scenic Area review of a proposed use or development shall provide the following information.

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

(b) The name, mailing address, telephone number, and email address of the landowner and all other persons or entities that hold easements or other partial interests that give a right to use or refuse use of land, as determined by the Executive Director;

(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 Executive Director 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 one 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.g.*, cliffs, rock faces, slopes, stands of trees);

(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, including intermittent and ephemeral streams;

(H) Location and width of existing and proposed roads, driveways, and trails;

(I) Location, dimensions, height, and size (in square feet) of existing and proposed structures;

(J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting; and

(K) Location and depth of all proposed grading and ditching

(k) Elevation drawings, which shall show the appearance of proposed structures and shall include natural grade, finished grade, and the geometrical exterior of at least the length and width of structures as seen from a horizontal view. Elevation drawings shall be drawn to scale and include sizes and dimensions of windows, doors, and covered openings;

(l) A list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in 350-082-0110 Table 1 - Notice Requirements;

(m) Any additional information that the applicant feels will assist in the evaluation of the proposal, including but not limited to, maps, drawings, and development plans; and

(n) The signature of the applicant, and the signature or other statement of the landowner and other persons or entities that hold easements or other partial interests that give a right to use or refuse use of land, as determined by the Executive Director indicating that they are aware of the application and that authorizes the Executive Director or the Executive Director's designee reasonable access to the site in order to evaluate the application and to conduct inspections during construction of an approved development or land use, and a final inspection when construction is completed.

(9) The Executive Director may require additional information necessary to demonstrate compliance with this land use ordinance, including but not limited to, a professional land survey and staking of proposed structure and building locations that are close to a property or buffer boundary, a professionally drawn site and landscaping plan, and copies of or other proof of prior building permits and land use permits.

(10) The Executive Director shall provide Firewise information to applicants with application forms and encourage and assist applicants to incorporate Firewise standards in their proposals as appropriate and as consistent with the resource protection provisions in the Management Plan.

(11) Requirements for applications for Emergency/Disaster Response Actions are contained in 350-082-0230.

(12) Completed application forms shall be submitted directly to the Gorge Commission office.

**NEW SECTION**

**350-082-0090. Pre-Application Conference**

The Executive Director may require a pre-application conference prior to submitting an application. An applicant may request a pre-application conference prior to submitting an application. The pre-application conference may occur on the site of the proposed use or development. The purposes of the conference shall be to acquaint the Executive Director with the site of the proposed use or development and acquaint the applicant with the substantive and procedural requirements of this land use ordinance, to discuss the principal elements of the proposed action, and to identify guidelines that create opportunities or pose constraints for the proposed action. The Executive Director may summarize specific discussion points in a letter or electronic communication to the applicant, the content of which is not a decision and is not appealable.

**NEW SECTION**

**350-082-0100. Acceptance of Application**

(1) Within 14 days after receiving an application, the Executive Director shall review the application for completeness and if complete, shall accept the application for review.

(2) The Executive Director shall not accept an application for review until the applicant corrects all documented omissions and deficiencies. The Executive Director shall notify the applicant of all omissions and deficiencies in writing within 14 days after receipt of the application. The Executive Director shall review supplemental application materials within 14 days after receipt of the materials to determine if the application is complete.

(3) If the Executive Director receives an application for a proposed use or development that is explicitly prohibited by this land use ordinance, the Management Plan or the National Scenic Area Act, the Executive Director may choose to send a letter decision to the applicant without conducting the full review process in this land use ordinance. The letter decision shall state the proposed use or development is prohibited and cite and apply the law that prohibits the use. The letter decision is a final decision that may be appealed pursuant to Commission Rule 350-70.

**NEW SECTION**

**350-082-0110. Notice of Development Review**

(1) Within seven days after accepting an application, the Executive Director shall issue a notice of a proposed development. 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 filing comments on the proposed action;
- (e) The mailing and email addresses for submitting comments;

(f) A statement that the application and supporting documents are available on the Gorge Commission's website and for inspection at the Gorge Commission office during normal working hours; and

(g) A statement that compliance with the National Scenic Area standards does not ensure compliance with other applicable local, state, and federal laws.

(h) Additionally, the notice to the tribal governments shall request comments, recommendations, or concerns relating to the protection of treaty rights, including rights to access, hunt, fish, and gather, include a site plan, and include any supplemental information and a proposed treaty rights protection plan that the applicant has prepared to demonstrate protection of treaty rights.

(2) The notice shall be mailed or emailed to:

(a) The Forest Service, the applicable state agencies, the four tribal governments, and the applicable county and city (if the subject parcel is located within or adjacent to a city boundary);

(b) The applicant, landowner, holders of easements and other partial interests of the subject parcel, and other persons and entities within a radius of the subject parcel(s) as determined by 350-082-0110 Table 1 - Notice Requirements; and

(c) Other agencies and interested parties that request a notice or that the Executive Director determines at their discretion should be notified.

(3) The Executive Director at their discretion may require a new notice and comment period for any revision to an application that is materially different from the proposed use or development described in the original notice to such a degree that a reasonable person could not have understood the original notice to describe the proposed use or development as revised.

<b>350-082-0110 Table 1 - Notice Requirements</b>	
<b>Use Type</b>	<b>Send notice of application to:</b>
All Expedited Review Uses	Tribes, USFS, County
All Full Review Uses	Tribes, USFS, County, State
• Single family dwellings in the GMA Residential Land Use Designation adjacent to GMA Agriculture or Forest Land Use Designations;	Landowners and holders of easements and other partial interests within 500 feet



<ul style="list-style-type: none"> <li>• Commercial events and special uses in historic buildings adjacent to GMA Agriculture or Forest Land Use Designations;</li> <li>• Non-farm single family dwellings in the GMA Large-Scale Agriculture Land Use Designation;</li> <li>• Within GMA Forest Land Use Designations: utility facilities, railroads, home occupations, fruit &amp; produce stands, wineries, wine sales/tasting rooms, ag. product processing and packaging, mineral resources, geothermal resources, aquaculture, boarding of horses, temporary asphalt/batch plants, expansion of non-profit camps/retreats/conference centers, bed and breakfasts, non-profit learning/research facilities, fish processing operations, road spoils disposal sites</li> </ul>	
All other Full and Expedited Review Uses	Landowners and holders of easements and other partial interests within 200 feet
All Full and Expedited Review Uses within 1000 feet of a sensitive wildlife site	State Department of Wildlife
All Full and Expedited Review Uses within 1000 feet of a rare plant	State Natural Heritage Program
All Full and Expedited Review Uses within Agriculture-Special Land Use Designation	State Natural Heritage Program

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**NEW SECTION**

**350-082-0120. Comment Periods**

(1) Comments on Proposed Review Uses or Development. Interested persons have 21 days from the date the Executive Director sends the notice to submit written comments to the Executive Director relative to the consistency of the proposed actions with the guidelines of Commission Rule 350-082.

(a) Tribal governments shall have 30 days from the date the Executive Director sends the notice to submit written comments on the proposed action, and in their comments may request that the Executive Director consult with the tribal government regarding potential effects or modifications to treaty or other rights of the tribe.

(b) Where another provision of this land use ordinance specifies a longer time for specific agencies to review and comment on an application, that longer time shall apply to those agencies.

(2) Comments on Expedited Development and Uses. Interested persons have ten days from the date the Executive Director sends the notice to submit written comments to the Executive Director relative to the consistency of the proposed actions with the guidelines of 350-082-0220.

(3) Comments on Cultural Resource Surveys. Upon receipt of a completed cultural resources survey, the Executive Director shall forward the survey to the applicable State Historic Preservation Officer, and the four tribal governments. The State Historic Preservation Officer and the four tribal governments shall have 30 days to submit comments on the cultural resources survey. This comment period for cultural resource surveys may or may not run concurrently with the comment period in section (1) or (2) above.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**NEW SECTION**

**350-082-0130. Tribal Treaty Rights and Consultation**

(1) Tribal Treaty Rights and Consultation in the GMA

(a) Notice requirements to the governments of the four Columbia River Treaty Tribes are in 350-082-0110.

(b) Applications for proposed new review uses and development located in, providing recreation river access to, or on parcels that adjoin the Columbia River or its fishbearing tributaries shall include the following supplemental information:

(A) 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;

(B) A description of 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; and

(C) Proposed treaty rights protection measures that will be used to avoid effects to Indian treaty or other 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) At the same time that the Executive Director sends notice of the proposed development, they shall offer to meet with or consult with the tribal governments prior to making a decision on the proposed development. Offers to meet or consult with a tribal government shall include phone calls and electronic communication to tribal government chairs, chief

administrative officers, and natural and cultural resource staff. The Executive Director shall make more than one attempt to contact a tribal government.

(d) Tribal governments shall have 30 calendar days from the date a notice is mailed to request that the Executive Director consult with the tribal government regarding potential effects or modifications to treaty or other rights of the tribe. All substantive comments, recommendations, or concerns expressed by tribal governments during the consultation meeting shall be summarized in the Executive Director's decision, subject to the following confidentiality standards:

(A) The Executive Director shall keep confidential and may not disclose to any person or party who is not the applicant and the applicant's representative the tribal government's comments, recommendations, and concerns, and notes of the consultation and other information related to protection of treaty rights, unless the tribal government expressly authorizes disclosure.

(B) The confidential information shall be submitted to the Gorge Commission for review in the event of an appeal, and shall remain confidential and not subject to disclosure to any person or party other than the applicant, the applicant's representative, the appeal parties and their representatives, and the necessary Gorge Commission staff and Gorge Commission members, unless the tribal government expressly authorizes further disclosure.

(e) Any time periods specified in this land use ordinance shall stop when a tribal government requests consultation and shall not start again until the Executive Director meets with all tribal governments that requested consultation and the Executive Director receives all additional information and actions from the project applicant necessary to avoid effects to treaty rights to the satisfaction of the tribal governments that requested consultation.

(f) A tribal government's choice to consult with the Executive Director shall, in no way, be interpreted as a waiver of the tribe's sovereign immunity or waiver of any claim that the proposed use affects or modifies a treaty right or other tribal rights.

(g) All substantive comments, recommendations, or concerns expressed by tribal governments during the consultation meeting shall be resolved by the Executive Director or project applicant through revisions to the project application, conditions of approval, and, if necessary, in a treaty rights protection plan. The protection plan shall include measures to avoid effects or modifications to treaty and other rights of any Indian tribe.

(h) The Executive Director's decision shall integrate findings of fact that address their effort to meet with or consult with the tribal governments and any revisions and treaty rights protection plan resolving the tribal governments' comments, recommendations, or concerns.

(i) The treaty rights protection process may conclude if the Executive Director 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.

(j) A finding by the Executive Director that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the pro-

posed 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 affect or modify treaty or other tribal rights.

(2) Indian Tribal Treaty Rights and Consultation in the SMAs: For new development and uses in the SMAs, the Forest Service shall determine effects on treaty rights and shall notify the Executive Director of the determination.

#### **NEW SECTION**

##### **350-082-0140. Consultation with Resource Agencies**

(1) There are many provisions in this land use ordinance that require the Executive Director to consult with federal, state, local, tribal, and other resource agencies and entities. The Executive Director sends notices of proposed development to, and makes other attempts to consult with these agencies, but sometimes does not receive comments back within the comment period. In this situation, the Executive Director will continue to seek comment and consultation after the comment period as necessary to make findings required by this land use ordinance.

(2) The Executive Director may contact applicants to convey comments from federal, state, local, tribal, and other resource agencies and entities, and other commenters, and recommend revisions to applications or recommend that applicants work directly with the resource agencies and entities and other commenters to conduct surveys or studies and revise applications to address issues raised by the resource agencies and entities and other commenters. This process of ensuring compliance with this land use ordinance may occur during or after the comment period and may require a new application or new notice.

#### **NEW SECTION**

##### **350-082-0150. Decision of the Executive Director**

(1) In making a decision on a proposed use or development the Executive Director shall:

(a) Consult with the applicant, federal, state, local, and tribal agencies, and interested persons and entities as required in this land use ordinance or that the Executive Director at their discretion deems appropriate;

(b) Consider information submitted by the applicant and all other available relevant information;

(c) Develop new information necessary to evaluate the application;

(d) Consider all comments submitted pursuant to 350-082-0120 through 350-082-0140; and

(e) Solicit and consider the comments of the Forest Service.

(2) The Executive Director shall approve a proposed use or development only if it is consistent with the approval criteria in this land use ordinance. In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of this land use ordinance.

(3) Applicants shall record the Executive Director's decision and conditions of approval in county deeds and records to ensure notice of the conditions to successors in interest. The record shall be associated with all tax lots and parcels that constitute the subject property. Applicants need not record a separate staff report document containing the rele-

vant findings and conclusions. The Executive Director's decision shall include a statement specifying this recording requirement.

(4) The Executive Director's decision may require one or more inspections during construction of a development or land use and a final inspection. If the Executive Director's decision requires an inspection, the landowner shall permit the Executive Director on the property at a reasonable time to conduct the inspection.

(5) The Executive Director shall issue a decision within 135 days after accepting the application, except in one or more of the following situations:

(a) The applicant consents to an extension of time;

(b) The Executive Director determines that additional information or consultation is required pursuant to 350-082-0130 or 350-082-0140; or

(c) Unforeseen circumstances including, but not limited to, weather, illness, etc.

(6) The Executive Director shall send a copy of the decision to the applicant, the Forest Service, the applicable state agencies, the four tribal governments, the applicable county and city (if the subject parcel is located within or adjacent to a city boundary) and each person who submitted comments. The decision shall set forth the rights of appeal under Commission Rule 350-70.

(7) The decision of the Executive Director becomes final at the end of the appeal period unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. No person shall begin any approved land use or development during the appeal period.

(8) The Executive Director may withdraw a decision during the appeal period if they discover new facts or legal issues that could materially change conditions of approval or the decision. The Executive Director shall use this authority sparingly. If the Executive Director withdraws a decision, they shall provide notice of the withdrawal to all agencies, entities, and persons who received the original decision and a new notice of the proposed development with the new facts or explanation of the legal issues and provide a new comment period. The Executive Director shall issue a new decision as soon as possible after the end of the new comment period.

## NEW SECTION

### **350-082-0160. Expiration of National Scenic Area Approvals**

(1) Notice Not Required: Expiration of any Executive Director decision issued pursuant to this land use ordinance is automatic. The Executive Director does not notify applicants or landowners of decisions that are expired or may be close to expiring.

(2) National Scenic Area Approvals without Structures: An Executive Director's decision for a use or development that does not include a structure shall expire two years after the date the approval was granted, unless the use or development was established according to all specifications and conditions of approval in the approval. For land divisions, "established" means the final deed or plat has been recorded with the county recorder or auditor.

(3) National Scenic Area Approvals with Structures: An Executive Director's decision for a use or development that includes a structure shall expire as follows:

(a) When construction has not commenced within two years of the date the approval was granted; or

(b) When the structure has not been completed within two years of the date of commencement of construction.

(4) Commencement of Construction: As used in subsection (3)(a) above, commencement of construction means construction of the foundation or frame of the approved structure. For utilities and development without a frame or foundation, commencement of construction means construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction means grading of the roadway.

(5) Completion of Structure: As used in subsection (3)(b) above, completion of the structure means completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the National Scenic Area approval.

(6) Extension of Validity of National Scenic Area Approvals: A request for extension of the time frame in section (2) or (3) above, shall be submitted in writing before the applicable expiration date.

(a) The Executive Director may grant one 12-month extension to the validity of a National Scenic Area approval if they determine that events beyond the control of the applicant prevented commencement of the use or development (applicable to section (2) above) or commencement of construction (applicable to subsection (3)(a) above) within the original two-year time frame.

(b) The Executive Director may also grant one 12-month extension if they determine that events beyond the control of the applicant prevented completion of the structure (applicable to subsection (3)(b) above) within the original two-year time frame.

(c) The extension is good for 12 months from the date of the original expiration (not the date the extension was requested or granted and not the commencement of construction, or any other date or milestone).

(d) A request for extension shall state the reason why events beyond the control of the applicant warrant an extension.

(e) Approval or denial of a request for extension shall be considered an administrative decision.

(7) Vested Rights: The laws of the states of Oregon and Washington concerning vested rights shall not apply in the National Scenic Area. A person has a vested right for as long as the National Scenic Area approval does not expire.

## NEW SECTION

### **350-082-0170. Inspections**

(1) Applicants may request the Executive Director conduct an inspection during construction of an approved development or land use to ensure compliance with the Executive Director's decision. The Executive Director, at their discretion, may conduct the requested inspection. A delay in conducting an inspection or the Executive Director's choice not to conduct an inspection shall not be interpreted to mean that

the Executive Director believes a development or land use is in full compliance with the Executive Director's decision.

(2) The Executive Director may conduct an inspection at their discretion to ensure compliance with the Executive Director's decision. The Executive Director will usually schedule an inspection in advance but may request an inspection without advance notice.

(3) The Executive Director's decision may require an applicant request a final inspection after completion of a development or land use.

#### **NEW SECTION**

##### **350-082-0180. Changes or Alterations to an Approved Action**

(1) Any change to an Executive Director's decision shall be processed as a new action, except that the Executive Director may approve slight changes to findings, conclusions, and conditions of approval deemed to be consistent with the guidelines of Commission Rule 350-082 and the findings and conclusions for the original action.

(2) The Executive Director may approve a slight change only during the term that the Executive Director's decision has not expired pursuant to 350-082-0160 (2), (3), or (6), or upon completion of an approved structure pursuant to 350-082-0160(5), whichever is earlier.

(3) If the Executive Director approves a slight change, they shall notify all the parties listed in the original decision that received a copy of the original decision, except that the Executive Director will notify only a new landowner if the property has sold since the date of the original decision. The slight change decision (not the original decision) is final and may be appealed in accordance with 350-082-0150(7) above.

#### **NEW SECTION**

##### **350-082-0190. Applying New Less-Stringent Regulations to Development Approved Under Prior National Scenic Area Regulations**

(1) A landowner may submit a land use application to alter conditions of approval for an existing use or structure approved under prior National Scenic Area regulations (*e.g.*, *Columbia River Gorge National Scenic Area Final Interim Guidelines*, former Commission Rule 350-80 or former Commission Rule 350-81).

(2) The following standards apply to applications to alter conditions of approval for an existing use or structure approved under prior National Scenic Area regulations:

(a) The applicant shall apply for the same development that was reviewed in the original decision.

(b) The development shall remain in its current location.

(c) The Executive Director shall review the application and send notice of the application to agencies and other parties entitled to receive notice under the current land use ordinance.

(d) The Executive Director shall review the entire development to ensure that it would fully comply with all the current guidelines including, but not limited to, land use, treaty rights, scenic resources, cultural resources, recreation resources and natural resources.

(e) The Executive Director shall issue a new decision that supersedes the original decision.

(f) The new decision may remove or revise original conditions of approval or add new conditions of approval to ensure full compliance with all the current guidelines.

#### **Existing Uses and Discontinued Uses**

#### **NEW SECTION**

##### **350-082-0200. Existing Uses and Discontinued Uses**

(1) Right to Continue Existing Uses and Structures. Except as otherwise provided, any existing use or structure may continue as long as it is used in the same manner and for the same purpose.

(2) Changes to Existing Uses and Structures. Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to Commission Rule 350-082. Changes to exterior color and replacing siding, windows, chimneys, fences, paving; and other similar exterior features is considered a change to an existing structure.

(a) Expansion of Existing Commercial and Multifamily Residential Uses: In the SMAs, existing commercial and multifamily residential uses may expand as necessary for successful operation on the dedicated site, subject to guidelines to minimize adverse effects on scenic, cultural, natural, and recreation resources. Expansion beyond the dedicated site shall be prohibited.

(b) Conversion of Existing Industrial Uses in the GMA: In the GMA, existing industrial uses may convert to less intensive uses. For this guideline, a less intensive use is a commercial, recreation, or residential use with fewer adverse effects upon scenic, cultural, natural, and recreation resources.

(c) Existing Development or Production of Mineral Resources in the SMAs: Uses involving the exploration, development, or production of sand, gravel, or crushed rock in the SMAs may continue if both of the following conditions exist:

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

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

(3) Replacement of Existing Structures Not Damaged or Destroyed by Disaster. Except as provided in section (4) below, an existing structure may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply with the following standards:

(a) The replacement structure shall have the same use as the original structure.

(b) The replacement structure may have a different size or location than the original structure. An existing manufactured home may be replaced with a framed residence and an existing framed residence may be replaced with a manufactured home.

(c) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for

fire protection, and approval criteria for siting of dwellings on forest land.

(d) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one-year time frame.

(4) Replacement of Existing Structures Damaged or Destroyed by Disaster. An existing structure damaged or destroyed by fire, flood, landslide or other similar disaster may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards:

(a) The replacement structure shall have the same use as the original structure. An existing manufactured home may be replaced with a framed residence.

(b) The replacement structure shall be in the same location as the original structure. An exception may be granted and the replacement structure may be sited in a different location if the replacement structure complies with all the following guidelines:

(A) A registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the disaster made the original building site physically unsuitable for reconstruction.

(B) The new building site is no more visible from key viewing areas than the original building site. An exception may be granted if a registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the subject parcel lacks alternative building sites physically suitable for construction that are no more visible from key viewing areas than the original building site.

(C) The new building site complies with 350-082-0600 through 350-082-0720.

(c) The replacement structure shall be the same size and height as the original structure, provided:

(A) The footprint of the replacement structure may be up to ten percent larger than the footprint of the original structure. The footprint of a structure includes any covered decks and porches, attached garages, and breezeways that share a wall with the structure.

(B) The walls of the replacement structure shall be the same height as the walls of the original structure unless a minor increase is required to comply with standards in the current jurisdictional building code. Height is generally defined as the greatest vertical distance between the lowest finished grade adjoining any exterior wall and the highest point of the roof.

(d) The replacement structure shall only be subject to the following scenic resources standards:

(A) In the GMA, the replacement structure shall comply with the guidelines regarding color and reflectivity in 350-082-0600. In the SMAs, the replacement structure shall comply with the guidelines regarding color and reflectivity in 350-082-0610. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable.

(B) Decks, verandas, balconies and other open portions of the original structure shall not be rebuilt as enclosed (walls and roof) portions of the replacement structure.

(C) In the GMA, the replacement structure shall comply with the GMA guidelines regarding landscaping (350-082-0600). These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate) to the maximum extent practicable.

(D) In the SMAs, the replacement structure shall comply with the SMA guidelines regarding landscaping (350-082-0610). These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable, provided:

(i) Use of plant species appropriate for the area and minimum sizes of new trees needed to achieve the standard (based on average growth rates expected for the recommended species) are required. Examples of native species are identified in the *Scenic Resources Implementation Handbook* as appropriate to the area.

(ii) The height of any new trees shall not be required to exceed five feet.

(iii) The time frame for achieving the applicable scenic standard (visually subordinate or not visually evident) shall be ten years.

(e) The replacement structure shall be subject to subsections (3)(a), (3)(b), and (3)(c) above if it would not comply with subsections (4)(b) and (4)(c) above.

(f) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the two-year time frame.

(5) Discontinuance of Existing Uses and Structures. Except as provided in subsection (4)(a) above, any use or structure that is discontinued for one year or more shall not be considered an existing use or structure. Proof of intent to abandon is not required to determine that an existing use or use of an existing structure has been discontinued.

(a) Multiple Uses: An existing use or structure with more than one legally established use may discontinue one of the uses without discontinuing the others.

(b) Change in Use: An existing use or structure shall become discontinued if the use or use of the structure changes.

(6) Discontinued Uses and Structures. Re-establishment or replacement of any use or structure that has been discontinued shall be subject to all applicable policies and guidelines in the Management Plan, including, but not limited to, guidelines for land use designations and scenic, cultural, recreation and natural resources.

### Uses Allowed Outright (Without Review)

#### NEW SECTION

#### 350-082-0210. Uses Allowed Outright

(1) All Land Use Designations Except Open Space and Agriculture-Special. The following uses are allowed without review in all GMA and SMA land use designations, except GMA and SMA Open Space and Agriculture-Special:

(a) In the GMA, agricultural uses except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than five years shall be considered new cultivation. For this guideline, cultivation and

vegetation removal may be allowed in conjunction with a home garden.

(b) In the SMAs, agricultural uses within previously disturbed and regularly worked fields or areas, except new agricultural structures.

(c) Forest practices in the GMA that do not violate conditions of approval for other approved uses and developments.

(d) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(e) Accessory structures 60 square feet or less in area and ten feet or less in height, unless within the buffer zone of a wetland, stream, pond, lake or riparian area. This category does not include signs, fences, outdoor lights, retaining walls, flagpoles, roads, transportation facilities, or utility facilities. Only one free-standing renewable energy (solar or wind) structure is allowed on a parcel pursuant to this guideline.

(f) Wire-strand or woven-wire fences used for gardens, yards, livestock, and similar uses less than or equal to 500 feet in length and less than or equal to ten feet in height that are accessory to an existing dwelling, provided woven-wire fences (posts and wire) are brown or black if visible from key viewing areas. Height is measured from the ground to the top wire.

(g) Wire-strand fences less than or equal to 48 inches in height that are outside deer and elk winter range as delineated in the Gorge Commission and Forest Service natural resource data or determined by an appropriate federal or state agency. Height is measured from the ground to the top wire. This category does not include fences associated with transportation facilities or utility facilities.

(h) The following transportation facilities:

(A) Replace existing safety or protective structures, including, but not limited to, guardrails, access control fences and gates, barriers, energy attenuators, safety cables, rockfall structures, and traffic signals and controllers, provided the replacement structures are: (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the Management Plan.

(B) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are: (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the Management Plan.

(C) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(D) Permanent public regulatory, guide, and warning signs, except those excluded below, provided: (1) the signs comply with the *Manual for Uniform Traffic Control Devices*

(2012 or most recent version) and (2) the support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(E) Extensions of existing guardrails or traffic barriers less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are: (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of materials that match the existing structure, natural wood, weathering steel (*e.g.*, Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the Management Plan.

(F) New traffic barriers and guardrail ends, provided the structures are: (1) located inside rights-of-way that have been disturbed in the past and (2) are constructed of natural wood, weathering steel (*e.g.*, Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the Management Plan. This category does not include jersey barriers.

(G) In the GMA, replacement or expansion of existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(H) In the SMAs, replacement or expansion of existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective. The entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(I) Maintenance of existing railroad track and paved roads, provided the activity does not: (1) increase the width of a road or railroad, or (2) disturb the toe of adjacent embankments, slopes or cut banks.

(J) Apply dust abatement products to non-paved road surfaces.

(K) Grade and gravel existing road shoulders, provided the activity does not (1) increase the width of a road, or (2) disturb the toe of adjacent embankments, slopes or cut banks.

(L) Replace the superstructure of bridges (*e.g.*, decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails, traffic barriers, or the substructure of bridges (*e.g.*, foundations, abutments).

(i) The following underground utility facilities:

(A) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(B) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided: (1) no excavation would extend more than 12 inches beyond the depth and extent of the original excavation, (2) no ditch for linear facilities would be more than 24 inches wide, (3) no excavation for non-linear facilities would exceed ten cubic yards, and (4) no recorded archaeological site is located within 500 feet of the development. To comply with (4), the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation or the Oregon State Historic Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

(j) The following aboveground and overhead utility facilities:

(A) Replace existing aboveground and overhead utility facilities including towers, pole or tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have: (1) the same location and size as the existing facilities and (2) the same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the Management Plan.

(B) Replace existing utility poles, provided the replacement poles are: (1) located within five feet of the original poles, (2) no more than five feet taller and six inches wider than the original poles, and (3) constructed of natural wood, weathering steel (*e.g.*, Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(C) New whip antennas for public service less than or equal to eight feet in height and less than or equal to two inches in diameter, cables, wires, transformers, and other similar equipment, provided all such structures are on existing utility poles or towers.

(k) Flagpoles that are accessory to the principal building on a parcel, provided the height of the flagpole is less than or equal to the height of the highest ridgeline or parapet of the principal building.

(l) The following signs:

(A) Election signs. Removal must be accomplished within 30 days of election day.

(B) "For sale" signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(C) 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 on Uniform Traffic Control Devices* (2012 or

most recent version). Removal must be accomplished within 30 days of project completion.

(D) 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 six square feet in the GMA and two square feet in the SMAs.

(E) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.

(F) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(G) In the GMA, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

(m) In the GMA, wind machines for frost control in conjunction with agricultural use.

(2) GMA and SMA Open Space. The following uses are allowed without review in GMA and SMA Open Space:

(a) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities. This does not include trail, road, and railroad expansions.

(b) The following transportation facilities:

(A) Replace existing safety or protective structures, including guardrails, access control fences and gates, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are: (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the Management Plan.

(B) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are: (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the Management Plan.

(C) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(D) Permanent public regulatory, guide, and warning signs, except those excluded below, provided: (1) the signs comply with the *Manual on Uniform Traffic Control Devices* (2012 or most recent version) and (2) the support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(E) Extensions of existing guardrails or traffic barriers less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are: (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of materials that match the existing structure, natural wood, weathering steel (*e.g.*, Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the Management Plan.

(F) New traffic barriers and guardrail ends, provided the structures are: (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of natural wood, weathering steel (*e.g.*, Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the Management Plan. This category does not include jersey barriers.

(G) In the GMA, replacement of expansion of existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(H) In the SMAs, replacement or expansion of existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective.

(I) Maintenance of existing railroad track and paved roads, provided the activity does not (1) increase the width of a road or railroad, or (2) disturb the toe of adjacent embankments, slopes or cut banks.

(J) Apply dust abatement products to non-paved road surfaces.

(K) Grade and gravel existing road shoulders, provided the activity does not (1) increase the width of a road, or (2) disturb the toe of adjacent embankments, slopes or cut banks.

(L) Replace the superstructure of bridges (*e.g.*, decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails, traffic barriers, or the substructure of bridges (*e.g.*, foundations, abutments).

(c) The following underground utility facilities:

(A) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(B) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided: (1) no excavation would extend more than 12 inches beyond the depth and extent of the original excavation, (2) no ditch for linear facilities would be more than 24 inches wide, (3) no

excavation for non-linear facilities would exceed ten cubic yards, and (4) no recorded archaeological site is located within 500 feet of the development. To comply with this guideline, the entity or person undertaking the development shall contact the Washington Department of Archaeology and Historic Preservation or the Oregon State Historic Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

(d) The following aboveground and overhead utility facilities:

(A) Replace existing aboveground and overhead utility facilities including towers, pole or tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have: (1) the same location and size as the existing facilities and (2) the same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the Management Plan.

(B) Replace existing utility poles, provided the replacement poles are: (1) located within five feet of the original poles, (2) no more than five feet taller and six inches wider than the original poles, and (3) constructed of natural wood, weathering steel (*e.g.*, Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(C) New whip antennas for public service less than or equal to eight feet in height and less than or equal to two inches in diameter, cables, wires, transformers, and other similar equipment, provided all such structures are on existing utility poles or towers.

(e) The following signs:

(A) Election signs. Removal must be accomplished within 30 days of election day.

(B) "For sale" signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(C) 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 on Uniform Traffic Control Devices* (2012 or the most recent version). Removal must be accomplished within 30 days of project completion.

(D) 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 six square feet in the GMA and two square feet in the SMAs.

(E) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.



(F) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(G) In the GMA, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

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

(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 five 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. Development associated with these low-intensity recreation uses is subject to review and is not allowed outright.

(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.

### Expedited Development and Uses

#### NEW SECTION

#### 350-082-0220. Development and Uses Eligible for Expedited Review

(1) The following development and uses may be allowed, provided they comply with the resource protection guidelines contained in section (2) below.

(a) Except in Open Space and Agriculture-Special, accessory structures between 60 and 200 square feet in area and ten feet or less in height. Only one accessory building per parcel may be allowed under this guideline, regardless of whether the parcel already includes an accessory building(s). Additional accessory buildings shall be subject to full review. This category does not include signs, decks, fences, outdoor lights, retaining walls, transportation facilities, or utility facilities.

(b) Additions and covered decks for existing buildings, provided the existing building is at least 500 square feet in area and the addition or covered deck is no larger than 200 square feet in area and no taller than the height of the existing building. Only one addition and one covered deck per parcel may be allowed under this guideline, regardless of whether the parcel already includes an addition or covered deck.

(c) Rail, solid or semi-solid fences accessory to existing dwellings less than or equal to six feet in height and less than or equal to 100 feet in length.

(d) Wire-strand fences other than those allowed outright, provided the fence complies with 350-082-0650(5) if it is inside deer and elk winter range as delineated in the Gorge Commission and Forest Service natural resource data or determined by an appropriate federal or state agency.

(e) In the GMA, woven-wire fences for agricultural use that would enclose 80 acres or less.

(f) Decks that are: (1) uncovered; (2) attached and accessory to existing dwellings; and (3) 500 square feet or less in area and 30 inches or less in height above existing grade.

(g) Road closure gates.

(h) Signs, other than those allowed outright.

(i) Outdoor lights.

(j) Air, weather, water and other similar research and monitoring facilities, provided the facilities are attached to existing structures or are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(k) Lot line adjustments in the GMA that would not result in the potential to create additional parcels through subsequent land divisions, as determined by 350-082-0570 (1), except all lot line adjustments for parcels designated Open Space, Agriculture-Special, Public Recreation, or Commercial Recreation shall be reviewed through the full development review process.

(l) Lot line adjustments in the SMAs, subject to compliance with 350-082-0570(2).

(m) Removal or demolition of structures that are less than 50 years old, including wells, septic tanks and fuel tanks.

(n) Decommission non-paved roads, including ripping the road surface, barriers, and revegetation.

(o) Trail reconstruction involving up to 1,000 feet of trail re-route.

(p) The following transportation facilities, provided they are not a part of larger construction or reconstruction projects (which shall be reviewed as a whole):

(A) New traffic barriers and guardrail ends, other than those allowed outright, and new wire-strand and woven-wire access control fences. This category does not include jersey barriers.

(B) New traffic detection devices, vehicle weighing devices, and signal boxes less than or equal to 120 square feet in size and less than or equal to 12 feet in height. This category does not include signs.

(C) Pave existing dirt and gravel roads, provided the activity does not increase the width of the road or disturb the toe of adjacent embankments, slopes or cut banks.

(D) New weather, air, traffic or other monitoring equipment attached to existing structures or that are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(q) Except in Agriculture-Special, new underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided: (1) no ditch for linear facilities would be more than 36 inches wide and (2) no excavation for non-linear facilities would exceed 20 cubic yards.

(r) The following aboveground and overhead utility facilities:

(A) Modify existing aboveground and overhead utility facilities or, except in Agriculture-Special, develop new aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the development would be less than or equal to 120 square feet in area and less than or equal to 12 feet in height.

(B) Replace existing aboveground and overhead utility facilities including building and equipment foundations,

poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the replacement facilities would be in the same location as and no more than 15 percent larger than the physical size of the existing facilities.

(C) New antennas and associated support structures necessary for public service on existing wireless communication poles and towers other than those allowed outright, provided the size is the minimum necessary to provide the service.

(s) Replace an existing mobile home in a mobile home space within a mobile home park, provided: (1) the mobile home to be replaced, the mobile home space, and the mobile home park shall be existing, lawful uses according to the definition of existing use or structure in 350-082-0070(73) and in accordance with 350-082-0220(1) through 350-082-0220(4); (2) the replacement mobile home shall be in the same location as the mobile home to be replaced; (3) the height of the replacement mobile home shall be no more than 20 percent greater than the mobile home to be replaced; and (4) the mass and footprint of the replacement mobile home shall be no more than 100 percent greater than a single-wide mobile home to be replaced or no more than 25 percent greater than a double-wide mobile home to be replaced.

(t) Retaining walls accessory to existing dwellings less than or equal to two feet in height and less than or equal to 100 feet in length.

(u) In the SMAs, wind machines for frost control in conjunction with agricultural use.

(v) Additions to existing buildings or structures that generate solar power for approved uses, provided that the panels and hardware are non-reflective black or dark earth tone colors and do not increase the overall roof height. This category does not include free-standing solar arrays, which are subject to full review as new structures under 350-082-0540.

(2) Proposed development reviewed using the expedited review process shall comply with the following resource protection guidelines:

(a) Scenic

(A) In the GMA, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.

(B) Except signs, the colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors approved by the reviewing agency shall be included as a condition of approval. This guideline shall not apply to additions to existing buildings smaller in total area in square feet than the existing building, which may be the same color as the existing building.

(C) Except signs, structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents, and chimneys.

(D) Any exterior lighting shall be sited, limited in intensity, hooded, and shielded 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. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(E) Signs shall comply with 350-082-0520.

(F) Structures within one-half mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and designed to achieve the applicable scenic standard (e.g., visual subordination, not visually evident).

(b) Cultural

(A) The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey or historic survey as determined by 350-082-0620 (2)(a)(A).

(B) The GMA guidelines that protect cultural resources and human remains discovered during construction (350-082-0620 (6) and (7)) shall be applied as conditions of approval for all development approved under the expedited development review process, including development in the SMAs.

(c) Recreation. The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.

(d) Natural

(A) Water Resources (Wetlands, Streams, Ponds, Lakes and Riparian Areas). The development is outside water resources and their buffer zones. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.

(B) Sensitive Wildlife and Rare Plants

(i) The development meets one of the following:

(1) The development is at least 1,000 feet from known Priority Habitats or sensitive wildlife sites (excluding sensitive aquatic species and deer and elk winter range) and known rare plants.

(2) The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained.

(3) For sensitive wildlife, the development is within 1,000 feet of known Priority Habitats or sensitive wildlife sites (excluding sensitive aquatic species and deer and elk winter range), but an appropriate federal or state wildlife agency determines: (1) the Priority Habitat or sensitive wildlife site is not active or (2) the proposed development would not compromise the integrity of the Priority Habitat or wildlife area or occur during the time of the year when wildlife species are sensitive to disturbance.

(4) For rare plants, the development is within 1,000 feet of known rare plants, but the Oregon Biodiversity Information Center or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the rare plants.

(ii) Development eligible for expedited review shall be exempt from the field survey requirements for sensitive wildlife or rare plants in 350-082-0650 (1)(d) and (2) and 350-082-0660 (1)(d) and (2).

(e) Treaty rights protection guidelines:

(A) Proposed development shall not affect or modify any treaty or other rights of any Indian tribe.

(B) The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if a tribal government

submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.

(C) Except as provided in subsection (B) above, 350-082-0130 shall not apply to proposed development reviewed under the expedited review process.

### Emergency/Disaster Response Actions

#### NEW SECTION

#### 350-082-0230. Emergency/Disaster Response Actions

##### (1) General Guidelines

(a) Actions taken in response to an emergency/disaster, as defined in 350-082-0070(65), are allowed in all GMA and SMA land use designations, subject to the notification requirements in section (2) below.

(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, 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 Executive Director, or the Forest Service for federal agency actions.

(d) The new exploration, development (extraction or excavation), and production of mineral resources used for commercial or 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 water resources or their buffer zones within the National Scenic Area 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 determined to not be possible without further jeopardizing life or property.

##### (2) Notification Requirements

(a) Actions taken in response to an emergency/disaster, as defined in 350-082-0070(65), 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 seven days.

(C) Notification shall be furnished to the Executive Director, or the Forest Service for federal agency actions. If the Forest Service is the action agency, it shall provide notice 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; and
- (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 Executive Director, or Forest Service shall, as soon as possible:

(A) Review its natural resource 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 Oregon or 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 Oregon State Historic Preservation Office or the Washington Department of Archeology and Historic Preservation, and the tribal governments of all emergency/disaster response activities. The Forest Service will review their cultural resource 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 or agencies 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 Executive Director, or Forest Service for federal agency actions. In the case of an event with multiple responding parties, the party 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.

(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. The terms "development activities" and "development" include the disposal of any spoil materials associated with an emergency/disaster response action. 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) Applicant's 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; and

(D) A map of the project area drawn to scale, at a scale of one inch = 200 feet 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 in subsection (3)(d)(D) above may be granted 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 one inch = 200 feet or a scale providing greater detail shall be provided that shows a section of the response area exemplifying the specific actions taken.

(e) Emergency/disaster response review uses may be allowed pursuant to a process that provides at minimum the following:

(A) Notice of the application to landowners within 200 feet of the perimeter of the subject parcel, the Forest Service, Gorge Commission, the four Columbia River treaty tribes, and interested parties;

(B) A written decision with findings of fact and conclusions of law; and

(C) An opportunity to request a hearing.

(4) Post-Emergency/Disaster Response Development Review. Actions taken in all land use designations within the GMA or SMAs that are in response to an emergency/disaster event, as defined, shall be reviewed for compliance with the following guidelines.

(a) Scenic Resources

(A) Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic resources are not adversely affected. In the GMA, such actions shall be rendered visually subordinate in their landscape setting as visible from key viewing areas to the greatest extent practicable, except for actions located in areas exempted from visual subordinate requirements in 350-082-0600 (3)(k). In the SMAs, such actions shall meet the scenic standard to the greatest extent practicable.

(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 visible 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 visible from key viewing areas to the greatest extent practicable.

(F) In the GMA, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(1) Removed from the National Scenic Area,

(2) Deposited at a site within the National Scenic Area permitted by an agency administering a National Scenic Area land use ordinance, or

(3) (Re)contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.

(ii) The Executive Director shall decide whether an applicant removes the spoil materials, deposits the spoil materials, or (re)contours the spoils materials. The applicant does not make this decision.

(iii) The Executive Director shall select the action in subsection (i) above that, to the greatest extent practicable, best complies with the policies and guidelines in the Management Plan that protect scenic, cultural, recreation, and natural resources.

(iv) Disposal sites created according to subsection (i)(2) above shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from

routine road maintenance activities shall not be deposited at these sites.

(G) In the SMAs, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(1) Removed from the National Scenic Area, or

(2) Deposited at a site within the National Scenic Area permitted by an agency administering a National Scenic Area land use ordinance within two years of the emergency.

(ii) After the spoils materials are removed, the emergency disposal site shall be rehabilitated to meet the scenic standard.

(iii) All grading (i.e., recontouring) shall be completed within 30 days after the spoils materials are removed.

(iv) Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

(v) All revegetation shall take place within one year of the date an applicant completes the grading.

(b) Cultural Resources and Treaty Rights

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources.

(B) Emergency/disaster response actions shall not affect or modify tribal treaty rights.

(C) The 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 Executive Director.

(i) Reconnaissance surveys shall be conducted by the Forest Service and comply with the standards in 350-082-0620 (2)(b). Reconnaissance survey reports shall comply with the standards in 350-082-0620 (2)(d).

(ii) Historic surveys shall be conducted by the 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.

(D) 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 Executive Director when a reconnaissance survey is required or 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.

(E) When written comments are submitted in compliance with subsection (D) 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 inter-

ested persons. A report shall be prepared by the Executive Director following the consultation meeting. Consultation meetings and reports shall comply with the standards in 350-082-0620 (2)(e), and 350-082-0130.

(F) 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 standards in 350-082-0620 (2)(c) and 350-082-0620 (3)(b).

(G) A mitigation plan shall be prepared by the project applicant if the affected cultural resources are significant. The mitigation plan shall be prepared according to the information, consultation, and report guidelines in 350-082-0620 (5)(a).

(H) The Executive Director shall submit a copy of all reconnaissance and historic survey reports and treaty rights protection plans to the State Historic Preservation Office (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 Executive Director. The Executive Director shall record and address all written comments in the final decision.

(I) The Executive Director 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 Executive Director shall justify how the opposing conclusion was reached.

(J) The cultural resource protection process may conclude when it has been determined that tribal treaty rights have not been 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 or

(iv) A historic survey demonstrates that emergency/disaster response actions, and associated development, had no effect on historic buildings or structures because:

(1) 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 C.F.R. 60.4), or

(2) 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. Dep't of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Dep't 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 water resources, Priority Habitats, or sensitive wildlife sites, and sites containing rare plants, shall be the same as those established in 350-082-0640 through 350-082-0690.

(C) Water Resources

(i) Emergency/disaster response actions occurring within a water resource buffer zone shall be reviewed by the Oregon or Washington Department of Fish and Wildlife. State biologists will help determine if emergency/disaster response actions have affected or have a potential to affect these water resources or their buffer zones.

(ii) When emergency/disaster response activities occur within water resources or their buffer zones, the applicant shall demonstrate the following:

(1) 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; and

(2) Areas disturbed by response activities and associated development will be rehabilitated to the maximum extent practicable.

(iii) Impacts to water resources 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 Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response actions had minor effects on the water resource 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 Executive Director shall incorporate them into the final order and the aquatic area protection process may conclude.

(v) Unless addressed through subsection (4)(c)(C)(iv) above, mitigation and restoration efforts shall be delineated in a Water Resources Mitigation Plan. Water Resources Mitigation Plans shall satisfy the standards in 350-082-0640 (8)(a) and (b) and the following:

(1) 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.

(2) Planting plans shall be included that specify native plant species to be used, specimen quantities and plant locations.

(3) 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 Priority Habitat or sensitive wildlife site, shall be reviewed by the Oregon or 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 Priority Habitat or sensitive wildlife site.

(ii) Site plans for emergency/disaster response sites shall be submitted by the Executive Director to the Oregon or Washington Department of Fish and Wildlife for review as prescribed in 350-082-0650 (3)(a) and (b).

(iii) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines: (1) the Priority Habitat or sensitive wildlife site was not active, or (2) the emergency/disaster response did not compromise the integrity of the Priority Habitat or sensitive wildlife site or occurred at a time when wildlife species are not sensitive to disturbance.

(iv) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had minor effects on the Priority Habitat or sensitive wildlife 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 Executive Director shall incorporate them into the final decision and the wildlife protection process may conclude.

(v) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had adverse effect on a Priority Habitat or sensitive wildlife site, the project applicant shall prepare a wildlife mitigation plan. Wildlife mitigation plans shall comply with standards in 350-082-0650(4). Upon completion of the wildlife mitigation plan, the Executive Director shall:

(1) Submit a copy of the wildlife mitigation plan to the state wildlife agency for review. The state wildlife agency will have 15 days from the date that a plan is mailed to submit written comments to the Executive Director;

(2) Record any written comments submitted by the state wildlife agency in its development review order. Based on these comments, the Executive Director 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 Executive Director shall justify how the opposing conclusion was reached.

(3) Require the project applicant to revise the wildlife mitigation plan as necessary to ensure that the proposed use

would not adversely affect a Priority Habitat or sensitive wildlife site.

(E) Deer and Elk Winter Range. Any fencing permanently erected within deer and elk winter range, as a result of an emergency/disaster response, shall comply with the standards in 350-082-0650(5).

(F) Rare Plants

(i) Emergency/disaster response actions occurring within 1,000 feet of a rare plant, shall be reviewed by the Oregon Biodiversity Information Center or 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 Oregon Biodiversity Information Center or Washington Natural Heritage Program by the Executive Director. 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 Executive Director, 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 Executive Director, 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 Executive Director shall incorporate them into the final decision 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 Rare Plant Mitigation Plan that meets the standards in 350-082-0660(4).

(vi) The Executive Director shall submit a copy of all Rare Plant Mitigation Plans to the state natural heritage program for review. The state natural heritage program will have 15 days from the date the Rare Plant Mitigation Plan is mailed to submit written comments to the Executive Director.

(vii) The Executive Director shall record any written comments submitted by the state natural heritage program in its development review order. Based on these comments, the Executive Director 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 Executive Director shall justify how the opposing conclusion was reached.

(viii) The Executive Director shall require the project applicant to revise the Rare Plant Mitigation Plan as necessary to ensure that the proposed use would not adversely affect a rare 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. Placement of structures necessary for continued public safety and the protection of private property and essential public services damaged during an emergency/disaster event are allowed in all land use designations in accordance with 350-082-0080 through 0200, 350-082-0380 through 0590 (as applicable), and 350-082-0600 through 0720. 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.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## Agricultural Land Use Designations

### NEW SECTION

#### **350-082-0240. Uses Allowed on Lands Designated Large-Scale Agriculture and Small-Scale Agriculture**

(1) Uses Allowed Outright. The uses listed in "350-082-0210(1) are allowed without review on lands designated Large-Scale Agriculture and Small-Scale Agriculture.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated Large-Scale Agriculture and Small-Scale Agriculture.

(3) Review Uses. The following uses may be allowed on lands designated Large-Scale Agriculture and Small-Scale Agriculture subject to compliance with 350-082-0600 through 350-082-0720, except where a use specifies that it is only allowed on land designated Large-Scale Agriculture or Small-Scale Agriculture:

(a) New cultivation, subject to compliance with guidelines for the protection of cultural resources and natural resources in 350-082-0620 and 350-082-0640 through 350-082-0690, and upon demonstration that the landowner has sufficient water to support the use.

(b) Agricultural structures in conjunction with agricultural use, including new cultivation.

(c) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to compliance with 350-082-0380.

(d) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in subsection (e) or (f) below.

(e) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any

legal parcel less than or equal to ten acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(f) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel larger than ten acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(g) The temporary use of a manufactured home, tiny house on a trailer, or similar structure in the case of a family hardship, subject to compliance with 350-082-0390.

(h) On lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, upon a demonstration of compliance with all the following guidelines:

(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, as defined under "Designation Policies," 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. The farm or ranch must currently satisfy subsection (C)(iv) below.

(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.

(iv) Annual income. The farm or ranch, and all its constituent parcels, must produce at least \$80,000 in gross annual income in 2020 dollars. This gross annual income amount shall be indexed for inflation on an annual basis using Consumer Price Index data from the U.S. Bureau of Labor Statistics, and the new adjusted amount for each calendar year (calculated from 2020 dollars) will be posted on the Gorge Commission's website by January 15 of each year. This determination can 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 = Annual income

(i) On lands designated Large-Scale Agriculture, a second single-family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling that is included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with the criteria listed in 350-082-0620 (3)(a)(A).

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

(k) On lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative subject to compliance with all the following guidelines:

(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.

(C) The operation is a commercial enterprise, as determined by an evaluation of the factors described in 350-082-0240 (3)(h)(C).

(l) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and natural resources, subject to compliance with 350-082-0460. These projects may include new structures (e.g., fish ladders, sediment barriers) or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(m) Structures associated with hunting and fishing operations.

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

(o) Agricultural labor housing, subject to compliance with all the following guidelines:

(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 nine months.

(C) The housing shall 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.

(p) On lands designated Large-Scale Agriculture, on a parcel that was legally created and existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural use upon a demonstration of compliance with all the following guidelines:

(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 used in conjunction with other agricultural operations in the area.

(C) The dwelling shall be set back from any abutting parcel designated Large-Scale Agriculture or Small-Scale Agriculture, as required by 350-082-0580(2), or designated Commercial Forest Land, Large Woodland, or Small Woodland, as required by 350-082-0270(6).

(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 Agriculture, Small-Scale Agriculture, Commercial Forest Land, Large Woodland, or Small Woodland.

(E) All owners of land in areas designated Large-Scale Agriculture, Small-Scale Agriculture, Commercial Forest Land, Large Woodland, or Small Woodland that is 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 ten days to comment prior to a decision.

(q) Life estates, subject to compliance with the following guidelines:

(A) A landowner who sells or otherwise transfers real property on lands designated Large-Scale Agriculture or Small-Scale Agriculture may retain a life estate in a dwelling and a tract of land surrounding the dwelling.

(B) The life estate tract shall not be considered a parcel as defined in this land use ordinance.

(C) A second dwelling may be allowed, subject to compliance with 350-082-0600 through 350-082-0720 and upon findings that the proposed dwelling is in conjunction with agricultural use, using subsection (3)(h) above.

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

(r) Land divisions, subject to compliance with 350-082-0560.

(s) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to compliance with 350-082-0570(1).

(t) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(u) Docks and boathouses, subject to compliance with 350-082-0410.

(v) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(w) Commercial events, subject to compliance with 350-082-0480.

(x) Special uses in historic buildings, subject to compliance with 350-082-0530.

(4) Review Uses with Additional Approval Criteria.

(a) The following uses may be allowed on lands designated Large-Scale and Small-Scale Agriculture, subject to compliance with 350-082-0600 through 350-082-0720,

except where a use specifies that it is only allowed on land designated Large-Scale Agriculture or Small-Scale Agriculture. The following uses shall also comply with the "Approval Criteria for Specified Review Uses," in subsection (b) below:

(A) Construction, reconstruction, or modification of roads, utility facilities, and railroads necessary for public service upon a showing that:

(i) there is no practicable alternative location with less adverse effect on agricultural or forest lands, and;

(ii) the size is the minimum necessary to provide the service.

(B) Home occupations in existing residential or accessory structures, subject to compliance with 350-082-0420.

(C) Fruit and produce stands.

(D) Wineries and cideries, in conjunction with an on-site vineyard or orchard, upon a showing that processing of wine or cider is from fruits harvested on the subject farm and the local region.

(E) Wine or cider sales and tasting rooms, in conjunction with an on-site winery or cidery.

(F) 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.

(G) Exploration, development, and production of mineral and geothermal resources, subject to compliance with 350-082-0500.

(H) 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; invited guests on an infrequent and occasional basis; and 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.

(I) Aquaculture.

(J) Recreation development, subject to the Recreation Intensity Class provisions in 350-082-0700 through 350-082-0720.

(K) Boarding of horses. The reviewing agency shall make findings on property characteristics, parcel size and impacts to neighbors, and shall specify the maximum number of horses based on those findings.

(L) Temporary portable asphalt or batch plants related to public road projects, not to exceed six months.

(M) Bed and breakfast inns in single-family dwellings, subject to compliance with 350-082-0440 and provided that the residence:

(i) Is included in the National Register of Historic Places, or

(ii) In Washington, is listed on the Washington Heritage Register maintained by the Washington Department of Archaeology and Historic Preservation, or

(iii) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(N) Nonprofit, environmental learning or research facilities.

(O) Expansion of existing school or place of worship.

(P) On parcels designated Small-Scale Agriculture, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to compliance with 350-082-0450.

(Q) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a National Scenic Area county public works department for earth materials and any inter-mixed vegetation generated by routine or emergency/disaster public road maintenance activities within the National Scenic Area, subject to compliance with 350-082-0470.

(b) Approval Criteria for Specified Review Uses on Lands Designated Large-Scale Agriculture and Small-Scale Agriculture

(A) 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.

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

#### NEW SECTION

#### 350-082-0250. Uses Allowed on Lands Designated Agriculture-Special

(1) Uses Allowed Outright. The uses listed in 350-082-0210(3) are allowed without review on lands designated Agriculture-Special.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated Agriculture-Special.

(3) Review Uses with Additional Approval Criteria.

(a) The following uses may be allowed on lands designated Agriculture-Special, subject to compliance with 350-082-0600 through 350-082-0720 and "Approval Criteria for Review Uses on Lands Designated Agriculture-Special" in subsection (b) below:

(A) New livestock grazing. Any operation that would introduce livestock to land that has not been grazed, or has laid idle, for more than five years shall be considered new livestock grazing.

(B) New fences, livestock watering facilities, and corals.

(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 350-082-0240 (3)(p). The buffer guidelines for non-agricul-

tural 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 in 350-082-0700 through 350-082-0720.

(I) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(J) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and natural resources, subject to compliance with 350-082-0460. These projects may include new structures (e.g., fish ladders, sediment barriers) or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(K) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(L) Lot line adjustments, subject to compliance with 350-082-0570(1).

(b) Approval Criteria for Review Uses on Lands Designated Agriculture-Special

(A) A range conservation plan 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 (3)(a)(A), (B), and (C)).

(i) If a range conservation plan is required before a use is allowed, it shall be prepared by the landowner in cooperation with range scientists from local conservation districts. Specialists from the Oregon Biodiversity Information Center or Washington Natural Heritage Program should be consulted while the plan is being prepared.

(ii) Range conservation plans shall ensure that new uses do not adversely affect natural areas. They shall accomplish the following goals:

(1) Maintain native rangeland that is in excellent or good condition; enhance rangeland that is in fair or poor condition;

(2) Preserve native trees and shrubs; and

(3) Reestablish native grasses in degraded areas that have been invaded by non-native plants and weeds.

(iii) Range conservation plans shall include all the following elements:

(1) 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.

(2) 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.

(3) Livestock management plan. This shall include the grazing system that will be used, including number and size of pastures, expected livestock numbers, and grazing or deferral periods and sequence. Livestock management plans shall project livestock movements for at least three years.

(4) 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.

(B) The Executive Director shall submit all land use applications and range conservation plans to the Oregon Bio-

diversity Information Center or Washington Natural Heritage Program. The state heritage staff will have 30 days from the date that an application or plan is mailed to submit written comments to the Executive Director.

(C) The Executive Director shall record and address any written comments submitted by the state heritage staff in the Executive Director's decision.

(D) Based on the comments from the state heritage staff, the Executive Director shall make a final decision on whether the proposed use is consistent with the Agriculture-Special policies and guidelines. If the final decision contradicts the comments submitted by the state heritage staff, the Executive Director shall justify how they reached an opposing conclusion.

(4) Prohibited Uses. Except for the uses listed in sections (1) through (3) above, 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 the 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.

## NEW SECTION

### 350-082-0260. Uses Allowed on Lands Designated SMA Agriculture

(1) Uses Allowed Outright. The uses listed in 350-082-0210(1) are allowed without review on lands designated SMA Agriculture.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated SMA Agriculture.

(3) Review Uses. The following uses may be allowed on lands designated SMA Agriculture subject to compliance with 350-082-0600 through 350-082-0720. The use or development shall be sited to minimize the loss of land suitable for the production of agricultural crops or livestock.

(a) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-082-0280 (3)(w).

(b) Forest uses and practices, as allowed for in 350-082-0280 (3)(x).

(c) A single-family dwelling necessary for and accessory to agricultural use upon a demonstration of compliance with all the following guidelines:

(A) The proposed dwelling would be the only dwelling on the subject farm or ranch, including contiguous lots and 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 subsection (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) Average income. The farm or ranch, and all its contiguous parcels, must produce at least \$80,000 in gross annual income in 2020 dollars. This gross annual income amount shall be indexed for inflation on an annual basis using Consumer Price Index data from the US Bureau of Labor Statistics, and the new adjusted amount for each calendar year (calculated from 2020 dollars) will be posted on the Gorge Commission's website by January 15 of each year. This determination can 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

(D) Minimum parcel size of 40 contiguous acres.

(d) Farm labor housing on a parcel with an existing dwelling subject to compliance with all the following guidelines:

(A) The proposed housing is necessary and accessory to a current agricultural use, and the operation is a commercial agricultural enterprise as determined by an evaluation of the criteria listed in subsection (c)(C) above.

(B) The housing 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 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.

(D) Minimum parcel size of 40 contiguous acres.

(e) Agricultural structures, except buildings, in conjunction with agricultural use.

(f) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to compliance with 350-082-0380.

(g) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in subsection (3)(h) or (3)(i), below.

(h) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel less than or equal to ten acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(i) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel larger than ten acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(j) Home occupations subject to compliance with 350-082-0420. The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(k) Bed and breakfast inns, subject to compliance with 350-082-0440. The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(l) Fruit and produce stands.

(m) Aquaculture.

(n) 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 SMAs.

(o) 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.

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

(q) Community facilities and nonprofit facilities related to agricultural resource management.

(r) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation or natural resources, subject to compliance with 350-082-0460. These projects may include new structures (*e.g.*, fish ladders, sediment barriers) or activities (*e.g.*, closing and revegetating unused roads, recontouring abandoned quarries).

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

(t) Public recreation, commercial recreation, interpretive, and educational developments and uses, consistent with the guidelines in 350-082-0710 through 350-082-0720.

(u) Road and railroad construction and reconstruction.

(v) 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.

(w) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a manufactured home or dwelling structure in the case of a family hardship, subject to compliance with 350-082-0390.

(x) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(y) Docks and boathouses, subject to compliance with 350-082-0410.

(z) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks, and fuel tanks.

(aa) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a National Scenic Area county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the National Scenic Area, subject to compliance with 350-082-0470.

#### Forest Land Use Designations

##### NEW SECTION

##### **350-082-0270. Uses Allowed on Lands Designated Commercial Forest Land, Large Woodland, and Small Woodland**

(1) Uses Allowed Outright. The uses listed in 350-082-0210(1) are allowed without review on lands designated Commercial Forest Land, Large Woodland, and Small Woodland.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated Commercial Forest Land, Large Woodland, or Small Woodland.

(3) Review Uses. The following uses may be allowed on lands designated Commercial Forest Land, Large Woodland, and Small Woodland, subject to compliance with 350-082-0600 through 350-082-0720, except where a use specifies that it is only allowed on land designated Commercial Forest Lands, or Large Woodland or Small Woodland:

(a) On lands designated Small Woodland, one single-family dwelling on a legally created and existing parcel upon the parcel's enrollment in the appropriate 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 350-082-0270 (5) and (6). 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 Woodland, Small

Woodland, Large-Scale Agriculture, or Small-Scale Agriculture.

(b) One single-family dwelling on lands designated Small Woodland if shown to be in conjunction with and substantially contributing to the current agricultural use of a farm. The guidelines in 350-082-0240 (3)(h) shall be used to determine whether a dwelling is a farm dwelling. The siting of the dwelling shall comply with 350-082-0270(5).

(c) Temporary onsite structures that are auxiliary to and used during the term of a particular forest operation. "Auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located onsite, is temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(d) Temporary portable facility for the primary processing of forest products grown on a parcel of land or contiguous land in the same ownership where the facility is to be located. The facility shall be removed upon completion of the harvest operation.

(e) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation or natural resources, subject to compliance with 350-082-0460. These projects may include new structures (e.g., fish ladders, sediment barriers) or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(f) Structures associated with hunting and fishing operations.

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

(h) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to 350-082-0270(5) and 350-082-0380.

(i) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in subsection (j) or (k) below.

(j) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel less than or equal to ten acres in size are subject to compliance with 350-082-0270 (5) and (6) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(k) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel larger than ten acres in size are subject to compliance with 350-082-0270 (5) and (6) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on

a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(l) On lands designated Commercial Forest or Large Woodland with a dwelling that was legally established and not discontinued, the temporary use of a manufactured home, tiny house on a trailer, or similar structure in the case of a family hardship, subject to compliance with 350-082-0390 and 350-082-0270 (5) and (6).

(m) On lands designed Small Woodland, the temporary use of a manufactured home, tiny house on a trailer, or similar structure in the case of a family hardship, subject to the guidelines for hardship dwellings in compliance with 350-082-0390 and 350-082-0270 (5) and (6).

(n) A second single-family dwelling on lands designated Small Woodland for a farm operator's relative, subject to compliance with 350-082-0240 (3)(k) and 350-082-0270 (5) and (6).

(o) Private roads serving a residence on the subject parcel, subject to compliance with 350-082-0270 (5) and (6).

(p) Recreation development, subject to compliance with the guidelines established for the recreation intensity classes in 350-082-0700.

(q) Agricultural labor housing, subject to compliance with all the following guidelines:

(A) The proposed housing is necessary and accessory to a current agricultural use on the subject farm.

(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 shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(D) The housing is subject to compliance with 350-082-0270 (5) and (6).

(r) On lands designated Commercial Forest Land, a temporary manufactured home, tiny house on a trailer, or similar structure, in conjunction with a timber operation, upon a finding that security personnel are required to protect equipment associated with a harvest operation or to protect the subject forest land from fire. The manufactured home, tiny house on a trailer, or similar structure must be removed upon completion of the subject harvest operation or the end of the fire season. The placement of the manufactured home, tiny house on a trailer, or similar structure is subject to compliance with 350-082-0270 (5) and (6).

(s) New cultivation, subject to compliance with guidelines for the protection of cultural resources and natural resources in 350-082-0620 and 350-082-0640 through 350-082-0690.

(t) Agricultural structures, except buildings, in conjunction with agricultural use, including new cultivation, subject to compliance with 350-082-0270(5).

(u) On lands designated Small Woodland, a life estate, subject to compliance with the following guidelines:

(A) A landowner who sells or otherwise transfers real property on lands designated Small Woodland may retain a life estate in a dwelling and a tract of land surrounding the dwelling.

(B) The life estate tract shall not be considered a parcel as defined in this land use ordinance.

(C) A second dwelling unit may be allowed, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

(i) The proposed dwelling is in conjunction with agricultural use, as determined by compliance with the guidelines in 350-082-0240 (3)(h) or

(ii) The proposed dwelling complies with subsection (3)(a) above and

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

(v) Land divisions, subject to compliance with 350-082-0560.

(w) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to compliance with 350-082-0570(1).

(x) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(y) Docks and boathouses, subject to compliance with 350-082-0410.

(z) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks, and fuel tanks.

(aa) Commercial events on lands designated Large Woodland or Small Woodland, subject to compliance with 350-082-0480.

(bb) Special uses in historic buildings, subject to compliance with 350-082-0530.

(4) Review Uses with Additional Approval Criteria

(a) The following uses may be allowed on lands designated Commercial Forest Land, Large Woodland, and Small Woodland, subject to compliance with 350-082-0600 through 350-082-0720, except where a use specifies that it is only allowed on land designated Commercial Forest Land, Large Woodland, or Small Woodland. The following uses shall also comply with the "Approval Criteria for Specified Review Uses" in subsection (b) below:

(A) Construction, reconstruction, or modification of roads, utility facilities, and railroads necessary for public service upon a showing that:

(i) there is no practicable alternative location with less adverse effect on agricultural and forest lands and on scenic, cultural, natural and recreation resources and;

(ii) the size is the minimum necessary to provide the service.

(B) Home occupations in an existing residence or accessory structure, subject to compliance with 350-082-0420.

(C) Fruit and produce stands.

(D) Wineries and cideries, in conjunction with an on-site vineyard or orchard, upon a showing that processing of wine or cider is from fruits harvested on the subject farm and the local region.

(E) Wine or cider sales and tasting rooms, in conjunction with an on-site winery or cidery.

(F) 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.

(G) Exploration, development, and production of mineral and geothermal resources, subject to compliance with 350-082-0500.

(H) Aquaculture.

(I) Boarding of horses. The reviewing agency shall make findings on property characteristics, parcel size and impacts to neighbors, and shall specify the maximum number of horses based on those findings.

(J) Temporary portable asphalt or batch plants related to public road projects, not to exceed six months.

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

(L) Bed and breakfast inns in single-family dwellings, subject to 350-082-0440 and provided that the residence:

(i) Is included in the National Register of Historic Places, or

(ii) In Washington, is listed on the Washington Heritage Register maintained by the Washington Department of Archaeology and Historic Preservation, or

(iii) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(M) Nonprofit, environmental learning or research facilities.

(N) On parcels designated Small Woodland, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to compliance with 350-082-0450.

(O) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a National Scenic Area county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the National Scenic Area, subject to compliance with 350-082-0470.

(b) Approval Criteria for Specified Review Uses on Lands Designated Commercial Forest, Large Woodland, and Small Woodland.

(A) The owners of land that is designated Commercial Forest Land, Large Woodland, Small Woodland, Large-Scale Agriculture, 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 ten days to comment prior to a final decision.

(B) The use will not seriously interfere with accepted forest or agricultural practices on nearby lands devoted to resource use.

(C) 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.

(D) The use will not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel and complies with 350-082-0270(5).

(5) All uses, as specified, shall comply with the following Approval Criteria for Fire Protection in Forest Designations:

(a) All buildings shall be surrounded by a maintained defensible space of at least 50 feet. Hazardous fuels shall be removed within the defensible space. Irrigated or fire resistant vegetation may be planted within the defensible space. 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 eight feet) branches. Accumulated leaves, needles, and other dead vegetation should be removed from beneath trees. The Executive Director may consult with a fire professional to adjust defensible space to account for site slope. Defensible space may be adjusted to protect riparian vegetation and other resources, or as recommended by local fire districts, conservation districts, or other professional.

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

(c) 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.

(d) 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 and at the building site. 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.

(e) Utility supply systems shall be underground whenever possible.

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

(g) Any chimney or stovepipe on any structure for use with a woodstove or fireplace should be equipped with a spark arrester that includes at least one screen no coarser than 1/8-inch mesh metal that is noncombustible and corrosion resistant.

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

(i) Attic openings, soffit vents, foundation louvers or other ventilation openings on dwellings and accessory structures should be screened with no coarser than 1/8-inch mesh metal screen that is noncombustible and corrosion resistant.

(j) Within one year of the occupancy of a dwelling, the Executive Director shall conduct a review of the development to assure compliance with subsections (a) through (i).

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

(a) 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.

(b) 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 non-forest uses, adjacent dwellings, or land productivity.

(c) Dwellings shall be located to minimize the risks associated with wildfire. Dwellings shall be located on gentle slopes and in any case not on slopes that exceed 30 percent. Dwellings shall be set back from slopes. Narrow canyons and draws shall be avoided. Dwellings shall be located to minimize the difficulty of gaining access to the structure in the case of fire. Dwellings shall be located to make the access roads as short and flat as possible.

(d) The Executive Director may grant a variance to the siting guidelines contained in subsections (a) through (c) upon a demonstration that the guidelines in 350-082-0590 have been satisfied.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

### **350-082-0280. Uses Allowed on Lands Designated SMA Forest**

(1) Uses Allowed Outright. The uses listed in 350-082-0210(1) are allowed without review on lands designated SMA Forest.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with 350-082-0220(2) on lands designated SMA Forest.

(3) Review Uses. The following uses may be allowed on lands designated SMA Forest subject to compliance with 350-082-0600 through 350-082-0720. The use or development shall be sited to minimize the loss of land suitable for the production of forest products:

(a) All review uses allowed for in 350-082-0260.

(b) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of subsection (3)(w) below.

(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 SMAs.

(e) Silvicultural nurseries.

(f) Utility facilities for public service, upon a showing 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) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and natural resources, subject to compliance with 350-082-0460. These projects may include new structures (*e.g.*, fish ladders, sediment barriers), or activities (*e.g.*, closing and revegetating unused roads, recontouring abandoned quarries).

(h) Fish hatcheries and aquaculture facilities.

(i) Public recreation, commercial recreation, interpretive and educational development, and uses consistent with the provisions of 350-082-0710.

(j) One single family dwelling on a parcel of 40 contiguous acres or larger if an approved forest management plan demonstrates that such a dwelling is necessary for and accessory to forest uses. The forest management plan shall demonstrate all 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 indicates a relationship between ongoing forest management and the need for a dwelling on the subject property.

(B) The subject parcel is 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 appropriate county. 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 management of the property.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forest management of the subject parcel.

(E) The dwelling complies with county dwelling, siting, and state and county fire protection guidelines.

(F) A declaration is 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 for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(l) or (2)(m), below.

(l) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel less than or equal to ten acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel larger than ten acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) Home occupations, subject to compliance with 350-082-0420.

(o) Temporary portable facilities for the processing of forest products.

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

(q) Community facilities and nonprofit facilities related to forest resource management; or 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.

(r) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a manufactured home or dwelling structure in the case of a family hardship, subject to compliance with 350-082-0390.

(s) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(t) Docks and boathouses, subject to compliance with 350-082-0410.

(u) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(v) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a National Scenic Area county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the National Scenic Area, subject to compliance with 350-082-0470.

(w) Clearing trees for new agricultural use with the following steps and subject to the following additional guidelines:

(A) A Stewardship Plan shall be submitted and deemed complete by the Executive Director and submitted to the Forest Service for review. 350-082-0280 (3)(x)(C).

(B) Clearing trees for new agricultural use shall be limited to 15 acres.

(C) If the Stewardship Plan proves that the above guideline is detrimental to the proposed agricultural use, the final size of the clearing shall be determined by the application of subsection (D) below and subject to subsection (I) below.

(D) After a 30-day public comment period, the Forest Service shall review the Stewardship Plan using the following criteria:



(i) Scenic Resource guidelines in 350-082-0280 (3)(x)(D)(i) and (iv).

(ii) Applicable guidelines of 350-082-0630, 350-082-0670 through 350-082-0690, and 350-082-0710 through 350-082-0720.

(iii) The Natural Resource Conservation Service (NRCS) soil unit description shall indicate that soils are suitable for the proposed agricultural use. The woodland management tables shall be used as part of the analysis of suitability for both agricultural and forest uses.

(iv) The size, shape and pattern on the landscape of the clearing for the new agricultural use shall blend with the surrounding landscape pattern either because the existing pattern includes agricultural openings or because the new agricultural opening is designed to appear natural.

(E) The Forest Service shall send the review statement to the Executive Director. The Forest Service shall state whether the new agricultural use should proceed including any conditions that are recommended to be required by the county.

(F) The Executive Director will accept an application for new agricultural use on forested lands after receipt of a positive review statement from the Forest Service.

(G) The forest practice portion of the new agricultural use shall not be approved by the state forestry department until a decision on the new agricultural use is issued by the Executive Director.

(H) The new agricultural use shall be operational within two years of the time frame described in the approved Stewardship Plan.

(I) New agricultural uses with an approved Stewardship Plan requiring more than 15 acres shall attain the final approved size sequentially. After the first 15 cleared acres is operational, each subsequent clearing shall not occur until the previous clearing is operational.

(x) Forest practices in accordance with an approved forest practices application and subject to the additional guidelines in 350-082-0280.

(A) The following information, in addition to general site plan requirements in 350-082-0080 shall be required:

(i) Delineate the following on a recent aerial photo or detailed map:

(1) The size, shape, and exact location of the proposed treatment area including any clumps of leave trees to remain. If more than one silvicultural prescription is to be used, code each on the photo;

(2) Other important natural features of the subject parcel such as steep areas, streams, wetlands, rock outcrops, etc.;

(3) Road and structure construction or reconstruction location;

(4) Location of proposed rock or aggregate sources;

(5) Major skid trails, landings, and yarding corridors

(6) Commercial firewood cutting areas.; and

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

(ii) Describe the existing forest in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(iii) Describe how the forest practice will fit into the existing landscape pattern and how it will meet scenic and natural resource standards in 350-082-0280 (3)(x)(D) and (E).

(iv) Written silvicultural prescriptions with projected post-treatment forest condition specified in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(v) Road and structure construction or reconstruction design.

(vi) Existing and proposed rock pit development plans.

(vii) A discussion of slash disposal methods.

(viii) A reforestation plan as reviewed by the appropriate state forest practices agency.

(B) As part of the application, flag, stake or mark buffers, any trees or downed wood to be retained or removed (whichever makes the most sense), and areas for placing fill or removing material in preparation for a field visit by the reviewer.

(C) Stewardship Plan Requirements: The following information, in addition to the applicable portions of the forest practice application requirements above and general site plan requirements in 350-082-0080 shall be provided:

(i) Outline the long term goals, proposed operations, and future sustainability of the subject parcel.

(ii) Describe the time frame and steps planned to reach the long term goals.

(iii) For Forest Practices, describe how the proposed activities fit into the long term goals and sustainability of the parcel or forest health. The following shall be addressed:

(1) Describe the range of natural conditions expected in the forest in terms of tree species, structure, and landscape pattern.

(2) Describe what the resulting tree species, structure, and landscape pattern will be after the proposed activities.

(3) Give a clear explanation of how a deviation from the applicable guidelines may better achieve forest health objectives.

(4) Give a clear explanation of how and why the proposed activities will move the forest towards its range of natural variability and result in reaching sustainability, resiliency to disturbances.

(iv) For clearing trees for new agricultural use, the following shall be addressed in addition to 350-082-0280 (3)(x)(C)(i) and (ii) above:

(1) Submit NRCS soil unit description and map for each soil unit affected by the proposed clearing or treatment.

(2) Based on the needs of the operation, give a clear explanation as to the exact size of the clearing needed and how it will meet the natural and scenic requirements in 350-082-0280 (3)(x)(D)(i) through (iv).

(3) Describe in sufficient detail for evaluation the proposed agricultural use, the improvements needed on the parcel, timeline for its establishment, and its marketability.

(4) Show evidence that an agricultural specialist, such as the county extension agent, has examined and found the proposed agricultural use reasonable and viable.

(D) For forest practices, the following scenic resource guidelines shall apply:

(i) Forest practices shall meet the design guidelines and scenic standards for the applicable landscape setting and zone (See Required SMA Scenic Standards table in 350-082-0610 (2)).

(ii) In the western portion (to White Salmon River) of the SMA Coniferous Woodland Landscape Setting, no more than 8% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iii) In the western portion (to the White Salmon River) of the SMA Gorge Walls, Canyons and Wildlands Landscape Setting, no more than 4% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iv) For all other landscape settings, created forest openings visible at one time shall be within the desired range for the vegetation type as set forth in Natural Resources guidelines in 350-082-0280 (3)(x)(E)(i) through (iii).

(v) Size, shape, and dispersal of created forest openings shall maintain the desired natural patterns in the landscape as set forth in Natural Resources guidelines in 350-082-0280 (3)(x)(E)(i) through (iii).

(vi) The maximum size of any created forest opening is set forth by the "Desired" vegetation type in 350-082-0280 Table 1 - Desired Forest Structure and Pattern.

(1) If the treatment is proposed to go beyond the above guideline based on forest health or ecosystem function requirements, a Stewardship Plan shall be required.

(2) If the Stewardship Plan proves that the above guideline is detrimental to either forest health or ecosystem function, the size of the created forest opening shall be within the natural range for the vegetation type as listed in 350-082-0280 Table 1 - Desired Forest Structure and Pattern for each vegetation type, shall not mimic catastrophic fires, and shall maintain scenic standards.

(vii) Created forest openings shall not create a break or opening in the vegetation in the skyline as viewed from KVAs.

(E) Forest practices shall maintain the following in addition to applicable natural resources guidelines in 350-082-0670 through 350-082-0690

(i) Silvicultural prescriptions shall maintain the desired natural forest stand structures (tree species, spacing, layering, and mixture of sizes) based on forest health and ecosystem function requirements. Forest tree stand structure shall meet the requirements listed in 350-082-0280 Table 1 - Desired Forest Structure and Pattern for each vegetation type. Forest tree stand structure is defined as the general structure of the forest in each vegetation type within which is found forest openings.

(ii) Created forest openings shall be designed as mosaics not to exceed the limits defined as desired in 350-082-0280

Table 1 - Desired Forest Structure and Pattern unless proposed as a deviation as allowed under the scenic resource guideline in 350-082-0280 (3)(x)(D)(vi).

(iii) Snag and down wood requirements shall be maintained or created as listed in 350-082-0280 Table 1 - Desired Forest Structure and Pattern for each vegetation type.

(iv) If the treatment is proposed to deviate from the snag and down wood requirements based on forest health or ecosystem function requirements, a Stewardship Plan shall demonstrate and prove why a deviation from the snag and down wood requirements is required.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

350-082-0280 Table 1 - Desired Forest Structure and Pattern								
Vegetation Type <sup>1</sup>	Forest Structure (Average % total canopy closure (cc) <sup>2</sup> )	Typical Forest Openings Size (Disturbance caused)		Percent Openings at One Time		Leave Trees Includes all available remnant old forest	Average Down Wood Pieces 30 ft long per acre (scattered)	Average Snags Number of conifers per acre Snags are 20-40 ft in height
		Historic (Natural)	Desired	Historic (Natural)	Desired			
<b>West Conifer</b>	60-80% canopy closure  Understory layer variable (0-60% of total cc)	Variable sizes with mosaic pattern, irregular shapes  Mosaic fire 1-100 acres Catastrophic fire over 100 acres	Retain forested character  Allow openings up to 15 acres (up to 5 acres in the foreground of KVAs)  All openings 1 acre or less on National Forest land and all Open Space LUD Openings retain 15-40% canopy closure	10% (mosaic fire) up to 55% (catastrophic fire)  Intense fire return interval is 300 years	Not to exceed 8% for West Coniferous Woodland Landscape Setting and not to exceed 4% for Gorge Walls, Canyons and Wildlands Landscape Setting  Widely dispersed, variable sized mosaic of irregular shapes blending with existing openings	Leave 15% of existing trees per acre throughout opening and in clumps.  Include 3 trees per acre of the largest size trees available	18-25 pieces greater than 20" diameter at breast height (dbh)	10 snags at 10"-20" diameter at breast height (dbh), and 7 snags greater than 20" dbh
<b>East Conifer (Ponderosa Pine/Douglas fir)</b>	40-80% canopy closure Understory layer less than 25% of total cc	Few openings due to low intensity fires 1/4 to 2 acres	Openings less than 1 acre  Openings have 0-40% canopy closure  Openings widely dispersed	1-10%	1-10% (% by vegetation type)	No leave trees required	3-6 pieces greater than 20" dbh	5 snags at 10"-20" dbh and 3 snags greater than 20" dbh
<b>Ponderosa Pine/ Oregon Oak</b>	25-60% canopy closure Understory layer greater than 25% of total cc.	Most natural openings due to poor soil. Disturbance openings few	Openings less than 1 acre  Openings have 0-25% canopy closure  Openings widely dispersed	1-10%	1-10% (% by vegetation type)	No leave trees required	1-3 pieces greater than 20" dbh	5 snags at 10"-20" dbh and 3 snags greater than 20" dbh  Oak snags can be counted if already dead or partially dead

1 Map available at the Forest Service, National Scenic Area Office, Hood River, Oregon.

2 Does not apply to openings.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Open Space Land Use Designations**

**NEW SECTION**

**350-082-0290. Uses Allowed on Lands Designated GMA Open Space**

(1) Uses Allowed Outright. The uses listed in 350-082-0210(2) are allowed without review on lands designated GMA Open Space.

(2) Expedited Uses. The uses listed in 350-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated GMA Open Space.

(3) Review Uses on All Lands Designated GMA Open Space. The following uses may be allowed on all lands designated GMA-Open Space subject to compliance with 350-082-0600 through 350-082-0720:

(a) Low-intensity recreation, subject to the guidelines for Recreation Intensity Classes (350-082-0700(2)).

(b) Land divisions to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources.

(c) Improvement, not including expansion, 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.

(e) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation, and natural resources, subject to compliance with 350-082-0460. These projects may include new structures (*e.g.*, fish ladders, sediment barriers) or activities (*e.g.*, closing and revegetating unused roads, recontouring abandoned quarries).

(f) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(g) Lot line adjustments, subject to compliance with 350-082-0570(1).

(4) Review Uses on Specific Lands Designated GMA Open Space

(a) The following uses may be allowed on lands designated GMA Open Space for Gorge Walls and Canyons subject to compliance with 350-082-0600 through 350-082-0720:

(A) Livestock grazing.

(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 county conservation district.

(D) Harvesting of wild crops.

(E) Educational or scientific research.

(F) Continued operation of existing quarries, if they are determined to be consistent with guidelines to protect scenic, cultural, natural, and recreation resources.

(G) All those uses allowed in section (3) above.

(b) The following uses may be allowed on lands designated GMA Open Space for the Mosley Lakes Natural Area subject to compliance with 350-082-0600 through 350-082-0720:

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(B) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(C) Commercial trapping.

(D) All those uses allowed in section (3) above.

(c) The following uses may be allowed on lands designated GMA Open Space for the Chenoweth Table Natural Area subject to compliance with 350-082-0600 through 350-082-0720:

(A) Except in the upland dunes south of the railroad tracks, low-intensity recreation, subject to the guidelines for Recreation Intensity Classes (350-082-0700(2)), after consultation with the Oregon Biodiversity Information Center.

(B) Repair and maintenance of railroads, except measures to stabilize dunes, after consultation with the Oregon Biodiversity Information Center.

(C) Except as limited by subsection (A) above, all those uses allowed in section (3) above.

(d) The following uses may be allowed on lands designated GMA Open Space for the Squally Point Natural Area subject to compliance with 350-082-0600 through 350-082-0720:

(A) Except in the upland dunes south of the railroad tracks, low-intensity recreation, subject to the guidelines for Recreation Intensity Classes (350-082-0700(2)), after consultation with the Oregon Biodiversity Information Center.

(B) Repair and maintenance of railroads, except measures to stabilize dunes, after consultation with the Oregon Biodiversity Information Center.

(C) Except as limited by subsection (A) above, all those uses allowed in section (3) above.

(e) The following uses may be allowed on lands designated GMA Open Space for the Klickitat River Wildlife and Natural Area subject to compliance with 350-082-0600 through 350-082-0720:

(A) Low-intensity recreation, subject to the guidelines for Recreation Intensity Classes (350-082-0700(2)), after consultation with the Washington Natural Heritage Program and Washington Department of Wildlife.

(B) 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) All those uses allowed in section (3) above.

(f) The following uses may be allowed on lands designated GMA Open Space for the Balch Lake Wetlands Area subject to compliance with 350-082-0600 through 350-082-0720:

(A) Livestock grazing, subject to a range conservation plan, after consultation with the Washington Department of Wildlife.

(B) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(C) Educational and scientific research, after consultation with the Washington Department of Wildlife.

(D) Low-intensity recreation, subject to the guidelines for Recreation Intensity Classes (350-082-0700(2)), after consultation with the Washington Department of Wildlife.

(E) All those uses allowed in section (3) above.

(g) The following uses may be allowed on lands designated GMA Open Space for the Mouth of Wind River Wildlife Area subject to compliance with 350-082-0600 through 350-082-0720:

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research, after consultation with the Washington Department of Wildlife or Fisheries.

(E) Commercial fishing and trapping.

(F) Low-intensity recreation, subject to the guidelines for Recreation Intensity Classes (350-082-0700(2)), after consultation with the Washington Department of Wildlife.

(G) All those uses allowed in section (3) above.

(h) The following uses may be allowed on lands designated GMA Open Space on those portions of state park ownerships not suitable for major recreation facilities subject to compliance with 350-082-0600 through 350-082-0720:

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research.

(E) All those uses allowed in section (3) above.

#### NEW SECTION

#### **350-082-0300. Uses Allowed on Lands Designated SMA Open Space**

(1) Uses Allowed Outright. The uses listed in 350-082-0210(2) are allowed without review on lands designated SMA Open Space.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated SMA Open Space.

(3) Review Uses on All Lands Designated SMA Open Space.

(a) The following uses may be allowed on all lands designated SMA Open Space subject to compliance with 350-082-0600 through 350-082-0720 and completion of an SMA Open Space Plan pursuant to subsection (b) below:

(A) Changes in existing uses, including reconstruction, replacement, and expansion of existing structures and transportation facilities, except for commercial forest practices.

(B) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation or natural resources, subject to compliance with 350-082-0460. These projects may include vegetation management and forest practices (subject to the forest practice guidelines of 350-082-0280) for the restoration of forest health, new structures (e.g., fish ladders, sediment barriers), or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(C) Low-intensity recreation uses and development, including educational and interpretive facilities, consistent with 350-082-0710 (2)(b).

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

(i) There is no alternative location with less adverse effect on Open Space land.

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

(E) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(F) Treatment of noxious weeds shall be permitted without completion of an SMA Open Space plan when the following criteria have been met:

(i) Noxious weed infestation is new and eradication is still viable.

(ii) Delayed or deferred treatment could have widespread or major adverse impacts to one or more of the following resources:

(1) Displacement of native and traditionally gathered plants;

(2) Degradation of wildlife habitat and forage;

(3) Degradation or loss of agricultural uses of land, such as cropland or livestock forage; or

(4) Limitation of recreational uses.

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

(b) 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.

#### **Residential Land Use Designations**

#### NEW SECTION

#### **350-082-0310. Uses Allowed on Lands Designated GMA Residential**

(1) Uses Allowed Outright. The uses listed in 350-082-0210(1) are allowed without review on lands designated GMA Residential.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated GMA Residential.

(3) Review Uses. The following uses may be allowed on lands designated GMA Residential, subject to compliance with 350-082-0600 through 350-082-0720:

(a) One single-family dwelling per legally created and existing parcel. If the subject parcel is located adjacent to lands designated Large-Scale Agriculture, Small-Scale Agriculture, Commercial Forest Land, Large Woodland, or Small Woodland, the use shall comply with the buffer and notification requirements for agricultural land (350-082-0580(2) and 350-082-0240 (3)(p)(E)) or forest land (350-082-0270(6)). If the subject parcel is located within a Residential designation that is adjacent to lands designated Commercial Forest Land or Large Woodland or Small Woodland, the placement of a dwelling shall also comply with the fire protection guidelines in 350-082-0270(5).

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline (3)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) The temporary use of a manufactured home, tiny house on a trailer, or similar structure in the case of a family hardship, subject to compliance with 350-082-0390.

(e) New cultivation, subject to compliance with guidelines for the protection of cultural resources () and natural

resources (350-082-0620 and 350-082-0640 through 350-082-0690).

(f) Agricultural structures, in conjunction with agricultural use, including new cultivation.

(g) Land divisions, subject to compliance with 350-082-0560.

(h) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to compliance with 350-082-0570(1).

(i) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and natural resources, subject to compliance with 350-082-0460. These projects may include new structures (*e.g.*, fish ladders, sediment barriers) or activities (*e.g.*, closing and revegetating unused roads, recontouring abandoned quarries).

(j) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to compliance with 350-082-0380.

(k) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(l) Docks and boathouses, subject to compliance with 350-082-0410.

(m) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(n) Commercial events, subject to compliance with 350-082-0480.

(o) Special uses in historic buildings, subject to compliance with 350-082-0530.

#### (4) Review Uses with Additional Approval Criteria

(a) The following uses may be allowed on lands designated Residential, subject to compliance with the guidelines for protection of scenic, cultural, natural, and recreation resources and "Approval Criteria for Specified Review Uses," in subsection (b) below

(A) Accredited childcare centers within lands designated 1-acre Residential or 2-acre Residential. A childcare center may be allowed in other Residential designations within an existing church or community building.

(B) Schools within an existing church or community building.

(C) Expansion of existing primary or middle schools on land purchased prior to June 8, 1999. For purposes of this guideline, existing schools means public schools that existed prior to adoption of the original Management Plan on October 15, 1991.

(D) Construction and reconstruction of roads, utility facilities, and railroads.

(E) Home occupations in an existing residence or accessory structure, subject to compliance with 350-082-0420.

(F) Fire stations.

(G) Recreation development, subject to compliance with 350-082-0700.

(H) Community parks and playgrounds.

(I) Bed and breakfast inns in single family dwellings located on lands designated 5-acre Residential or 10-acre Residential, subject to compliance with 350-082-0440.

(J) Overnight accommodations in single family dwellings located on lands designated 5-acre Residential or 10-acre Residential, subject to compliance with 350-082-0430.

(K) Wineries and cideries, in conjunction with an on-site vineyard or orchard, upon a showing that processing of wine or cider is from fruit harvested on the subject farm and the local region.

(L) Wine or cider sales and tasting rooms in conjunction with an on-site winery or cidery subject to compliance with all the following guidelines:

(i) The use shall comply with the guidelines in 350-082-0420, with the following exceptions:

(ii) The use may employ an unlimited number of outside employees.

(iii) The wine or cider sales and tasting room may include interior and exterior space, provided the combined interior and exterior spaces shall not exceed 1,000 square feet.

(iv) The interior space may be located in an existing building or in a new building or addition to an existing building constructed for the primary purpose of housing the wine or cider sales and tasting room.

(v) The exterior space may be a veranda, patio, or other similar type of structure.

(M) Small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to compliance with 350-082-0450.

(N) Boarding of horses on lands designated 10-acre Residential. The reviewing agency shall make findings on property characteristics, parcel size and impacts to neighbors, and shall specify the maximum number of horses based on those findings.

(b) Approval Criteria for Specified Review Uses on Lands Designated GMA Residential

(A) 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.

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

(C) If the subject parcel is located within 500 feet of lands designated Large-Scale Agriculture, Small-Scale Agriculture, Commercial Forest Land, Large Woodland, or Small Woodland, new buildings associated with the proposed use comply with the buffer guidelines in 350-082-0580(2).

(D) If the subject parcel is located within 500 feet of lands designated Commercial Forest Land, Large Woodland, or Small Woodland, new buildings associated with the proposed use comply with the fire protection guidelines in 350-082-0270(5).

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

### 350-082-0320. Uses Allowed on Lands Designated SMA Residential

(1) Uses Allowed Outright. The uses listed in 350-082-0210(1) are allowed without review on lands designated SMA Residential.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated SMA Residential.

(3) Review Uses. The following uses may be allowed on lands designated SMA Residential, subject to compliance with 350-082-0600 through 350-082-0720:

(a) One single-family dwelling per legally created lot or consolidated parcel not less than 40 contiguous acres. The placement of a dwelling shall comply with 350-082-0270 (5) and (6).

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in subsection (c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) New utility facilities.

(e) Fire stations.

(f) Home occupations subject to compliance with 350-082-0420.

(g) Bed and breakfast inns, subject to compliance with 350-082-0440.

(h) Community parks and playgrounds.

(i) Road and railroad construction and reconstruction.

(j) Forest practices, as specified in 350-082-0280.

(k) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and natural resources, subject to compliance with 350-082-0460. These projects may include new structures (*e.g.*, fish ladders, sediment barriers) or activities (*e.g.*, closing and revegetating unused roads, recontouring abandoned quarries).

(l) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a manufactured home or dwelling structure in the case of a family hardship, subject to compliance with 350-082-0390.

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(o) Docks and boathouses, subject to compliance with 350-082-0410.

(p) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements in 350-082-0280 (3)(w).

### Rural Center Land Use Designation

#### NEW SECTION

#### 350-082-0330. Uses Allowed on Lands Designated Rural Center

(1) Uses Allowed Outright. The uses listed in 350-082-0210(1) are allowed without review on lands designated Rural Center.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated Rural Center.

(3) Review Uses. The following uses may be allowed within Rural Centers, subject to compliance with 350-082-0600 through 350-082-0720:

(a) One single-family dwelling per legally created and existing parcel.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in subsection (c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) The temporary use of a manufactured home, tiny house on a trailer, or similar structure in the case of a family hardship, subject to compliance with 350-082-0390.

(e) Duplexes.

(f) Fire stations.

(g) Libraries.

(h) Government buildings.

(i) Community centers and meeting halls.

(j) Schools.

(k) Accredited childcare centers.

(l) 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) Bed and breakfast inns, subject to compliance with 350-082-0440.

(F) Restaurants.

(G) Taverns and bars.

(H) Gas stations.

(I) Gift shops.

(m) Overnight accommodations subject to compliance with 350-082-0430.

(n) Home occupations in an existing residence or accessory structure, subject to compliance with 350-082-0420.

(o) Utility facilities, roads, and railroads.

(p) Recreation development, subject to the guidelines established for Recreation Intensity Classes in 350-082-0700.

(q) Places of worship.

(r) New cultivation, subject to compliance with guidelines for the protection of cultural resources and natural

resources (350-082-0620 and 350-082-0640 through 350-082-0690).

(s) Agricultural structures, in conjunction with agricultural use, including new cultivation.

(t) Land divisions, subject to 350-082-0560 and the following:

(A) 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. The Executive Director shall determine the parcel size on a case-by-case basis.

(B) The minimum size for new parcels created for residential uses within a Rural Center shall be one acre. To encourage the efficient use of land, provide public amenities and standards for quality developments, and reduce the cost of providing services within a Rural Center, the Executive Director may allow a minimum parcel size of less than one acre within a 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.

(u) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to compliance with 350-082-0570(1).

(v) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and natural resources, subject to compliance with 350-082-0460. These projects may include new structures (*e.g.*, fish ladders, sediment barriers) or activities (*e.g.*, closing and revegetating unused roads, recontouring abandoned quarries).

(w) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to compliance with 350-082-0380.

(x) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(y) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(z) Commercial events, subject to compliance with 350-082-0480.

(aa) Special uses in historic buildings, subject to compliance with 350-082-0530.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## Commercial Land Use Designation

### NEW SECTION

#### **350-082-0340. Uses Allowed on Lands Designated Commercial**

(1) Uses Allowed Outright. The uses listed in 350-082-0210(1) are allowed without review on lands designated Commercial.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated Commercial.

(3) Review Uses with Additional Approval Criteria

(a) The following uses may be allowed on lands designated Commercial, subject to compliance with 350-082-0600 through 350-082-0720 and "Approval Criteria for Specified Review Uses," in subsection (b) below.

(A) Overnight accommodations subject to compliance with 350-082-0430.

(B) Bed and Breakfast Inns, subject to compliance with 350-082-0440.

(C) Restaurants.

(D) Gift shops.

(E) Home occupations in an existing residence or accessory structure, subject to compliance with 350-082-0420.

(F) One single-family dwelling per legally created and existing parcel.

(G) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed as accessory buildings larger than 200 square feet in area or ten feet in height.

(H) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel, subject to the following standards:

(i) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(ii) The height of any individual accessory building shall not exceed 24 feet.

(I) Utility facilities, roads, and railroads.

(J) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation or natural resources, subject to compliance with 350-082-0460. These projects may include new structures (*e.g.*, fish ladders, sediment barriers) or activities (*e.g.*, closing and revegetating unused roads, recontouring abandoned quarries).

(K) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to compliance with 350-082-0570(1).

(L) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(M) Docks and boathouses, subject to compliance with 350-082-0410.

(N) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(O) Commercial events, subject to compliance with 350-082-0480.

(P) Special uses in historic buildings, subject to compliance with 350-082-0530.

(b) Approval Criteria for Specified Review Uses on Lands Designated Commercial

(A) The proposal is limited to 5,000 square feet of floor area per building or use.

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



## Recreation Land Use Designations

### NEW SECTION

#### 350-082-0350. Uses Allowed on Lands Designated Public Recreation

(1) Uses Allowed Outright. The uses listed in 350-082-0210(1) are allowed without review on lands designated Public Recreation.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated Public Recreation.

(3) Review Uses with Limited Additional Approval Criteria. The following uses may be allowed on lands designated Public Recreation, subject to compliance with 350-082-0600 through 350-082-0720 and compliance with 350-082-0700 (5), except for subsections 0700 (5)(b) and (j):

(a) Publicly owned, resource-based recreation uses, consistent with 350-082-0700.

(b) Commercial uses and non-resource based recreation uses that are part of an existing or approved resource-based public recreation use, consistent with the following:

(A) Uses other than those providing public recreation opportunities may be allowed if they do not interfere with existing or approved recreation uses on the subject site or adjacent lands, and do not permanently commit the site to non-recreation uses.

(B) Commercial uses may be allowed if they are part of an existing or approved public recreation use and are consistent with the following:

(i) Private concessions and other commercial uses at public recreation sites may be allowed pursuant to adopted policies of the public agency owning or managing the site. If a different agency manages the site, that agency's policies shall apply, unless superseded by provisions of the owning agency's policies.

(ii) For commercial recreation sites and public recreation sites not owned or managed by a public park agency with adopted concession policies, the following policies shall apply:

(1) Retail sales at campgrounds shall be limited to camping supplies for overnight guests in dedicated space within the registration or central office building.

(2) Private concessions in permanent structures shall be limited to one structure per park site. Sales shall be limited to those items necessary for enjoyment and use of recreation opportunities at the site, including food and beverages and recreation equipment rental.

(3) Mobile vendors may be permitted, subject to local government approvals. Local government review shall address solid waste disposal, visual impacts of signs, traffic circulation, and safety. Such uses shall be limited to the term of the recreation season, and sales shall be limited to food and beverages and recreation equipment rental.

(c) New cultivation, subject to compliance with guidelines for the protection of cultural resources and natural resources (350-082-0620 and 350-082-0640 through 350-082-0690).

(d) Special uses in historic buildings, subject to compliance with 350-082-0530.

(4) Review Uses with Additional Approval Criteria.

(a) The following uses may be allowed on lands designated Public Recreation, subject to compliance with 350-082-0600 through 350-082-0720 and "Approval Criteria for Non-Recreation Uses in Public Recreation designations," in subsection (b) below:

(A) One single-family dwelling for each existing parcel legally created prior to adoption of the first Management Plan on October 15, 1991. Exceptions may be considered only upon demonstration that more than one residence is necessary for management of a public park.

(B) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in subsection (C) below.

(C) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(i) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(ii) The height of any individual accessory building shall not exceed 24 feet.

(D) Agricultural structures in conjunction with agricultural uses.

(E) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to compliance with 350-082-0380.

(F) Utility transmission, transportation, communication, and public works facilities.

(G) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation or natural resources, subject to compliance with 350-082-0460. These projects may include new structures (e.g., fish ladders, sediment barriers) or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(H) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(I) Docks and boathouses, subject to compliance with 350-082-0410.

(J) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(K) Commercial events, subject to compliance with 350-082-0480.

(b) Approval Criteria for Specified Review Uses on Lands Designated Public Recreation:

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

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

(C) 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.

(5) Land divisions may be allowed subject to compliance with 350-082-0560(3).

(6) Lot line adjustments may be allowed, subject to compliance with 350-082-0570(1).

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

### 350-082-0360. Uses Allowed on Lands Designated Commercial Recreation

(1) Uses Allowed Outright. The uses listed in 350-082-0210(1) are allowed without review on lands designated Commercial Recreation.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated Commercial Recreation.

(3) Review Uses with Limited Additional Approval Criteria. The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with 350-082-0600 through 350-082-0720 and compliance with 350-082-0700(5), except for subsections 0700 (5)(b) and (j):

(a) Commercially owned, resource-based recreation uses, consistent with 350-082-0700.

(b) Overnight recreation accommodations that are part of a commercially owned, resource-based recreation use, where such resource-based recreation use occurs on the subject site or on adjacent lands that are accessed through the site, and that meet the following standards:

(A) Buildings containing only one unit shall be no larger than 1,500 square feet in total floor area and no higher than 2-1/2 stories.

(B) Buildings containing more than one unit shall be no larger than 5,000 square feet in total floor area and no higher than 2-1/2 stories.

(C) The total number of individual units shall not exceed 25, unless the proposed development complies with standards for clustered accommodations in subsection (D) below.

(D) Clustered overnight recreation accommodations meeting the following standards 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 in the Management Plan as Recreation Intensity Class 4.

(c) Commercial uses, including restaurants sized to accommodate overnight visitors and their guests, and non-resource based recreation uses that are part of an existing or approved resource-based commercial recreation use.

(d) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-082-0620) and natural resources (350-082-0640 through 350-082-0680).

(e) Special uses in historic buildings, subject to compliance with 350-082-0530.

(4) Review Uses with Additional Approval Criteria.

(a) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with 350-082-0600 through 350-082-0720 and "Approval Criteria for Non-Recreational Uses in Commercial Recreation," in subsection (b) below:

(A) One single-family dwelling for each existing parcel legally created prior to adoption of the first Management Plan on October 15, 1991.

(B) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in subsection (C) below.

(C) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(i) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(ii) The height of any individual accessory building shall not exceed 24 feet.

(D) Agricultural structures, in conjunction with agricultural use.

(E) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to compliance with 350-082-0380.

(F) Utility transmission, transportation, and communication facilities.

(G) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation or natural resources, subject to compliance with 350-082-0460. These projects may include new structures (*e.g.*, fish ladders, sediment barriers) or activities (*e.g.*, closing and revegetating unused roads, recontouring abandoned quarries).

(H) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(I) Docks and boathouses, subject to compliance with 350-082-0410.

(J) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(K) Commercial events, subject to compliance with 350-082-0480.

(b) Approval Criteria for Non-Recreation Uses in GMA-Commercial Recreation Designations.:

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

(B) 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.

(C) 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.

(5) Land divisions may be allowed subject to compliance with subsection (4)(b)(C) above and 350-082-0560 (1)(c).

(6) Lot line adjustments may be allowed, subject to compliance with 350-082-0570(1).

(7) Recreation resorts may be allowed on lands designated Commercial Recreation that include an existing industrial complex, subject to compliance with 350-082-0600 through 350-082-0720 and 350-082-0490.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

### 350-082-0370. Uses Allowed on Lands Designated SMA Public Recreation

(1) Uses Allowed Outright. The uses listed in 350-082-0210(1) are allowed without review on lands designated SMA Public Recreation.

(2) Expedited Uses. The uses listed in 350-082-0220(1) may be allowed subject to compliance with the expedited development review guidelines in 350-082-0220(2) on lands designated SMA Public Recreation.

(3) Review Uses. The following uses may be allowed on lands designated SMA Public Recreation subject to compliance with 350-082-0600 through 350-082-0720:

(a) Forest uses and practices, as allowed for in 350-082-0280 except subsections 0280 (3)(i), (3)(l), (3)(m), and (3)(v).

(b) Public trails, consistent with the provisions in 350-082-0710.

(c) Public recreational facilities, consistent with the provisions in 350-082-0710.

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

(e) One single-family dwelling on a parcel of 40 contiguous acres or larger when it meets the conditions described for single-family dwellings in 350-082-0260 (3)(c) or 350-082-0280 (3)(j) or when shown to be necessary for public recreation site management purposes.

(f) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline 1.G below.

(g) Accessory building(s) larger than 200 square feet in area or taller than ten feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(h) Home occupations, as specified in 350-082-0420.

(i) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation or natural resources, subject to the guidelines in 350-082-0460. These projects

may include new structures (*e.g.*, fish ladders, sediment barriers) or activities (*e.g.*, closing and revegetating unused roads, recontouring abandoned quarries).

(j) Road and railroad construction and reconstruction.

(k) 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.

(l) Agricultural review uses, as allowed for in 350-082-0260, except subsections 0260 (3)(h), (3)(i), (3)(t), and 3(aa).

(m) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a manufactured home, tiny house on a trailer, or similar structure in the case of a family hardship, subject to the guidelines for hardship dwellings in 350-082-0390.

(n) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(o) Removal or demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Docks and boathouses, subject to the guidelines in 350-082-0410.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## Guidelines for Specific Development and Land Uses

### NEW SECTION

#### 350-082-0380. Agricultural Buildings

(1) Agricultural buildings may be allowed where authorized in specified land use designations and consistent with the guidelines in sections (2) and (3) below.

(2) The size of proposed agricultural buildings shall not exceed the size needed to serve the current agricultural use and, if applicable, the proposed agricultural use.

(3) To satisfy 350-082-0240(3), applicants shall submit the following information with their land use application:

(a) A description of the size and characteristics of current agricultural use;

(b) An agricultural plan for any proposed agricultural use that specifies agricultural use (*e.g.*, crops, livestock, products), agricultural areas and acreages (*e.g.*, fields, pastures, enclosures), agricultural structures (*e.g.*, irrigation systems, wind machines, storage bins) and schedules (*e.g.*, plowing, planting, grazing); and

(c) A floor plan showing intended uses of the agricultural building (*e.g.*, space for equipment, supplies, agricultural products, livestock).

### NEW SECTION

#### 350-082-0390. Temporary Use Hardship Dwelling

(1) Hardship dwellings may be allowed where authorized in specified land use designations and consistent with the guidelines in sections (2) through (5) below.

(2) A permit for the temporary placement of a manufactured home, a tiny home on a trailer, or other similar structure

may be granted upon a demonstration of compliance with the following guidelines:

(a) A family hardship exists where conditions relate to the necessary care for a family member 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.

(d) The structure does not require a permanent foundation.

(3) A permit may be issued for a two-year period, subject to annual review for compliance with the provisions of 350-082-0390 and any other conditions of approval.

(4) Upon expiration of the permit or cessation of the hardship, whichever comes first, the hardship dwelling shall be removed within 30 days.

(5) A new or renewed permit may be granted upon a finding that a family hardship continues to exist. The Executive Director may renew an existing permit that has not expired for an additional two years. A new permit is necessary if the hardship permit has expired.

#### **NEW SECTION**

##### **350-082-0400. Sewer and Water Services**

(1) Water and sewer services are a type of utility facility. Where utility facilities are authorized in specified land use designations, water and sewer services may be permitted consistent with the guidelines in sections (2) and (3) below.

(2) Sewer lines may be extended from an urban area into a rural area to serve:

(a) Areas with a documented health hazard; or

(b) Recreation uses open to the public, only upon a demonstration by the Executive Director that there is no practicable alternative to providing service to the area. In such cases, the lines shall be engineered and sized solely to serve the defined area or use. Such lines shall not be relied upon as the sole justification for revision to an urban area boundary.

(3) New uses authorized in this land use ordinance may hook up to existing sewer and water lines in rural areas.

#### **NEW SECTION**

##### **350-082-0410. Docks and Boathouses**

(1) Docks and boathouses may be allowed where authorized in specified land use designations and consistent with the guidelines in sections (2) through (5) below.

(2) New, private docks and boathouses serving only one family and one property may be allowed, up to 120 square feet in size.

(3) New, private docks and boathouses serving more than one family and property may be allowed, up to 200 square feet in size.

(4) Public docks open and available for public use may be allowed.

(5) Boathouses may be allowed under sections (2) and (3) above only when accessory to a dwelling and associated with a navigable river or lake.

(6) Docks and boathouses may be allowed when the land use designation of the appurtenant land authorizes docks.

(7) Floating uses and uses anchored to the bottom of the Columbia River and its tributaries, including, but not limited to, floating cafes and mooring buoys, are not allowed.

#### **NEW SECTION**

##### **350-082-0420. Home Occupations**

(1) Home occupations may be allowed where authorized in specified land use designations and consistent with the following guidelines:

(a) May employ the residents of the home and up to three outside employees.

(b) No more than 25 percent of the total actual living space of the dwelling may be used for the home occupation.

(c) No more than 500 square feet of an accessory structure may be used for a home occupation.

(d) There shall be no outside, visible evidence of the home occupation, including outside storage.

(e) Exterior structural alterations to the residence for the home occupation shall not be permitted. New structures shall not be constructed for the primary purpose of housing a home occupation.

(f) No retail sales may occur on the premises.

(g) One non-animated, non-illuminated sign, not exceeding two square feet in area, may be permitted on the subject structure or within the yard containing the home occupation.

(h) Parking not associated with residential use shall be screened so it is not visible from key viewing areas.

(2) In the GMA, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of 350-082-0420 and 350-082-0440.

(3) In the SMAs, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of 350-082-0420 and 350-082-0440, except 350-082-0440 (1)(d).

#### **NEW SECTION**

##### **350-082-0430. Overnight Accommodations**

(1) Overnight accommodations may be allowed where authorized in specified land use designations and consistent with the following guidelines and in section (2) below:

(a) The owner of the subject parcel may rent the dwelling for up to 90 room nights per year.

(b) Parking areas shall be screened so they are not visible from key viewing areas.

(c) The use is incidental and subordinate to the primary use of the property.

(d) The dwelling must be the principal residence of the owner.

(e) Commercial events are not permitted at overnight accommodations.

(f) The overnight accommodation may employ up to three employees other than the residents of the dwelling.

(2) Approvals for overnight accommodations shall be valid for no more than two years. Landowners must reapply

or renew an approval for the use, and demonstrate past compliance with conditions of approval through financial and other records. The Executive Director may renew an existing permit for an additional two years if that permit has not expired. A new permit is necessary if the overnight accommodation permit has expired. An existing permit shall not be renewed and a new permit shall not be approved if there have been past violations related to the overnight accommodations permit, including failure to file a new application while still operating overnight accommodations.

#### NEW SECTION

##### 350-082-0440. Bed and Breakfast Inns

(1) Bed and breakfast inns may be allowed where authorized in specified land use designations and consistent with the following guidelines and in section (2) below.:

(a) Guests may not occupy a facility for more than 14 consecutive days.

(b) One non-animated, non-illuminated sign, not exceeding four square feet in area, may be permitted on the structure or within the yard containing the structure.

(c) Parking areas shall be screened so they are not visible from key viewing areas.

(d) In the SMAs, 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.

(2) See 350-082-0420(2) and (3) for Bed and Breakfast Inns that are two bedrooms or less.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

##### 350-082-0450. Small-Scale Fishing Support and Fish Processing Operations

(1) Small-scale fishing support and fish processing operations in conjunction with a family-based commercial fishing business may be allowed where authorized in specified land use designations and consistent with sections (2) through (15) below):

(2) The operation shall comply with 350-082-0140(1). In addition, if the operation will be located on land designated Small Woodland, then it shall also comply with 350-082-0270 (5) and (6).

(3) The following fishing support activities may be allowed: maintenance, repair, and storage of boats, nets, fish totes and other commercial fishing equipment that is used in the family-based commercial fishing business; and garaging of fish hauling trucks, trailers and all other related equipment that is used in the family-based commercial fishing business.

(4) The following fish processing activities may be allowed: cleaning, gutting, heading, and icing or freezing of fish that is caught by the family-based commercial fishing business. Other fish processing activities shall not be allowed, including, but not limited to, canning, smoking, salting or brining for wholesale or retail sale.

(5) The operation shall be located on a lawful parcel that is contiguous with and has direct access to the Columbia River.

(6) The subject parcel shall include a lawful dwelling, and the permanent resident of the dwelling shall participate in the fishing support and fish processing operation.

(7) The operation may only employ residents of the dwelling and up to three outside employees.

(8) No more than 25 percent of the total actual living space of the dwelling may be used for the fishing support and fish processing operation.

(9) The operation may take place in an existing or new lawful accessory building or an existing agricultural building on the subject parcel. A new building constructed for the purpose of housing a fishing support and fish processing operation shall be considered an accessory building. An existing agricultural building shall not be expanded, and a new agricultural building shall not be constructed for the purpose of housing a fishing support and fish processing operation.

(10) An accessory building used in the fishing support and fish processing operation may be allowed up to 2,500 square feet.

(11) Docks may be allowed as follows:

(a) One dock serving a parcel with an approved fishing support and fish processing operation may be allowed up to 500 square feet in size.

(b) For multiple contiguous parcels each with an approved fishing support and fish processing operation, the area of the docks authorized in subsection (A) above may be combined into one dock, provided the total size of the dock shall not exceed 2,000 square feet.

(12) There shall be no outside visible evidence of the fishing support and fish processing operation, including storage, other than boats and docks.

(13) No retail sales may occur on the parcel.

(14) The operation shall only support and shall only be used to process fish caught by residents of the dwelling and up to three outside employees.

(15) Before beginning the operation, applicants shall demonstrate that they have obtained and complied with federal, state and local water quality and wastewater permits.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

##### 350-082-0460. Resource Enhancement Projects

(1) Resource enhancement projects may be allowed where authorized in specified land use designations and consistent with the guidelines in sections (2) through (6) below.

(2) Applications for resource enhancement projects must describe the goals and benefits of the proposed enhancement project. They must also thoroughly document the condition of the resource before and after the proposed enhancement project. Applicants shall seek technical assistance from federal, state or county technical experts for assistance in designing voluntary wetland, stream, habitat, plant, and scenic enhancement projects.

(3) In addition to compliance with 350-0872-0600 through 350-082-0720, quarry enhancement projects shall comply with the following guidelines:

(a) Application Requirements. In addition to other applicable requirements, land use applications for quarry enhance-

ment projects shall include perspective drawings of the site as visible from key viewing areas as specified in 350-082-0500 (6)(f) and a reclamation plan that provides at a minimum the following information:

(A) A map of the site, at a scale of one inch equals 200 feet (1:2,400) or a scale providing greater detail, with 10-foot contour intervals or less, showing pre-reclamation existing grades and post-reclamation 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-reclamation and post-reclamation 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 and 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.

(b) Scenic Resource Standard. Quarry enhancement projects shall restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable.

(c) Natural Resource Standard. Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

(d) Time Frames. The following time frames shall apply to quarry enhancement projects:

(A) All grading (*e.g.*, excavating, filling and re-contouring) shall be completed within one year of the date an applicant begins on-the-ground work.

(B) All landscaping shall be planted within one year of the date an applicant completes the grading.

(C) An applicant may request one one-year extension to the one-year grading time frame if a project is unexpectedly delayed by adverse weather or emergency/disaster. Such requests shall be considered an administrative action. An applicant shall submit such a request to the reviewing agency after grading has commenced and before the one-year grading time frame has expired.

(D) An applicant may also request one six-month extension to the one-year landscaping time frame if a project is unexpectedly delayed by adverse weather or emergency/disaster. Such requests shall be considered an administrative action. An applicant shall submit such a request to the reviewing agency after landscaping has commenced and before the one-year landscaping time frame has expired.

(4) Enhancement of wetlands not associated with any other project proposal may be allowed, if such efforts are conducted pursuant to a written plan consistent with 350-082-0640(7).

(5) Enhancement of streams, ponds, lakes, and riparian areas not associated with any other development proposal

may be allowed, if such efforts are conducted pursuant to a written plan consistent with 350-082-0640(8).

(6) In the SMAs, enhancement of water resources not associated with any other project proposal may be allowed, if such efforts comply with the water resources provisions in the Management Plan. Enhancement efforts shall be conducted pursuant to a written plan, consistent with 350-082-0670(2).

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

### 350-082-0470. Disposal Sites for Spoil Materials from Public Road Maintenance Activities

(1) Disposal sites for spoil materials from public road maintenance activities may be allowed where authorized in specified land use designations and consistent with the guidelines in sections (2) through (4) below.

(2) Application Requirements. In addition to other applicable requirements, land use applications for disposal sites shall include the same information that applicants are required to submit for expansion of existing quarries and exploration, development (extraction and excavation), and production of mineral resources in the GMA, including, but not limited to:

(a) A reclamation plan that provides at a minimum the following information:

(A) A map of the site, at a scale of one inch equals 200 feet (1:2,400) or a scale providing greater detail, with 10-foot contour intervals or less, showing pre-reclamation existing grades and post-reclamation 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-reclamation and post-reclamation 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 and erosion control features to be employed for the duration of the use; and

(E) A landscaping plan providing for revegetation consistent with the vegetation patterns of the subject 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.

(b) Perspective drawings of the site as visible from key viewing areas as specified in 350-082-0500 (6)(f).

(c) Cultural resource reconnaissance and historic surveys consistent with 350-082-0620 (2)(c) and 350-082-0620 (2)

(d). Disposal sites shall be considered a "large-scale use."

(d) Field surveys to identify sensitive wildlife sites and rare plants consistent with 350-082-0650(2) and 350-082-0660(2).

(3) Siting Standard. The proposed disposal site shall only be approved if the applicant demonstrates it is not practicable

to locate the disposal site outside the National Scenic Area or inside an urban area. At a minimum, the applicant shall submit a feasibility and suitability analysis that compares the proposed disposal site to existing or potential disposal sites located both outside the National Scenic Area and inside an urban area.

(4) Scenic Resource Standards. Disposal sites shall comply with the same scenic resources protection standards as expansion of existing quarries and exploration, development (extraction and excavation), and production of mineral resources in the GMA, including, but not limited to:

(a) Sites more than four miles from the nearest key viewing area shall be visually subordinate as visible from any key viewing area, according to 350-082-0500(1). An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed three years beyond the start of on-the-ground activities.

(b) Sites less than four miles from the nearest key viewing area shall be fully screened from any key viewing area, according to 350-082-0500(2). An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed one year beyond the start of on-the-ground activities. Disposal activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(c) Reclamation plans shall restore the site to a natural appearance that blends with and emulates natural landforms and vegetation patterns characteristic to the landscape setting to the maximum extent practicable.

## NEW SECTION

### 350-082-0480. Commercial Events

(1) Commercial events may be allowed where authorized in specified land use designations and consistent with the guidelines in sections (2) and (3) below.

(2) Commercial events include weddings, receptions, parties and other small-scale gatherings that are incidental and subordinate to the primary use on a parcel.

(3) Commercial events may be allowed in the GMA except on lands designated Open Space, Commercial Forest, or Agriculture-Special, subject to compliance with 350-082-0600 through 350-082-0720 and all the following guidelines:

(a) The use must be in conjunction with an on-site wine or cider sales and tasting room, bed and breakfast inn, or commercial use. If the use is proposed on a property with a building on or eligible for the National Register of Historic Places, it shall be subject to 350-082-0530 and not 350-082-0480.

(b) The owner of the subject parcel shall live on the parcel and shall operate and manage the use.

(c) A single commercial event shall host no more than 100 guests.

(d) The use shall comply with the following parking requirements:

(A) A single commercial event shall include no more than 50 vehicles for guests.

(B) All parking shall occur on the subject parcel.

(C) At least 200 square feet of parking space shall be required for each vehicle.

(D) Parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other impervious materials shall be prohibited.

(E) All parking areas shall be fully screened from key viewing areas.

(e) The owner of the subject parcel may conduct 18 single events up to one day in length per year.

(f) The owner of the subject parcel shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject parcel of each planned event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.

(g) Tents, canopies, portable restrooms and other similar temporary structures necessary for a commercial event may be allowed, provided all such structures are erected or placed on the subject parcel no more than two days before the event and removed no more than two days after the event. Alternatively, temporary structures may remain in place for up to 90 days if they are fully screened from key viewing areas.

(h) The use may be allowed upon demonstration of compliance with all the following guidelines to protect any nearby agricultural and forest operations:

(A) The use would not force a change in or increase the cost of accepted agricultural practices on surrounding lands.

(B) The use would be set back from any abutting parcel designated Large-Scale Agriculture or Small-Scale Agriculture, as required in 350-082-0580(2), or designated Commercial Forest Land, Large Woodland, or Small Woodland, as required in 350-082-0270 (6)(a).

(C) 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 agriculture or forest practices on lands designated Large-Scale Agriculture, Small-Scale Agriculture, Commercial Forest Land, Large Woodland, or Small Woodland.

(D) All owners of land in areas designated Large-Scale Agriculture, Small-Scale Agriculture, Commercial Forest Land, Large Woodland, or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the use is proposed to be located have been notified and given at least ten days to comment prior to a decision.

(i) The Executive Director may impose additional requirements to address potential impacts to surrounding neighbors. For example, they may limit noise, lighting and operating hours.

(j) Approvals for commercial events shall not be valid for more than two years. Landowners must reapply for the use after an approval expires.

(k) A yearly report shall be submitted to the reviewing agency by January 31st reporting on the events held the previous year. This report shall include the number of events held, how many people were in attendance, and copies of catering contracts or other vendors used to verify.

(l) Permits shall not be renewed if there have been past violations, including failure to file.

**NEW SECTION****350-082-0490. Recreation Resorts**

(1) Recreation Resorts may be allowed where authorized in specified land use designations and consistent with the guidelines in sections (2) through (5) below.

(2) Uses Allowed: All commercial development (except for privately owned, public use resource-based recreation uses) and accommodations within a recreation resort shall be located within the resort core. Recreation facilities associated with the recreation resort shall be included on the resort master plan and may extend to contiguous and adjacent lands under other land use designations only if consistent with the land use designation and the Recreation Intensity Class guidelines in 350-082-0700.

(a) Accommodations that are part of a recreation resort shall meet the following standards:

(A) The total number of accommodation units and campground sites shall not exceed that approved by the resort master plan.

(B) The average size of accommodation units shall not exceed 1,300 square feet. Individual accommodation units shall be no larger than 1,600 square feet in total floor area.

(C) No unit shall contain more than one kitchen.

(D) Parking shall be predominantly in common lots or structures and accessed through shared driveways. Individual accommodation units shall not have separate or attached garages.

(E) All accommodation units shall have design and use restrictions that effectively limit their use to short-term occupancy and that require occupancy to be limited to no more than 45 days in any 90-day period.

(b) Commercial uses that are part of a recreation resort shall meet the following standards:

(A) Commercial uses shall be located predominantly within and oriented internally toward the center of the resort core or to serve adjacent recreation areas, rather than at or toward the resort perimeter.

(B) Commercial uses are limited to restaurants and pubs, a mini-mart, recreation equipment rental, and other small-scale retail and guest services. Conference and meeting facilities may be permitted.

(C) Gas stations, banks, grocery stores, or other services commonly found in urban areas or catering to the traveling public shall not be permitted.

(D) Commercial uses shall be sized and oriented to primarily serve resort guests and recreation-site users rather than the traveling public.

(c) Notwithstanding 350-082-0600 (1)(b), new recreation resort buildings located within the resort core may be compatible with the general scale (height, dimensions and overall mass) of industrial buildings that existed within the existing industrial complex.

(A) The cumulative footprint of all recreation resort buildings located within the resort core shall not exceed that of buildings located within the existing industrial complex at the time of application.

(B) Buildings shall not exceed 2-1/2 stories in height.

(d) Land divisions for the purpose of selling individual accommodation units shall not be permitted within the resort core.

(3) An application for a recreation resort shall include the following materials in addition to those required for large-scale review uses in 350-082-0600 through 350-082-0720:

(a) A master plan including the contents listed in subsection (4)(a) below. The master plan shall include all areas where recreational, commercial, and resort uses are proposed and where mitigation and enhancement measures are planned or necessary.

(b) A traffic impact study meeting the applicable local or state department of transportation standards that projects future conditions for each phase and after the project is completed.

(c) A description of economic impacts of resort development prepared by a qualified economist that includes:

(A) Assessment of effects on public services and emergency response needs; and

(B) Assessment of net economic effect on surrounding communities and counties that takes into account public services costs, job creation, effect on tax base, and commercial activity in nearby urban areas.

(d) An engineering assessment of impact on community water facilities and surface water quality due to projected water use and treatment methods at resort build-out.

(e) Assessment of effects on existing recreation resources at and adjacent to the resort that evaluates:

(A) Types of recreation resources and levels of current use;

(B) Existing site conditions and recreation site capacity, including parking, safety, river access, and on-river conditions;

(C) Projected additional use and effect on existing recreation areas due to recreation resort development, by phase and at full build-out;

(D) Potential effect on the quality of the recreation experience at adjacent recreation sites; including effects due to potential changes in parking, traffic, public health and safety due to recreation resort development; and

(E) Identification of potential mitigation and enhancement actions that would improve the quality of the experience for current and projected levels of use.

(f) Assessment of effect on surrounding areas. Review of impacts at a minimum shall include the visual character of the area, traffic generation, emergency response, fire risk and lighting.

(g) A delineation of the boundary of the existing industrial complex, and an inventory of existing development within the complex, including the dimensions and locations of all buildings.

(4) All development within the recreation resort shall be based on a master plan. Master plans shall be sufficiently detailed to enable the reviewing agency to confirm the guidelines of this section will be met through the development.

(a) The resort master plan shall include all the following:

(A) Land use plan: This shall designate uses for all areas within the development. This shall also include a delineation of the resort core.

(B) Building design plan: This shall describe the location, materials, colors, and dimensions of all structures proposed.



(C) Landscape plan: This shall identify all areas where existing vegetation is to be removed and retained, and describe proposed landscape plantings, species and size of plants used, as well as irrigation and landscape maintenance plans.

(D) Traffic circulation plan: This shall describe all roadway and parking locations, widths, and surfacing materials.

(E) Roadway improvement plan: This shall describe all on-site and off-site improvements necessary to mitigate traffic impacts and enhance driver and pedestrian safety in the vicinity of the resort.

(F) Grading and drainage plan: This shall indicate existing and proposed contours throughout the redevelopment area. Stormwater drainage routes and facilities shall also be indicated on this plan.

(G) Infrastructure development plan: This shall describe the location, size, basic design, funding mechanisms, and operational plans for water, sewer, power, and emergency services.

(H) Construction phasing plan: This shall indicate intended phasing of development of the project, if any, including anticipated initiation and completion dates for each component of the development. This shall also discuss how the project will function at interim stages prior to completion of all phases, and how the resort may operate successfully and meet its resource protection and enhancement commitments should development cease before all phases are completed.

(I) Resource protection and enhancement plan: This shall describe and indicate proposed measures that will be implemented to protect and enhance scenic, natural, cultural and recreation resources, including measures necessary to mitigate impacts identified through assessments required by this section.

(b) The Executive Director shall develop procedures for master plan and phase approval, time extension, and revision consistent with the following:

(A) Construction of all phases of the master plan shall be completed within 12 years from the date of approval. The Executive Director may grant one extension of time, not to exceed three years, to the validity of the master plan if they determine that events beyond the control of the applicant prevented completion of all phases of the master plan.

(B) The initial phase of the master plan shall be commenced within three years of master plan approval by the Executive Director. The Executive Director may approve one extension of time, not to exceed two years, to initiate the initial phase if they determine that events beyond the control of the applicant prevented commencement of the phase.

(C) The Executive Director shall review each phase of the master plan for consistency with the master plan prior to any construction on that phase. The review for consistency shall be an administrative decision. Each phase of the master plan shall be completed within three years from the date the Executive Director determines that phase is consistent with the master plan. The Executive Director may grant one extension of time, not to exceed two years, if they determine that events beyond the control of the applicant prevented completion of that phase.

(D) The Executive Director may approve minor changes in accordance with 350-082-0180 to the findings, conclusions, and conditions of approval for master plans and phases if the change is deemed to be consistent with the guidelines of 350-082-0490 and does not generate new significant potential impacts not previously addressed in the original review. Approval or denial of a request for a minor change or extension shall be an administrative decision.

(5) Development Standards: The applicant shall demonstrate, and the Executive Director shall make findings that determine the following standards are met through development under the approved master plan for the recreation resort:

(a) Master Plan:

(A) Removal: The first phase of recreation resort development shall result in the elimination of industrial uses and removal of all portions of the industrial complex that are not planned for use as part of the resort. Existing residential uses may remain.

(B) Infrastructure: The recreation resort shall provide its own sewer, water and internal circulation system, including roads. The development shall accommodate mass transportation to access the site and adjacent recreation areas.

(C) On-site and off-site infrastructure impacts shall be fully considered and mitigated. Mitigation may include assessment of impact fees, provision of community facilities within or adjacent to the resort. The reviewing agency may require that some or all reasonable and negotiated costs, expenses or charges associated with the alteration, construction or improvement of public services and facilities shall be the responsibility of the applicant.

(D) Phasing: Each phase shall be self-sufficient, in conjunction with existing elements of the resort. Transportation, parking, utilities, landscaping, as well as recreation mitigation and enhancements for each phase shall be satisfied within each phase and shall not be dependent upon a future phase.

(i) Each phase of the development shall be designed to be completed within two years of the commencement of construction for that phase.

(ii) Off-site recreation mitigation and enhancement shall be included in the first phase and completed prior to occupancy of resort buildings and initiation of a second phase.

(iii) On-site recreation mitigation and enhancement shall be developed in proportion to the type and amount of development in each phase.

(E) Landscaping necessary to screen development from key viewing areas shall be sized to provide sufficient screening to make development of each phase visually subordinate within five years or less from the commencement of construction of that phase, except for landscaping necessary to screen development from the section of SR 14 passing through the resort core. Such landscaping may be sized to provide sufficient screening to make development visually subordinate within ten years from the commencement of construction of each phase. Landscaping for each phase shall be installed as soon as possible and prior to phase completion.

(F) Bonding sufficient to ensure remediation and clean-up of the site and completion of resource enhancements identified in the master plan is required.

(b) Potentially adverse impacts of a recreation resort on surrounding areas shall be mitigated.

(A) Traffic, safety, and circulation impacts shall be mitigated in conformity with reviewing agency requirements. For each phase of the proposed development, the developer shall make road and intersection improvements to maintain traffic levels of service existing prior to each phase. The developer shall ensure that in no event may it cause the public road system to operate below a level-of-service (LOS) C for intersection delay during the peak traffic hour. LOS C standards shall be determined based on the most recently adopted version of the Highway Capacity Manual (Transportation Research Board).

(B) The Executive Director may apply additional restrictions on noise, odor, lighting and water treatment in order to mitigate identified impacts.

(c) Recreation resources on the subject property shall be protected and enhanced by the development of the recreation resort. Recreation resources on adjacent lands and nearby areas shall be protected.

(A) Potentially adverse impacts to adjacent recreation sites due to the development shall be mitigated.

(B) Recreation enhancements shall include, but are not limited to, measures that address existing site conditions and provide new or expanded facilities that are open to the public.

(C) Resource protection and enhancement plans shall address at a minimum:

- (i) Improvements to recreation user areas;
- (ii) New or improved access to recreation sites;
- (iii) Parking improvements and other potential methods to reduce parking demand at adjacent recreation sites by resort guests, such as shuttles or parking restrictions;
- (iv) Cooperative agreements with the management of adjacent recreation sites to jointly address potential adverse impacts;

(v) Establishment of mitigation funds to be applied to improvements at public recreation sites; and

(vi) Development of secondary activities, such as spectator seating, development of recreational trails, interpretation sites and trails.

(d) Scenic resources shall be protected and enhanced by the development of the recreation resort. All new development, including additions or re-use of existing structures for resort use shall be visually subordinate as visible from key viewing areas. Enhancements may include, but are not limited to: removal of visually discordant structures and building materials not associated with the existing industrial complex, grading and vegetative restoration of previously disturbed areas and permanent protection of undeveloped lands in the master plan area or adjoining lands in the same ownership.

(e) Cultural resources shall be protected and enhanced by development of the recreation resort. Cultural resource reconnaissance survey procedures and standards for large-scale uses are applicable to recreation resort development. Enhancements may include, but are not limited to, interpretive displays, restoration or adaptive re-use of historical structures.

(f) Natural resources shall be protected and enhanced by the development of the recreation resort. Enhancements may include, but are not limited to, habitat improvements, perma-

nent protection of undeveloped lands, water-quality improvements.

(g) Development of the recreation resort shall not affect or modify the treaty or other rights of the four Columbia River treaty tribes. This requires determination that the policies for "River Access and Consistency with Tribal Treaty Rights" in Part I, Chapter 4: Recreation Resources in the Management Plan and the guidelines in 350-082-0130 have been met by the application and development plan.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

### **350-082-0500. Expansion of Existing Quarries and Exploration, Development, and Production of Mineral Resources**

(1) Expansion of existing quarries and exploration, development (extraction and excavation), and production of mineral resources may be allowed where authorized in specified land use designations and consistent with the guidelines in sections (2) through (7) below.

(2) Expansion of existing quarries and exploration, development (extraction and excavation), and production of mineral resources proposed on sites more than four miles from the nearest key viewing areas from which it is visible may be allowed upon a demonstration that:

- (a) The site plan requirements 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 visible from any key viewing areas.

(c) A reclamation plan to restore the site to a natural appearance that blends with and emulates distinctive characteristics of the designated landscape setting to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with sections (6) and (7) below.

(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:

(A) A list of key viewing areas from which exposed mining surfaces (and associated facilities and activities) would be visible;

(B) An estimate of the surface area of exposed mining surfaces that would be visible from those key viewing areas;

(C) The distance from those key viewing areas and the linear distance along those key viewing areas from which proposed mining surfaces are visible;

(D) The slope and aspect of mining surfaces relative to those portions of key viewing areas from which they are visible;

(E) The degree to which potentially visible mining surfaces are screened from key viewing areas by existing vegetation, including winter screening considerations; and

(F) 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.

(3) Unless addressed by section (2) above, exploration, development (extraction and excavation), and production of mineral resources may be allowed upon a demonstration that:

(a) The site plan requirements 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.

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

(4) An interim time period to achieve compliance with visual subordination requirements for expansion of existing quarries and development of new quarries located more than four miles from the nearest key viewing area from which it is visible shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed three years beyond the date of approval.

(5) An interim time period to achieve compliance with full screening requirements for new quarries located less than four miles from the nearest key viewing area from which it is visible shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed one year beyond the date of approval. Quarrying activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(6) For all exploration, development (extraction and excavation), production of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance that blends with and emulates distinctive characteristics inherent to its landscape setting to the maximum extent practicable. At a minimum, such reclamation plans shall include:

(a) A map of the site, at a scale of one 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 and 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; and

(f) If the site is visible from key viewing areas, the applicant shall also submit perspective drawings of the proposed mining areas as visible from applicable key viewing areas.

(7) All reclamation plans for new quarries or expansion of existing quarries shall be sent to the appropriate state reclamation permitting agency for review and comment. The reviewing agency may request technical assistance from state agencies on reclamation plans for proposed mining not within the state agency's jurisdiction. The state agency shall have 30 calendar days from the date a reclamation plan is mailed to submit written comments on the proposal. State agency comments shall address the following:

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

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

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

## NEW SECTION

### 350-082-0510. Columbia River Bridge Replacement

#### (1) Visual Quality

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall be visually unobtrusive and harmonious with the surrounding Gorge landscape and the Columbia River.

(b) A replacement bridge is exempt from 350-082-0600, but shall comply with the following visual quality standards:

(A) Utilize recessive dark natural or earth-tone colors for steel components of the bridge, a thin and open structural design that allows views through it to the extent practicable, and consistent design character and ornamental elements; and

(B) Employ lighting that provides a safe and pleasant atmosphere for bicycles and pedestrians while not casting glare directly into the sky or onto the river.

#### (2) Historic Design Elements

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall incorporate elements that reflect historic design features of National Scenic Area roadways and bridges. The historic themes should be an integral component of the design of the bridge structure, incorporated from "shore to shore."

(b) A replacement bridge should include:

(A) Arches and other traditional structural forms in the bridge;

(B) Historic style benches, lighting, other pedestrian furnishings, and signs and graphic materials consistent with the USFS Graphic Signing System for the National Scenic Area; and

(C) Ornamental concrete or steel railings.

#### (3) Recreation and Pedestrian and Bicycle Access

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall encourage and promote pedestrian and bicycle use, for recreational enjoyment and to enhance multi-modal transportation connections between the Urban Areas it connects.

(b) The bridge shall include facilities for pedestrians and bicyclists that:

- (A) Are permanent;
- (B) Are wide enough to safely accommodate and encourage walking, bicycling, and other uses;
- (C) Meet safety standards to prevent conflicts among automobiles, trucks, pedestrians, bicyclists, and other users;
- (D) Provide multiple sitting and viewing areas with significant upstream and downstream views; and
- (E) Are safe to approach from both the north and south ends of the bridge and provide strong multi-modal connections, both east-west and to the nearby urban areas.

## NEW SECTION

### 350-082-0520. Signs

(1) Signs may be allowed where authorized in specified land use designations and consistent with the guidelines in section (2) or (3) below.

#### (2) GMA Sign Provisions

(a) Except for signs allowed without review pursuant to 350-082-0210, all new signs must meet the following guidelines unless these guidelines conflict with the Manual on Uniform Traffic Control Devices (2012, or most recent version) for public safety, traffic control or highway construction signs. In such cases, the standards in the Manual on Uniform Traffic Control Devices (2012, or most recent version) 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. Signs shall be colored to 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) Spotlighting of signs may be allowed where needed for night visibility. Backlighting is not permitted for signs.

(E) Except for signs along public highways necessary for public safety, traffic control, or road construction and consistent with the *Manual on Uniform Traffic Control Devices* (2012, or most recent version), the following signs are prohibited:

(i) Luminous signs or those with intermittent or flashing lights. These include neon signs, fluorescent signs, light displays, and other signs that are internally illuminated, exclusive of seasonal holiday light displays.

(ii) New billboards.

(iii) Signs with moving elements.

(iv) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle.

(F) In addition to subsections (A) through (E) above, signs shall meet the below guidelines according to Recreation Intensity Class (and subject to compliance with 350-082-0700(5) and 350-082-0720:

(i) Recreation Intensity Class 1 (Very Low Intensity) - Simple interpretive signs or displays, not to exceed a total of 50 square feet. Entry name signs, not to exceed ten square feet per sign.

(ii) Recreation Intensity Class 2 (Low Intensity) - Simple interpretive signs and displays, not to exceed a total of 100

square feet. Entry name signs, not to exceed 20 square feet per sign.

(iii) Recreation Intensity Class 3 (Moderate Intensity) - Interpretive signs, displays or facilities. Visitor information and environmental education signs, displays, or facilities. Entry name signs, not to exceed 32 square feet per sign.

(iv) Recreation Intensity Class 4 (High Intensity) - Entry name signs, not to exceed 40 square feet per sign.

(G) For recreation facility design projects, signs shall be limited to that necessary to provide relevant recreation or facility information, interpretive information, vehicular and pedestrian direction, and for safety purposes.

(b) Any sign that does not conform with a provision of these guidelines and has existed before their adoption is subject to the following provisions:

(A) Alteration of existing nonconforming signs shall comply with these guidelines.

(B) Any nonconforming sign used by a business must be brought into conformance concurrent with any expansion or change in use that requires a development permit.

#### (3) SMA Sign Provisions

(a) New signs may be allowed as specified in the applicable land use designation.

(b) 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.

(c) Preexisting signs are allowed to continue, provided no changes occur in size, structure, color, or message.

(d) Except for signs allowed without review pursuant to 350-082-0210, all new signs shall meet the following guidelines and be consistent with the Manual on Uniform Traffic Control Devices (2012, or most recent version):

(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 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) The backs of all signs shall be visually unobtrusive, non-reflective, and blend in with the setting.

(H) Internal illumination or backlighting of signs shall not be permitted except for highway construction, warning, or safety.

(e) Public signs shall meet the following standards in addition to subsections (a) through (d) above:

(A) The Graphic Signing System provides design standards for public signs in and adjacent to public road rights-of-way. All new and replacement public signs, except those transportation regulatory, guide, and warning signs allowed outright shall conform to the guidelines in this system. Types of signs addressed include recreation site entry, interpretive,

specific service signs, destination and distance signs, variable message signs, or signs that bridge or are cantilevered over the road surface.

(B) Signs located outside public road rights-of-way are encouraged to be designed in a way that is consistent with similar-purpose signs described in the Graphic Signing System.

(f) Signs located outside public road rights-of-way are encouraged to be designed in a way that is consistent with similar-purpose signs described in the Graphic Signing System. Signs posted by governmental jurisdictions giving notice to the public shall be no larger than that required to convey the intended message.

(g) Signs for public and commercial recreation facilities, home occupations, and commercial uses shall meet the following guidelines in addition to subsections (a) through (d) above and subsection (h) below:

(A) Any sign advertising or relating to a business that 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.

(B) Any signs relating to or advertising for a business shall be brought into conformance with these sign guidelines before any expansion or change in use that is subject to review by the Executive Director.

(C) Offsite and onsite directional signs on approach roads to recreational facilities may be permitted. Name and interpretive signs may be permitted onsite, but should be kept to the minimum required to achieve the purpose(s) of the facilities.

(D) Commercial recreation businesses approved in conjunction with a recreational facility may have a name sign not exceeding 16 square feet.

(E) 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.

(h) The following signs are prohibited:

(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.

(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.

## NEW SECTION

### 350-082-0530. Special Uses in Historic Buildings

(1) Special uses in historic buildings may be allowed where authorized in specified land use designations and consistent with the following guidelines and in section (2) below.

(a) Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places shall be permitted to be open for public viewing, interpretive displays, and an associated gift shop that is no larger than 100 square feet and

incidental and subordinate to the primary use of the property, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and subsections (2)(a)(C)(i) and (ii), (2)(a)(D) through (F), and (2)(b) through (d) below. Voluntary donations or fees to support maintenance, preservation and enhancement of the cultural resource may be accepted by the landowner.

(b) Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places, and which were former restaurants or inns shall be permitted to re-establish these former uses, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and subsections (2)(a)(C)(i) and (ii), (2)(a)(D) through (F), and (2)(b) through (d) below. The capacity of restaurant use and overnight accommodations shall be limited to that existing in the former use, and the former use shall be contained within the limits of the building as of January 1, 2006. Banquets, private parties and other special events that take place entirely within an approved restaurant facility shall be considered a restaurant use allowed under 350-082-0530.

(c) Properties in all GMA land use designations except Open Space and Agriculture-Special with buildings included on the National Register of Historic Places shall be permitted to hold commercial events, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and subsections (2)(a)(C) through (F), and 0530 (2)(b) through (d) below.

(d) The following additional review uses may be allowed in all GMA land use designations except Open Space and Agriculture-Special on a property with a building either on or eligible for the National Register for Historic Places and that was 50 years old or older as of January 1, 2006, subject to compliance with the applicable guidelines to protect scenic, cultural, natural and recreation resources and 350-082-0530(2):

(A) Establishments selling food or beverages, limited to historic buildings that originally had kitchen facilities. The seating capacity of such establishments shall be limited to the building, as the building existed as of January 1, 2006, including any decks, terraces or patios also existing as of that date. Banquets, private parties and other special events that take place entirely within approved establishments selling food or beverages shall be considered a part of the approved use.

(B) Overnight accommodations. The room capacity of such accommodations shall be limited to the total number of existing rooms in the historic building as of January 1, 2006.

(C) Commercial events in the building or on the subject property, incidental and subordinate to the primary use of the property

(D) Wineries upon a showing that processing of wine is from grapes grown on the subject parcel or the local region, within a historic building, as the building existed as of January 1, 2006.

(E) Sales/tasting rooms in conjunction with an on-site winery, within a historic building, as the building existed as of January 1, 2006.

(F) Conference or retreat facilities within a historic building, as the building existed as of January 1, 2006.

(G) Artist studios and galleries within a historic building, as the building existed as of January 1, 2006.

(H) Gift shops within a historic building, as the building existed as of January 1, 2006 that are:

(i) incidental and subordinate to another approved use included in 350-082-0530 (1)(d); and

(ii) no larger than 100 square feet in area.

(I) Interpretive displays, picnic areas or other recreational day use activities on the subject property.

(J) Parking areas on the subject property to support any of the above uses.

(e) For the purposes of the guidelines in 350-082-0530, the term "historic buildings" refers to buildings either on or eligible for the National Register of Historic Places. Eligibility for the National Register shall be determined pursuant to subsection (2)(a)(A) and (B) below.

(f) Uses listed in 350-082-0530 (1)(c) and 350-082-0530 (1)(d)(C) above are not subject to the "Commercial Events" provisions in 350-082-0480. Commercial events at historic properties will be regulated by 350-082-0530. Applications for commercial events shall include all information in the "Operational Plan for Commercial Events" as specified in 350-082-0530 (2)(a)(C)(iv). The following apply to commercial events at historic properties:

(A) Commercial events include weddings, receptions, parties and other gatherings that are incidental and subordinate to the primary use on a parcel.

(B) The owner of the subject property shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject property of each event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.

(g) Uses listed in 350-082-0530 (1)(a) and 350-082-0530 (1)(d)(I) above are not subject to the parking limits and associated "Facility Design Guidelines" in the Recreation Intensity Classes.

(h) Approvals for special uses in historic buildings shall be subject to review by the Executive Director every five years from the date the original approval was issued. As part of this review, the applicant shall submit documentation to the Executive Director on the progress made in implementing the "Protection and Enhancement Plan" required in subsection (2)(a)(C) below. The Executive Director shall submit a copy of the applicant's documentation to the State Historic Preservation Officer (SHPO). The SHPO shall have 30 calendar days from the date this information is mailed to submit written comments to the Executive Director. If the Executive Director's determination contradicts comments from the SHPO, they shall justify how they reached an opposing conclusion. The Executive Director shall revoke the approval if the owner has failed to implement the actions described in the "Protection and Enhancement Plan" according to the schedule for completing such actions in this plan. The Executive Director may, however, allow such a use to continue for up to one additional year from the date the Executive Director determines the applicant has failed to implement the actions if the applicant submits a written statement describing unforeseen circumstances that prevented the applicants from completing the specified actions according to the approved schedule, what progress the applicants have made towards

completing such actions, and a proposed revised schedule for completing such actions.

(2) Additional Resource Protection Guidelines for Special Uses in Historic Buildings. The following guidelines apply to proposed uses listed under "Special Uses for Historic Buildings" in addition to all other relevant guidelines for protection of scenic, cultural, natural and recreation resources:

(a) Cultural Resources

(A) All applications for uses listed in subsection (1)(d) above shall include a historic survey and evaluation of eligibility for the National Register of Historic Places, to be prepared by a qualified professional hired by the applicant. The evaluation of eligibility shall not be required for buildings previously determined to be eligible. For such properties, documentation of a prior eligibility determination shall be included in the application. The historic survey shall meet the requirements specified in 350-082-0620 (2)(d). The evaluation of eligibility shall follow the process and include all information specified in the National Register Bulletin "How to Apply the National Register Criteria for Evaluation" (National Park Service, National Register Bulletin #15).

(B) Eligibility determinations shall be made by the Executive Director, based on input from the State Historic Preservation Officer (SHPO). The Executive Director shall submit a copy of any historic survey and evaluation of eligibility to the SHPO. The SHPO shall have 30 calendar days from the date this information is mailed to submit written comments on the eligibility of the property to the Executive Director. If the Executive Director's determination contradicts comments from the SHPO, they shall justify how they reached an opposing conclusion.

(C) Applications for Special Uses for Historic Buildings shall include a "Protection and Enhancement Plan" which shall include the following:

(i) A description of how the proposed use will significantly contribute to the protection and enhancement of the historic resource, including specific actions that will be taken towards restoration, protection and enhancement, and adequate maintenance of the historic resource, and a proposed schedule for completion of such actions.

(ii) A statement addressing consistency of the proposed use with the *Secretary of the Interior's Standards for Rehabilitation of Historic Properties* and the *Secretary of the Interior's Standards for Preservation of Historic Properties*.

(iii) Detailed architectural drawings and building plans that clearly illustrate all proposed exterior alterations to the building associated with the proposed use. Any exterior additions to the building or outdoor components of the proposed use (e.g., parking areas, site for temporary structures, interpretive displays) shall be shown on the site plan.

(iv) Any proposal for commercial events at a historic property shall include an Operation Plan for Commercial Events, to be incorporated into the "Protection and Enhancement Plan." The Operational Plan shall include sufficient information to demonstrate how the commercial events will remain incidental and subordinate to the primary use of the property, and shall, at minimum, address:

(1) Number of events to be held annually.

(2) Maximum size of events, including number of guests and vehicles at proposed parking area.

(3) Provision for temporary structures, including location and type of structures anticipated.

(4) How the proposed commercial events will contribute to protection and enhancement of the historic resource.

(D) The Executive Director shall submit a copy of the "Protection and Enhancement Plan" to the State Historic Preservation Officer (SHPO). The SHPO shall have 30 calendar days from the date this information is mailed to submit written comments to the Executive Director. The SHPO's comments shall address consistency of the proposed use with the *Secretary of the Interior's Standards for Rehabilitation of Historic Properties* and the *Secretary of the Interior's Standards for Preservation of Historic Properties*, and the effect of the proposed use on the historic resource.

(E) Any alterations to the building or surrounding area associated with the proposed use have been determined by the Executive Director to be consistent with the *Secretary of the Interior's Standards for Rehabilitation of Historic Properties* and the *Secretary of the Interior's Standards for Preservation of Historic Properties*. If the Executive Director's final decision contradicts the comments submitted by the State Historic Preservation Officer, they shall justify how they reached an opposing conclusion.

(F) The proposed use has been determined by the Executive Director to have no effect or no adverse effect on the historic character of the property, including features of the property contributing to its historic significance. If the Executive Director's final decision contradicts the comments submitted by the State Historic Preservation Officer, they shall justify how they reached an opposing conclusion.

(b) Scenic Resources

(A) New parking areas associated with the proposed use shall be located on the subject property as it existed as of January 1, 2006. Such parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other impervious materials shall be prohibited.

(B) New parking areas associated with the proposed use shall be visually subordinate from Key Viewing Areas, and shall to the maximum extent practicable, use existing topography and existing vegetation to achieve visual subordination. New screening vegetation may be used if existing topography and vegetation are insufficient to help make the parking area visually subordinate from Key Viewing Areas, if such vegetation would not adversely affect the historic character of the building's setting.

(C) Temporary structures associated with a commercial event (e.g., tents, canopies, portable restrooms) shall be placed on the subject property no sooner than two days before the event and removed within two days after the event. Alternatively, temporary structures may remain in place for up to 90 days after the event if the Executive Director determines that they will be visually subordinate from Key Viewing Areas.

(c) Recreation Resources. The proposed use shall not detract from the use and enjoyment of existing recreation resources on nearby lands.

(d) Agricultural and Forest Lands

(A) The proposed use is compatible with and will not interfere with accepted forest or agricultural practices on nearby lands devoted to such uses.

(B) The proposed use will be sited to minimize the loss of land suitable for production of crops, livestock or forest products.

(C) 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 Agriculture, Small-Scale Agriculture, Agriculture-Special, Commercial Forest Land, Large Woodland, or Small Woodland.

(D) All owners of land in areas designated Large-Scale Agriculture, Small-Scale Agriculture, Agriculture-Special, Commercial Forest Land, Large Woodland, or Small Woodland that are within 500 feet of the perimeter of the subject property on which the use is proposed to be located have been notified and given at least ten days to comment prior to a decision on an application for a Special Use for a Historic Building.

## NEW SECTION

### 350-082-0540. Renewable Energy Production in the GMA

(1) Renewable energy production may be allowed where authorized in specified land use designations and consistent with the guidelines in sections (2) through (5) below.

(2) Except as specified in (3) below, production of electrical power, including, but not limited to wind and solar production, for commercial purposes is considered an industrial use and is prohibited.

(3) Solar and wind power generation that is accessory to a primary structure or allowed use in the GMA is not considered an industrial use and may be permitted provided that the capacity for power generation is limited to the expected annual electrical power need of the structure or use. The generating equipment may serve only the parcel on which it is located, or an adjacent parcel in the same ownership and used in conjunction with the subject parcel. Sale of power back to the electrical grid is permitted, provided that it is an occasional event, not ongoing over the course of the year.

(4) Equipment attached to an existing structure is an addition to the structure on which it is located.

(5) Free-standing equipment is a new accessory structure.

## Land Divisions and Lot Line Adjustments

### NEW SECTION

#### 350-082-0550. Consolidation of Lots

(1) A unit of land shall be consolidated with adjacent units of land in the same ownership if:

(a) In Oregon, the subdivision within which the unit of land is located is undeveloped pursuant to ORS Chapter 92; or

(b) In Washington, if the unit of land is smaller than the current minimum parcel size and is located within a final plat that is older than five years from the date of filing.

(2) No portion of a consolidated subdivision or plat shall be considered a separate parcel solely because an existing parcel overlays, and possibly fragments, that consolidated subdivision or plat.

(3) Section (1) shall not be applied to consolidate two or more units of land where each unit of land is developed with a dwelling that qualifies as an existing use. One or more undeveloped units of land shall be consolidated with one or more developed units of land.

(4) To carry out 350-082-0550 counties shall develop their own procedures for consolidating units of land, including amending plats, vacating plats, replatting, or other similar action.

#### NEW SECTION

##### 350-082-0560. Land Divisions

(1) New land divisions in the SMAs are not allowed, unless the creation of a new parcel will facilitate land acquisition by the federal government to achieve the policies and guidelines in the Management Plan.

(2) Creation of a parcel, regardless of size, or any division of land shall be subject to the guidelines in this land use ordinance.

(3) 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.

#### NEW SECTION

##### 350-082-0570. Lot Line Adjustments

(1) The following guidelines shall apply to lot line adjustments in the GMA.

(a) Lot line adjustments for parcels in all land use designations except Agriculture-Special, Open Space, Commercial, Public Recreation, or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment shall not result in the creation of any new parcel(s).

(B) The lot line adjustment shall not result in the potential to create a new parcel(s) or residential development in excess of the maximum density allowed by the land use designation(s) for the affected parcels.

(C) The lot line adjustment shall not allow a parcel that is equal to or larger than the minimum parcel size before the lot line adjustment to become less than the minimum parcel size after the lot line adjustment, except to allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(D) The lot line adjustment shall not allow a parcel that is smaller than the minimum parcel size to be reduced in size, except to accomplish one of the following purposes:

(i) Resolve boundary disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided: (1) the parcel to be enlarged would not become eligible for a subsequent land division, (2) the amount of land transferred would be the minimum necessary to resolve the issue, and (3) the transfer would not cause a development or land use that currently meets a required setback or buffer to become out of compliance with that required setback or buffer, or cause a development or land

use that currently does not meet a required setback or buffer to become out of compliance with that required setback or buffer to a greater extent.

(ii) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(E) The lot line adjustment shall not allow the boundary of a parcel designated Large-Scale Agriculture, Agriculture-Special, Commercial Forest Land, Large Woodland or Open Space to be extended into another land use designation for the purpose of establishing a dwelling under less stringent guidelines (*e.g.*, extending a parcel designated GMA Large-Scale Agriculture into a parcel designated Rural Center or Residential).

(F) The lot line adjustment shall not allow previously approved parcels or development to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(G) The lot line adjustment shall not result in a parcel that cannot comply with existing land use and resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

(b) Lot line adjustments for parcels designated Agriculture-Special or Open Space shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources. (Note: There is no specified minimum parcel size for parcels designated Open Space.)

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (B), (E), (F), and (G) above.

(c) Lot line adjustments for parcels designated Commercial shall comply with subsections (1)(a)(A), (B), (E), (F), and (G) above.

(d) Lot line adjustments for parcels designated Public Recreation or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate, enhance, or otherwise improve recreation uses on the parcel. (Note: There are no specified minimum parcel sizes for parcels designated Public Recreation or Commercial Recreation.)

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (B), (E), (F), and (G) above.

(2) The following guidelines shall apply to lot line adjustments in the SMAs.

(a) The proposed lot line adjustment shall not result in the creation of any new parcel(s).

(b) A lot line adjustment shall not result in a parcel greater than or equal to 40 acres with a dwelling becoming less than 40 acres.

(c) A lot line adjustment shall not result in a parcel less than 40 acres becoming 40 acres or greater.



(d) A parcel that is smaller than 40 acres shall not be reduced in size, except to accomplish one of the following purposes:

(A) Resolve boundary line disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided: (1) the parcel to be enlarged would not become 40 acres or greater and (2) the amount of land transferred would be the minimum necessary to resolve the issue.

(B) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes residential development.

(e) The lot line adjustment shall not cause previously approved parcels or development to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(f) The lot line adjustment shall not result in a parcel that cannot comply with existing land use and resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

**Buffers Zones and Variances**

**NEW SECTION**

**350-082-0580. Buffer Zones**

(1) Many standards in this land use ordinance contain requirements for buffer zones for specific development and land uses and to protect scenic, cultural, natural, and recreation resources and agricultural and forest uses and land that are not listed in 350-082-0580.

(2) Agricultural Buffer Zones in the GMA

(a) All new buildings in the GMA shall comply with the setbacks in 350-082-0580 Table 1 - Setback Guidelines when proposed to be located on a parcel adjacent to lands that are designated Large-Scale Agriculture or Small-Scale Agriculture and are currently used for agricultural use:

350-082-0580 Table 1 - Setback Guidelines			
Type of Agriculture	Type of Buffer (Size in Feet)		
	Open or Fenced	Natural or Created Vegetation Barrier	8-foot Berm or Terrain Barrier
Orchards	250	100	75
Row Crops	300	100	75
Livestock grazing; pasture; haying	100	15	20
Grains	200	75	50
Berries, vineyards	150	50	30
Other	100	50	30

(b) New buildings adjacent to lands designated Large-Scale Agriculture or Small-Scale Agriculture that are suitable, but currently not used for agriculture, shall use the open

or fenced setback associated with the dominant type of agriculture in the vicinity. If a vegetation barrier, eight-foot berm, or terrain barrier exists, the corresponding setback shall apply. If more than one type of agriculture is dominant, the setback shall be the larger width.

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

(d) The planting of a continuous vegetative screen may be used to satisfy, in part, the setback guidelines. Trees shall be at least six 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 shall be continuous.

(e) The necessary berm or planting shall be completed during the first phase of development and maintained in good condition.

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

(g) The Executive Director may grant a variance to the buffer guidelines upon a demonstration that the variance guidelines in 350-082-0590 have been satisfied.

(3) Buffers from Existing Recreation Sites. If new buildings or structures may detract from the use and enjoyment of established recreation sites, an appropriate buffer shall be established between the building or structure and the parcel.

**NEW SECTION**

**350-082-0590. Variances**

(1) In the GMA, when setbacks or buffers specified in the guidelines 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 of compliance with both of the following guidelines:

(a) A setback or buffer specified in this land use ordinance to protect one resource would cause the proposed use to fall within a setback or buffer specified in the plan to protect another resource.

(b) Variation from the specified setbacks or buffer would, on balance, best achieve the protection of the affected resources.

(2) In the GMA, a setback or buffer specified in the guidelines 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 of compliance with all the following guidelines:

(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 practically 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.

(d) The variance shall not be used to permit an addition to a building (including, but not limited to, decks and stairs), when the addition would be within the setback, except where

the building is wholly within the setback, in which case, the addition may only be permitted on the portion of the building that does not encroach any further into the required setback.

(3) Variances for Recreation Uses

(a) In the GMA, the Executive Director may grant a variance to the setback and buffer requirements contained in 350-082-0700 upon a demonstration of compliance with all the following guidelines:

(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.

(b) In the GMA and SMA, the Executive Director may grant a variance of up to ten percent to the guidelines of Recreation Intensity Class 4 for parking and campground units upon demonstration of compliance with all the following guidelines:

(A) Demand and use levels for the proposed activity or activities, particularly in the area where the site is proposed, are high and expected to remain so or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from the National Visitor Use Monitoring Program 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 offering similar opportunities, including those in nearby urban areas, have been evaluated, and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.

(D) The proposed use is consistent with goals, objectives, and policies in Chapter 4, Part I of the Management Plan.

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

### Scenic Resources Guidelines

#### NEW SECTION

#### 350-082-0600. General Management Area Scenic Resources Review Criteria

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

(1) All review uses. The guidelines in this section apply to all review uses in the National Scenic Area.

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

(b) New buildings and expansion of existing development shall be compatible with the general scale of existing nearby development. New buildings that are 1,500 square feet or less are exempt from this guideline. Findings addressing this guideline shall include, but are not limited to:

(A) Application of the landscape setting design guidelines, if applicable.

(B) A defined study area surrounding the development that includes at least ten existing buildings, not including existing buildings within urban areas or outside the National Scenic Area.

(C) Individual evaluations of scale for each separate proposed building in the application and each separate building in the study area, including:

(i) All finished above ground square footage;

(ii) Total area of covered decks and porches;

(iii) Attached garages;

(iv) Daylight basements;

(v) Breezeways, if the breezeway shares a wall with an adjacent building; and

(vi) Dimensions, based on information from the application or in Assessor's records.

(D) An overall evaluation demonstrating the compatibility of proposed development' with surrounding existing development and development approved but not yet constructed. Buildings in the vicinity of the proposed development that are significantly larger in size than the rest of the buildings in the study area should be removed from this evaluation.

(c) Landowners shall be responsible for the proper maintenance and survival of any planted vegetation required by 350-082-0600.

(2) Key Viewing Areas. The guidelines in this section shall apply to all review uses proposed on sites topographically visible from key viewing areas.

(a) Each development shall be visually subordinate to its landscape setting as visible from key viewing areas. New development shall be sited to achieve visual subordination from key viewing areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, rare plants, or sensitive wildlife sites or would conflict with guidelines to protect cultural resources. In such situations, new development siting shall comply with this guideline to the maximum extent practicable.

(b) Determination of potential visual effects and compliance with the visual subordination standard in subsection (a) above shall include consideration of the cumulative effects of proposed development. A determination of the potential visual impact of a new development shall include written findings addressing the following factors:

(A) The amount of area of the building site exposed to key viewing areas;

(B) The degree of existing vegetation providing screening;

(C) The distance from the building site to the key viewing areas from which it is visible;

(D) The number of key viewing areas from which it is visible;

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

(F) Other factors the reviewing agency determines relevant in consideration of the potential visual impact.

(c) The extent and type of conditions applied to a proposed development to achieve visual subordination to its landscape setting shall be proportionate to its potential visual impacts as visible from key viewing areas. Conditions may include, and shall be applied using the following order of priority, with (A) being the first condition to require and (F) being the last condition to require if the prior conditions do not achieve visual subordination:

(A) Screening by existing topography.

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

(C) Retention of existing vegetation on the applicant's property.

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

(E) New landscaping on the applicant's property.

(F) New berms or other recontouring on the applicant's property, where consistent with other applicable provisions.

(d) New development shall be sited using existing topography and existing vegetation as needed to achieve visual subordination from key viewing areas. The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) shall be required only when application of all other available guidelines in 350-082-0600 is not sufficient to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is required to make a proposed development visually subordinate from key viewing areas, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to make the development visually subordinate within five years or less from the commencement of construction. If after five years the vegetation has not achieved a size sufficient to screen the development, the Executive Director may require additional screening to make the development visually subordinate.

(C) Unless as specified otherwise by provisions in 350-082-0600, landscaping shall be installed as soon as practicable, and prior to project completion.

(D) Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(E) The Scenic Resources Implementation Handbook includes recommended species for each landscape setting

consistent with 350-082-0600(3) and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(e) Existing tree cover screening proposed development from key viewing areas shall be retained as specified in 350-082-0600(3).

(f) The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as visible from key viewing areas.

(g) Conditions regarding new landscaping or retention of existing vegetation for new development on lands designated GMA Commercial Forest, Large Woodland, or Small Woodland shall meet both scenic guidelines and defensible space requirements in 350-082-0270 (5)(a).

(h) Unless expressly exempted by other provisions in 350-082-0600, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors approved by the reviewing agency shall be included as a condition of approval.

(i) The exterior of buildings on lands visible from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. Continuous surfaces of glass shall be limited to ensure visual subordination. The Scenic Resources Implementation Handbook includes a list of recommended exterior materials and screening methods.

(j) 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.

(k) Additions to existing buildings smaller in total area in square feet than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of dark earth-tone colors found at the specific site or in the surrounding landscape. The specific colors approved by the reviewing agency shall be included as a condition of approval.

(l) Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordination requirements for lands visible 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) 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.

(n) New communication facilities (antennae, dishes, etc.) on lands visible from key viewing areas that require an open and unobstructed site shall be built upon existing facili-

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

(o) 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 visible only in the background; and

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

(p) 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.

(q) New buildings shall not be permitted on lands visible from key viewing areas with slopes in excess of 30 percent. Variances to this guideline may be authorized if the guideline's application would render a property unbuildable. In determining the slope, the average percent slope of the proposed building footprint shall be used.

(r) Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from key viewing areas.

(3) Landscape Settings. All review uses within the following landscape settings shall comply with the following applicable guidelines:

(a) Pastoral

(A) 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.

(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, 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. Examples of native species are identified in the Scenic Implementation Handbook as appropriate for the area.

(iv) At least one-quarter of any trees planted for screening shall be coniferous for winter screening. Variances may be granted to this guideline when development is directly adjacent to or adjoining a landscape setting where coniferous trees are not common or appropriate (*see* Scenic Implementation Handbook for guidance), and tree species ultimately selected for winter screening are natives characteristic to that setting.

(C) Compatible Recreation Use Guideline: Resource-based recreation uses of a very low-intensity or low-nature (as defined in 350-082-0700(1) and (2)), occurring infrequently in the landscape, are compatible with this setting.

(b) Coniferous Woodland

(A) Structure height shall remain below the forest canopy level.

(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 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. Examples of native species are identified in the Scenic Implementation Handbook as appropriate to the area.

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

(C) Compatible Recreation Use Guideline: Resource-based recreation uses of varying intensities may be compatible with this setting. Typically, outdoor recreation uses in Coniferous Woodlands are low intensity, and include trails, small picnic areas, and scenic viewpoints. Although infrequent, some more intensive recreation uses, such as campgrounds, occur. They tend to be scattered rather than concentrated, interspersed with large areas of undeveloped land and low-intensity uses.

(c) Oak-Pine Woodland

(A) Structure height shall remain below the tree canopy level of the dominant vegetation types of this setting.

(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) At least half of any tree species planted for screening purposes shall be species native to the setting. Examples of native species are identified in the Scenic Implementation Handbook as appropriate to the area.

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

(iii) For substantially wooded portions: 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) For treeless portions or portions with scattered tree cover:

(1) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(2) 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.

(3) 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.

(C) Compatible Recreation Use Guideline: Resource-based recreation uses of varying intensities may be compatible with this setting, although most are of a low-intensity nature (such as trails or small scenic outlooks). More intensive recreation uses may be compatible where allowed by the

"Recreation Intensity Classes" map and standards in 350-082-0700 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) 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.

(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) 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 windows. At least half of any trees planted for screening purposes shall be species native to the setting. Examples of native species are identified in the Scenic Implementation Handbook as appropriate to the area.

(C) Compatible Recreation Use Guideline: Resource-based recreation uses of a very low-intensity or low-intensity nature (350-082-0700 (1) and (2)) that occur infrequently are compatible with this setting, and include hiking, hunting, and wildlife viewing.

(e) Rural Residential

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

(B) In portions of this setting visible from key viewing areas, and not exempt from visual subordination guidelines (see 350-082-0600 (3)(k)), 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 (*see* Scenic Implementation Handbook for guidance).

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

(C) Compatible Recreation Use Guideline: Compatible recreation uses are usually 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 described 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 the applicant demonstrates 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 two sets of guidelines, the guidelines for the more rural setting (Coniferous Woodland, Oak-Pine Woodland or Pastoral) shall apply, unless the applicant demonstrates that application of such guidelines would not be practicable.

(C) Compatible Recreation Use Guideline: Very low-intensity and low-intensity resource-based recreation uses (350-082-0700 (1) and (2)), scattered infrequently in the landscape, may be compatible with this setting.

(g) Residential

(A) In portions of this setting visible from key viewing areas (except those areas described in 350-082-0600 (3)(k)), 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) The exteriors of structures shall be non-reflective unless fully screened from key viewing areas with existing vegetation and topography.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting. Examples of native species are identified in the Scenic Resources Implementation Handbook as appropriate to the area.

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

(B) Compatible Recreation Use Guideline: Compatible recreation uses are essentially limited to community park facilities.

(h) Village

(A) 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 1/2 stories or less.

(B) For new commercial, institutional (churches, schools, government buildings), or multifamily 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.

(C) 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.

(D) 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.

(E) New commercial, institutional or multifamily residential uses fronting a scenic travel corridor shall comply with the following landscape requirements:

(i) Parking or loading areas for ten or more spaces shall include a landscaped strip at least five feet wide between the new use and the scenic travel corridor roadway.

(ii) The landscape strip required in Guideline (E)(i) above, shall include shrubs, vegetative ground cover, and, at minimum, one tree. Trees shall be spaced as appropriate to the species and not to exceed 25 feet apart on the average.

(F) 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.

(G) Architectural styles that are characteristic of the area (such as 1 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.

(H) Design features that 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.

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

(J) Where feasible, existing tree cover of species native to the region (*see* species identified in the Scenic Implementation Handbook for guidance) as appropriate for the area shall be retained when designing new development or expanding existing development.

(K) Compatible Recreation Use Guideline: 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) 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 development is encouraged to maximize the percentage of planted screening vegetation native to this setting.

(iii) At least one-quarter of any trees planted for screening purposes shall be coniferous for winter screening. Variances may be granted to this guideline when development is directly adjacent or adjoining a landscape setting where coniferous trees are not common or appropriate (*see* Scenic Implementation Handbook for guidance), and tree species ultimately selected for winter screening are natives characteristic to that setting.

(B) Compatible Recreation Use Guidelines:

(i) Compatible recreation uses in this setting depend on the degree of natural resource sensitivity of a particular site. In the most critically sensitive River Bottomlands, very low-intensity uses (350-082-0700(1)) that do not impair wetlands or special habitat requirements may be compatible.

(ii) In other River Bottomland areas, nodes of moderate- or high-intensity recreation uses (350-082-0700 (3) and (4)) may be compatible, provided that: (1) their designs emphasize retention or enhancement of native riparian communities, (2) structures and parking areas are visually subordinate, and (3) 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 visible 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 buildings shall be limited in height to a maximum of 1 1/2 stories.

(E) The exteriors of structures shall be non-reflective.

(F) Signage shall be limited to natural materials such as wood or stone, with natural or earth-tone colors found in the surrounding landscape, unless public safety concerns or federal or state highway standards require otherwise.

(G) Compatible Recreation Use Guideline: Because of the fragility, steepness, and undeveloped nature of these lands, compatible recreation uses are usually limited to very low-intensity or low-intensity, resource-based activities that focus on enjoyment and appreciation of sensitive resources. Such uses (such as trails) are generally associated with minimal facility development, if any.

(k) Developed Settings and Visual Subordination Policies

(A) GMA policies to protect key viewing area viewsheds require that all new development on lands visible from key viewing areas be visually subordinate to its landscape setting, except for "specified developed settings that are not visually sensitive."

(B) Three landscape settings are considered developed settings within this context: Rural Residential, Residential, and Village. Of all GMA lands in these three settings, six particular areas that are not visually sensitive have been identified. New development in these settings shall be compatible with the setting, but not necessarily visually subordinate. New development in these settings is exempt from the color and siting guidelines in 350-082-0600(2). These areas are:

(i) Corbett Rural Center (Village)

(ii) Skamania Rural Center (Village)

(iii) West of Hood River Urban Area, east of Country Club Road (Rural Residential)

(iv) Murray's Addition subdivision, The Dalles (Residential)

(v) Two small areas south of The Dalles in Sections 9 and 10, Township 1N, Range 13E (Residential)

(vi) Portion of Underwood Heights along Cooper Avenue, south of Cook-Underwood Road (Rural Residential)

(4) Scenic Travel Corridors

(a) The immediate foreground of a scenic travel corridor shall include those lands within 1/4 mile of the edge of pavement of the scenic travel corridor roadway.

(b) All review uses within a scenic travel corridor shall comply with the following applicable guidelines:

(A) All new buildings and alterations to existing buildings shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway. This policy shall

not apply in Rural Center designations (Village landscape setting). A variance to this setback requirement may be granted pursuant to 350-082-0590(2). 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.

(B) 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 shall comply with subsection (A) above to the maximum extent practicable. This guideline shall not apply in Rural Center designations (Village landscape setting).

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

(i) An evaluation of potential visual impacts of the proposed project as visible from any key viewing area.

(ii) 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 Management Plan guidelines to protect the resources.

(D) 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* (April 1990).

(E) New exploration, development (extraction or excavation), and production of mineral resources proposed within 1/4 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 timeframes specified in 350-082-0500.

(F) Expansion of existing quarries may be allowed pursuant to 350-082-0500. Compliance with visual subordination requirements shall be achieved within timeframes specified in 350-082-0500.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

### 350-082-0610. Special Management Area Scenic Resources Review Criteria

(1) SMA Design Guidelines Based on Landscape Settings

(a) The following guidelines apply to all lands within SMA landscape settings regardless of visibility from KVAs (includes areas visible from KVAs as well as areas not visible from KVAs):

(A) Pastoral: Pastoral areas shall retain the overall appearance of an agricultural landscape. The use of plant species native to the landscape setting shall be encouraged. Examples of native species are identified in the Scenic Implementation Handbook as appropriate to the area. The use of agricultural plant species in rows, as commonly found in the landscape setting is also encouraged.

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

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

(ii) Use of plant species native to the landscape setting shall be encouraged. Examples of native species are identified in the Scenic Implementation Handbook as appropriate to the area. Where non-native plants are used, they shall have native-appearing characteristics.

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

(i) At Rowena Dell, new buildings shall have a rustic appearance using natural materials. At Latourell Falls, new buildings shall have an appearance consistent with the predominant historical architectural style.

(ii) Use of plant species native to the landscape setting shall be encouraged. Examples of native species are identified in the Scenic Implementation Handbook as appropriate to the area. Where non-native plants are used, they shall have native-appearing characteristics.

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

(i) Buildings shall have an overall horizontal appearance in areas with little tree cover.

(ii) Use of plant species native to the landscape setting shall be encouraged. Examples of native species are identified in the Scenic Implementation Handbook as appropriate to the area. Where non-native plants are used, they shall have native-appearing characteristics.

(E) Gorge Walls, Canyons, and Wildlands: New development and land uses shall retain the overall visual character of the natural-appearing landscape.

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

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

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

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

(2) SMA Guidelines for Development and Uses Visible from KVAs

(a) The guidelines in this section shall apply to proposed development on sites topographically visible from key viewing areas.

(b) New development and land uses shall be evaluated to ensure that the required scenic standard is met and that scenic

resources are not adversely affected, including cumulative effects, based on the degree of visibility from key viewing areas.

(c) The required SMA scenic standards for all development and uses are summarized in 350-082-0610 Table 1 - Required Scenic Standards.

350-082-0610 Table 1 - Required SMA Scenic Standards		
LANDSCAPE SETTING	LAND USE DESIGNATION	SCENIC STANDARD
Coniferous Woodland, Oak-Pine Woodland	Forest (National Forest Lands), Open Space	Not Visually Evident
River Bottomlands	Open Space	Not Visually Evident
Gorge Walls, Canyons, Wildlands	Forest, Agriculture, Public Recreation, Open Space	Not Visually Evident
Coniferous Woodland, Oak-Pine Woodland	Forest, Agriculture, Residential, Public Recreation	Visually Subordinate
Residential	Residential	Visually Subordinate
Pastoral	Forest, Agriculture, Public Recreation, Open Space	Visually Subordinate
River Bottomlands	Forest, Agriculture, Public Recreation	Visually Subordinate

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

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

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

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

(i) The amount of area of the building site exposed to key viewing areas,

(ii) The degree of existing vegetation providing screening,

(iii) The distance from the building site to the key viewing areas from which it is visible,

(iv) The number of key viewing areas from which it is visible, and

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

(B) Conditions may be applied to various elements of proposed developments to ensure they meet the scenic standard, including but not limited to:

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

(ii) Retention of existing vegetation,

(iii) Design (form, line, color, texture, reflectivity, size, shape, height, architectural and design details and other elements), and

(iv) New landscaping.

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

(h) Proposed development shall not protrude above the line of a bluff, cliff, or skyline as visible from key viewing areas.

(i) 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.

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

(A) New landscaping (including new earth berms) to achieve the scenic standard from key viewing areas shall be required only when application of all other available guidelines in 350-082-0610 is not sufficient to make the development meet the scenic standard from key viewing areas. Development shall be sited to avoid the need for new landscaping wherever possible.

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

(C) Landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper



maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The Scenic Resources Implementation Handbook includes recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in 350-082-0610(3), and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(k) Unless expressly exempted by other provisions in 350-082-0610, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook shall include a recommended palette of colors as dark, or darker than the colors in the shadows of the natural features surrounding each landscape setting.

(l) The exterior of structures on lands seen from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. Continuous surfaces of glass shall be limited to ensure meeting the scenic standard. The Scenic Resources Implementation Handbook includes a list of recommended exterior materials and screening methods.

(m) Any exterior lighting shall be sited, limited in intensity, and 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.

(n) Seasonal lighting displays may be permitted on a temporary basis, not to exceed three months.

(o) New buildings shall be compatible with the general scale of existing nearby development. Expansion of existing development shall comply with this guideline to the maximum extent practicable. New buildings that are 1,500 square feet or less are exempt from this guideline. Findings addressing this guideline shall include, but are not limited to:

(A) Application of the landscape setting design guidelines, if applicable;

(B) A defined study area surrounding the development that includes at least ten existing buildings, not including existing buildings within urban areas or outside the National Scenic Area;

(C) Individual evaluations of scale for each separate proposed building in the application and each separate building in the study area, including:

(i) All finished above ground square footage;

(ii) Total area of covered decks and porches;

(iii) Attached garages;

(iv) Daylight basements;

(v) Breezeways, if the breezeway shares a wall with an adjacent building; and

(vi) Dimensions, based on information from the application or in Assessor's records;

(D) An overall evaluation demonstrating the compatibility of proposed development' with surrounding existing development and development approved but not yet constructed. Buildings in the vicinity of the proposed development that are significantly larger in size than the rest of the

buildings in the study area should be removed from this evaluation.

(3) SMA Guidelines for KVA Foregrounds and Scenic Routes

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

(b) Scenic highway corridor strategies shall be implemented for Interstate 84 (I-84), Washington State Route 14 (SR 14) and the Historic Columbia River Highway (HCRH). For I-84, SR 14 and the HCRH, this involves ongoing implementation (and possible updating) of the associated existing documents.

(c) The following guidelines shall apply only to development within the immediate foregrounds of key viewing areas. Immediate foregrounds are defined as within the developed prism of a road or trail KVA or within the boundary of the developed area of KVAs such as Crown Point and Multnomah Falls. They shall apply in addition to 350-082-0610(2).

(A) The proposed development shall be designed and sited to meet the applicable scenic standard from the foreground of the subject KVA. If the development cannot meet the standard, findings must be made documenting why the project cannot meet the requirements in 350-082-0610(2) and why it cannot be redesigned or wholly or partly relocated to meet the scenic standard.

(B) Findings must evaluate the following:

(i) The limiting factors to meeting the required scenic standard and applicable guidelines from 350-082-0610(2);

(ii) Reduction in project size;

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

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

(C) Form, line, color, texture, and design of a proposed development shall be evaluated to ensure that the development blends with its setting as visible from the foreground of key viewing areas:

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

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

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

(iv) Design - Design solutions shall be compatible with the natural scenic quality of the Gorge. Building materials shall be natural or natural appearing. Building materials such as concrete, steel, aluminum, or plastic shall use form, line color and texture to harmonize with the natural environment. Design shall balance all design elements into a harmonious

whole, using repetition of elements and blending of elements as necessary.

(d) Right-of-way vegetation shall be managed to minimize visual impacts of clearing and other vegetation removal as visible from key viewing areas. Roadside vegetation management (vista clearing, planting, etc.) should enhance views from the highway.

(e) Screening from key viewing areas shall be encouraged for existing and required for new road maintenance, warehouse, and stockpile areas.

(4) SMA Guidelines for Areas Not Seen from KVAs

(a) Unless expressly exempted by other provisions in 350-082-0610, colors of structures on sites not visible from key viewing areas shall be dark earth-tones found at the specific site. The specific colors or list of acceptable colors shall be approved as a condition of approval, (*see* palette of colors in the Scenic Resources Implementation Handbook for guidance).

(b) New buildings shall be compatible with the general scale of existing nearby development. Expansion of existing development shall comply with this guideline to the maximum extent practicable. New buildings that are 1,500 square feet or less are exempt from this guideline. Findings addressing this guideline shall include but are not limited to:

(A) Application of the landscape setting design guidelines, if applicable.

(B) A defined study area surrounding the development that includes at least ten existing buildings, not including existing buildings within urban areas or outside the National Scenic Area.

(C) Individual evaluations of scale for each separate proposed building in the application and each separate building in the study area, including:

- (i) All finished above ground square footage;
- (ii) Total area of covered decks and porches;
- (iii) Attached garages;
- (iv) Daylight basements;
- (v) Breezeways, if the breezeway shares a wall with an adjacent building; and
- (vi) Dimensions, based on information from the application or in Assessor's records.

(D) An overall evaluation demonstrating compatibility of the proposed development' with surrounding existing development and development approved but not yet constructed. Buildings in the vicinity of the proposed development that are significantly larger in size than the rest of the buildings in the study area should be removed from this evaluation.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## Cultural Resources Guidelines

### NEW SECTION

#### 350-082-0620. 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 C.F.R. 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 tribal governments and any person who submits written comments on a proposed use (interested person). Tribal governments shall be consulted if the affected cultural resources are precontact 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 tribal governments do not have to be consulted.

(c) Comments received from a tribal government at any time during the Executive Director's review of a proposed development or use shall be considered to ensure that the proposed development or use does not affect or modify the treaty or other rights of that tribe.

(d) As used in 350-082-0620, "large-scale uses" are: residential development involving two or more new dwellings; all recreation facilities; commercial 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. As used in this Chapter, small-scale uses are all uses and developments that are not large-scale uses.

(e) Determination of potential effects to significant cultural resources shall include consideration of cumulative effects of proposed development that is subject to any of the following: 1) a reconnaissance or historic survey; 2) a determination of significance; 3) an assessment of effect; or 4) a mitigation plan.

(f) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the GMA. 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.

(g) Project applicants are responsible for paying for evaluations of significance, assessments of effect, and mitigation plans for cultural resources that are discovered in a reconnaissance or historic survey or during construction of small-scale and large-scale uses in the GMA.

(2) Cultural Survey Requirements.

(a) When a reconnaissance or historic survey is required.

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

(B) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource and all proposed uses within 100 feet of a high probability area, including those uses listed as exceptions in subsection (C) below. The Forest Service maintains a map of known cultural resources and a probability map. Both maps are confidential as required by the National Scenic Area Act, other federal law, and Oregon and Washington law.

(C) 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; 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 manufactured 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. 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 large-scale uses.

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

(D) 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.

(b) Requirements for Reconnaissance Surveys and Reports for Small-Scale Uses.

(A) Reconnaissance surveys for small-scale uses shall be designed by a qualified professional.

(B) 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.

(C) 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.

(c) Requirements for Reconnaissance Surveys and Reports for Large-Scale Uses

(A) 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.

(B) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following 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.

(C) 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 precontact 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 that provides accurate and readable details. In no event shall the scale be less than one inch equals 100 feet (1:1,200).

(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 that provides accurate and readable details. In no event shall the scale be less than one inch equals 100 feet (1:1,200).

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

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

(d) Requirements for Historic Surveys and Reports

(A) 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.

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

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

(e) Requirements for Consultation and Ethnographic Research for Reconnaissance and Historic Surveys

(A) When written comments are submitted to the Executive Director within the comment period provided in 350-082-0120, the project applicant shall offer to meet with the interested persons within ten 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. This consultation meeting may include oral history identification through tribal sources. Recommendations to avoid potential conflicts should be discussed.

(B) All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report, except that sensitive tribal information may be redacted by an appropriate tribal representative. 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.

(C) 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. Record-

ings, maps, photographs, and minutes shall be used when appropriate.

(f) Notice of Survey Results

(A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the 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 tribal governments shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(g) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would be consistent with 350-082-0620. If the final decision contradicts the comments submitted by the State Historic Preservation Officer or a tribal government, the Executive Director shall justify how an opposing conclusion was reached.

(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 30 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, no substantiated concerns were voiced by interested persons within 30 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2 (f)(B) above.

(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.

(iv) 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.

(v) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures.

(1) To demonstrate that the proposed use would not have an effect on historic buildings or structures, the historic survey must satisfy one of the following guidelines:

(a) 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 C.F.R. 60.4), or

(b) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* (U.S. Department of the Interior 2017 or most recent revision).

(2) 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.

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

### (3) Evaluation of Significance

(a) 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 C.F.R. 60.4). Generally, cultural resources must meet one or more of the following criteria. If a cultural resource meets one or more of the criteria, then it shall be assessed for integrity of location, design, setting, materials, workmanship, feeling, and association. If a cultural resource has the requisite integrity, then it would be eligible for the National Register of Historic Places.

(i) Have an association with events that have made a significant contribution to the broad patterns of the history of this region.

(ii) Have an association with the lives of persons significant in the past.

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

(iv) Yield, or may be likely to yield, important precontact or historical information.

(B) The cultural resources are determined to be culturally significant by a tribal government, based on criteria developed by that tribal government.

(b) 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, 1997 or most recent version) and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, 1998 or most recent version). 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 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) or Washington Department of Archaeology and Historic Preservation (Washington DAHP). 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 tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from tribal governments and interested persons shall be appended to the evaluation of significance.

(c) 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 Executive Director as to whether affected cultural resources are significant.

### (d) Notice of Evaluation Results

(A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Executive Director shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the tribal governments for concurrence.

(B) The State Historic Preservation Officer, 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 Executive Director. The Executive Director shall record and address all written comments in the development review order.

### (e) Cultural Resources are Culturally Significant

(A) If a 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 tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.

(B) The tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Executive Director, 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 Executive Director within 30 calendar days from the date the evaluation of significance is mailed.

(f) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director 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, a tribal government, or the CAC, the Executive Director 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 Executive Director determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

(4) Assessment of Effect

(a) 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 C.F.R. 800.5) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 C.F.R. 800.11.

(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 C.F.R. 800.5).

(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 C.F.R. 800.5). Adverse effects on cultural resources include, but are not limited to:

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

(2) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

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

(4) Neglect of a significant cultural resource resulting in its deterioration or destruction, except as described in 36 C.F.R. 800.5.

(B) The assessment of effect shall be prepared in consultation with tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by 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 the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* (U.S. Department of the Interior 2017 or most recent revision).

(iii) The proposed use is limited to the transfer, lease, or sale of non-federal lands that contain cultural resources, and adequate restrictions or conditions are included to ensure preservation of the significant features of the resources.

(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 Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the tribal governments.

(B) The State Historic Preservation Officer, 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 Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director 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 or a tribal government, the Executive Director 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 Executive Director determines that the proposed use would have an adverse effect on significant cultural resources.

(5) Mitigation Plans

(a) 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 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.

(C) Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures may include, but are not limited to, requiring a monitor during construction, 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.

(D) 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 C.F.R. 800.11, 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 tribal governments, interested persons, and Executive Director.

(v) Copies of any written recommendations submitted to the Executive Director 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 Executive Director shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the tribal governments.

(B) The State Historic Preservation Officer, tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director 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 or a tribal government, the Executive Director 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

(a) The following procedures shall be used when cultural resources are discovered during construction activities and shall be included as conditions of approval for all review uses.

(b) All survey and evaluation reports and mitigation plans shall be submitted to the Executive Director and the State Historic Preservation Officer. Tribal governments also shall receive a copy of all reports and plans if the cultural resources are precontact 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 Executive Director within 24 hours of the discovery. If the cultural resources are precontact or otherwise associated with Native Americans, the project applicant shall also notify the 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 ORS 358.905 to 358.955, and 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 350-082-0620 (2)(c) and 350-082-0620(3). Based on the survey and evaluation report and any written comments, the Executive Director 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 350-082-0620(5). Construction activities may recommence when the conditions in the mitigation plan have been executed.

(7) Discovery of Human Remains

(a) The following procedures shall be used when human remains are discovered during a cultural resource survey or during construction, and shall be included as conditions of approval for all review uses.

(b) 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 Executive Director, and the tribal governments shall be contacted immediately. Do not contact any other entity other than those listed here.

(C) Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and deter-

mine if they are precontact, historic, or modern. Representatives from the 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, precontact or 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 precontact or historic.

(i) 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 350-082-0620(5).

(ii) 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 350-082-0620 (5)(c) are met and the mitigation plan is executed.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

### 350-082-0630. 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 National Scenic Area Act. Federal agency cultural resource information is also exempt by statute from the Freedom of Information Act under 16 USC § 470aa and 36 C.F.R. 296.18.

(b) 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 C.F.R. 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 350-082-0630(4) for federal forest practices and National Forest System lands.

(d) New developments or land uses shall not adversely affect significant cultural resources.

(e) Determination of potential effects to significant cultural resources shall include consideration of cumulative effects of proposed developments that are subject to any of the following: 1) a reconnaissance or historic survey; 2) a determination of significance; 3) an assessment of effect; or 4) a mitigation plan.

(2) The procedures and guidelines in 350-082-0630 shall be used to review all proposed developments and land uses other than those on all federal lands, federally assisted projects and federal forest practices.

(3) The procedures and guidelines in 36 C.F.R. 800 and 350-082-0630(4) shall be used by the Executive Director 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 C.F.R. 800.4 for assessing potential effects to cultural resources and 36 C.F.R. 800.5 for assessing adverse effects to cultural resources 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 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 subsection (4)(a) above with the field inventory of subsection (4)(b) above.

(ii) A description of the field inventory methodology used, including the type and extent of field inventory, supple-



mented 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 Department 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.

(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 the criteria of the National Register of Historic Places (36 C.F.R. 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 C.F.R. 60.4). The Forest Service 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 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 C.F.R. 800.5 ("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 shall review each determination for adequacy.

(B) If the proposed development or change in use will have "No Adverse Effect," as defined by 36 C.F.R. 800.4, to a significant cultural resource, documentation for that finding shall be completed, following the "Documentation Standards" of 36 C.F.R. 800.11. If the proposed development or change in use will have an effect then the criteria of adverse effect must be applied (36 C.F.R. 800.5).

(C) If the proposed development or change in use will have an "Adverse Effect" as defined by 36 C.F.R. 800.5 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 (36 C.F.R. 800.6 "Resolution of Adverse Effects"). This documentation shall follow the process outlined under 36 C.F.R. 800.11 ("Failure to Resolve Adverse Effects").

(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 C.F.R. 800.11 ("Documentation Standards").

(e) Mitigation

(A) If there will be an effect on cultural resources, measures shall be provided for mitigation of effects (36 C.F.R. 800.6 "Resolution of Adverse Effects"). These measures shall address factors such as avoidance of the property through project design or modification and subsequent protection, burial under fill, data recovery excavations, or other measures which are proposed to mitigate effects.

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

(C) The Forest Service 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 Executive Director 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 if possible recover the resource.

(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 Executive Director, the Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.

(C) The Forest Service or the Executive Director 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 350-082-0630 (4)(c) and report the results to the Forest Service or the Executive Director.

(c) The cultural resource review process shall be complete and work may continue if the Forest Service or the Executive Director determines that the cultural resource is not significant.

(d) The cultural resource professional shall recommend measures to protect and if possible recover the resource pursuant to 350-082-0630 (4)(e) if the Forest Service or the

Executive Director determines that the cultural resource is significant.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## Natural Resources Guidelines

### NEW SECTION

#### **350-082-0640. General Management Area Water Resources (Wetlands, Streams, Ponds, Lakes, and Riparian Areas) 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 National Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior) as well as local wetlands inventories produced by state or local governments. In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands that are discovered during an inspection of a potential project site shall be delineated and protected.

(B) The project applicant shall be responsible for using the procedures specified in the *Corps of Engineers Wetlands Delineation Manual* (Wetlands Research Program Technical Report Y-87-1, on-line edition) and applicable Regional Supplements as may be revised from time to time. All wetlands delineations shall be conducted by a professional who has been trained to use the federal delineation procedures.

(b) The Executive Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. If the project applicant contests the Executive Director's verification or an adjustment, the Executive Director shall obtain professional services to render a final delineation, at the project applicant's expense.

(c) In addition to the information required in all site plans, site plans for proposed uses in water resources, or their buffer zones, shall include:

(A) a site plan map prepared at a scale of one inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the water resource, ordinary high water mark, or normal pool elevation, and the buffer zone; and

(C) a description of actions that would affect the water resource.

(2) Commission Rule 350-082-0640 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 defined by the Ordinary High Water Mark or Normal Pool Elevation and generally 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 Gorge Commission and Forest Service offices. Backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

(3) Review Uses in Wetlands.

(a) The following uses may be allowed in wetlands, subject to compliance with 350-082-0600 through 350-082-0720 and subsection (b) below.

(A) The modification, expansion, replacement, or reconstruction of serviceable transportation or other public infrastructure (this does not include private roads and driveways), if such actions would not:

(i) Increase the size of an existing structure by more than 100 percent;

(ii) Result in a loss of water resource functions; and

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

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

(C) The construction, modification, expansion, replacement, or reconstruction 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 government resource agencies.

(b) The uses listed in subsection (a) above may be allowed only if they meet all of the following criteria:

(A) Practicable alternatives for locating the structure outside of the wetland do not exist.

(B) All reasonable measures have been applied to ensure that the use will result in the minimum loss of wetlands and in the minimum degradation of ecological functions, water quality, existing contour, vegetation, fish and wildlife resources, and hydrology.

(C) The use will be constructed using best management practices. Best management practices can include measures to prevent soil erosion, the introduction and spread of invasive plants and aquatic species, and other impacts to plants, wildlife, soil, and water. Boardwalks and observation decks shall be constructed using non-toxic materials to protect water quality.

(D) Areas disturbed during construction of the use will be rehabilitated to the maximum extent practicable.

(E) The use complies with 350-082-0640 (5)(b).

(F) Proposed uses in wetlands shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

(G) The use complies with all applicable federal, state, and local laws.

(4) Review Uses in Water Resources (Except Wetlands), and Water Resource Buffer Zones (Including Wetlands Buffer Zones)

(a) The following uses may be allowed in water resources (except wetlands), and may be allowed in all water resource buffer zones (including wetlands buffer zones), sub-

ject to compliance with 350-082-0600 through 350-082-0720 and subsection (b) below.

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

(i) Increase the size of an existing structure by more than 100 percent;

(ii) Result in a loss of water resources acreage or functions;

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

(iv) Intrude further into water resources or water resources buffer zone. New structures shall be considered intruding further into a water resource or associated buffer zone if any portion of the structure is located closer to the water resource or buffer zone than the existing structure.

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

(C) The construction, modification, expansion, replacement, or reconstruction 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 government resource agencies.

(b) The uses listed in subsection (a) above may be allowed only if they meet all of the following criteria:

(A) Practicable alternatives for locating the structure outside of the water resource or buffer zone do not exist.

(B) All reasonable measures have been applied to ensure that the structure will result in the minimum alteration or degradation of ecological functions, water quality, existing contour, vegetation, fish and wildlife resources, and hydrology.

(C) The structure will be constructed using best management practices. Best management practices can include measures to prevent soil erosion, the introduction and spread of invasive plants and aquatic species, and other impacts to plants, wildlife, soil, and water. Boardwalks and observation decks shall be constructed using non-toxic materials to protect water quality.

(D) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable.

(E) Proposed uses in water resources and their buffer zones shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

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

(5) Uses Not Allowed Outright or Listed in Guidelines (3)(a) and (4)(a)

(a) Uses that are not allowed outright or listed in subsections (3)(a) and (4)(a) above, may be allowed in water resources (except wetlands) and in all water resources buffer zones (including wetland buffer zones), subject to compliance with 350-082-0600 through 350-082-0720 and subsection (b) below.

tion (b) below. These provisions do not apply to uses listed in subsections (3)(a) and (4)(a) that cannot meet the criteria in subsections (3)(b) and (4)(b).

(b) The uses identified in subsection (a) above may be allowed only if they meet all of the following criteria:

(A) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by 350-082-0680.

(B) The proposed use is in the public interest. All of the following factors shall be considered when determining if a proposed use is in the public interest:

(i) The extent of public need for the proposed use. For uses in wetlands, public need is limited to uses necessary to alleviate a current public safety issue supported by evidence establishing the safety issue.

(ii) 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.

(iii) The functions and size of the water resource that may be affected.

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

(v) The ecological value of the water resource 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 of the resource. As a starting point, the following measures shall be considered when new development and uses are proposed in water resources or buffer zones:

(i) Ecological functions, contour, and hydrology shall be maintained. Nonstructural controls and natural processes shall be used to the greatest extent possible.

(ii) 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 or Washington state's published guidelines for in-water work, or as advised by the applicable Department of Fish and Wildlife.

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

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

(v) Stream channels shall 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. State agencies with permitting responsibility for culverts shall be consulted.

(vi) Temporary and permanent control measures shall be applied to minimize erosion and sedimentation when water resource areas are disturbed, such as slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(vii) Measures shall be taken to prevent the introduction or spread of invasive plants or aquatic species.

(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 that have a practicable alternative will not be located in water resources or buffer zones.

(F) The proposed use complies with all applicable federal, state, and local laws.

(G) Areas that are disturbed during construction of the proposed use will be rehabilitated. When a project area cannot be completely restored or rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

(H) Proposed uses in water resources and their buffer zones shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

(I) Unavoidable impacts to water resources will be offset through the deliberate restoration, creation, or enhancement of impacted resources. Restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable water resource impacts.

(J) Restoration, creation, and enhancement shall improve water quality, natural drainage, and fish and wildlife habitat of the affected wetland, stream, pond, lake, 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. The following water resource guidelines shall apply:

(i) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred approach when wetlands are impacted.

(ii) Water resources restoration and enhancement shall be conducted in accordance with a wetlands compensation plan or water resources mitigation plan. Voluntary enhancement project applications shall be encouraged. See 350-082-0460 and Part III, Chapter 4: Enhancement Strategies in the Management Plan.

(iii) Water resources shall be replanted with native plant species that replicate the original vegetation community.

(iv) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.

(v) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient. Riparian areas shall be rehabilitated to their original configuration, including slope and contour.

(vi) The bed of the affected aquatic area shall be rehabilitated with materials appropriate for the channel and hydrologic features.

(vii) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structural habitat features including large woody debris and boulders.

(viii) Rehabilitation and enhancement efforts shall be completed no later than 90 days after the water resource or buffer zone has been altered, or as soon thereafter as is practicable.

(ix) 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.

(1) Restoration: 2:1

(2) Creation: 3:1

(3) Enhancement: 4:1

(x) Replacement wetlands shall replicate the functions of the wetlands that will be altered such that improvement of wetlands functions occurs.

(xi) Replacement wetlands should replicate the type of wetland that will be altered. If this standard is not feasible or practical because of technical constraints, a wetland type of equal or greater benefit may be substituted, provided that improvement of wetlands functions occurs.

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

(xiii) Restoration, creation, and enhancement efforts should be completed before a water resource is altered. If it is not practicable to complete all restoration, creation, and enhancement efforts before the water resource is altered, these efforts shall be completed before the new use is occupied or used.

(xiv) Five years after a wetland is restored, created, or enhanced, or three years after a stream, pond, lake, or riparian area is restored, at least 75 percent of the replacement vegetation shall survive. The project applicant shall monitor the hydrology and vegetation of the replacement water resource, provide reports, and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan or water resources mitigation plan and this guideline.

#### (6) Water Resources Buffer Zones

(a) All water resources shall, in part, be protected by establishing undisturbed buffer zones as specified below. Except as otherwise allowed, water resources 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.

(b) Buffer zones shall be measured outward from the bank full flow boundary for streams, the high water mark for ponds, lakes, the ordinary high water mark for the Columbia River below Bonneville Dam, the normal pool elevation for the main stem Columbia River above Bonneville Dam, and the wetland delineation boundary (see 350-082-0640(1) for wetland delineation boundary requirements) for wetlands. Measurement shall be on a horizontal scale that is perpendicular to the water resource boundary.

(c) The project applicant shall be responsible for determining the exact location of the bank full flow boundary, high water mark, ordinary high water mark, normal pool elevation, or wetland delineation boundary. The Executive Director may verify the accuracy of and render adjustments to the applicant's determination. If the project applicant contests the Executive Director's verification or an adjustment, the Executive Director shall obtain professional services to render a final delineation, at the project applicant's expense.

(d) The width of wetlands, lakes, and ponds buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

(A) 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.

(i) 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.

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

(iii) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.

(B) The following buffer zone widths wetlands, lakes and ponds shall be required:

(i) Forest communities: 75 feet

(ii) Shrub communities: 100 feet

(iii) Herbaceous communities: 150 feet

(e) The width of buffer zones for the following streams, identified by the Environmental Protection Agency in 2019 as priority cold water refuge fish habitat streams: Sandy River, Wind River, Little White Salmon, White Salmon, Hood River, Klickitat River, and Deschutes River, shall be 200 feet.

(f) The width of buffer zones for streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams shall be 100 feet.

(g) The width of buffer zones for intermittent streams, provided they are not used by anadromous or resident fish, shall be 50 feet.

(7) Wetlands Compensation Plans. Wetlands compensation plans shall be prepared when a project applicant is required to restore, create, or enhance wetlands. A written plan addressing the guidelines in this section is also required for voluntary enhancement projects. All wetlands compensation plans must be approved by the Executive Director after consultation with federal and state agencies with jurisdiction over wetlands. They shall satisfy the following guidelines and any others required by federal and state agencies:

(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 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 one 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 five-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.

(8) Water Resources Mitigation Plans. Mitigation plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake, or buffer zone. A written plan addressing the guidelines in this section is also required for voluntary enhancement projects. Plans shall satisfy the following guidelines and any others required by federal and state agencies:

(a) Mitigation plans are the responsibility of the project applicant; they shall be prepared by qualified professionals.

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

(c) Plans shall include plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least two feet, slope percentages, and final grade elevations; and other technical information 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 minimum 3-year monitoring, maintenance, and replacement program shall be included in all mitigation plans. At a minimum, a project applicant shall prepare an

annual report that documents milestones, successes, problems, and contingency actions. Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation shall survive. The project applicant shall monitor the replacement vegetation and take corrective measures to meet this guideline. 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 mitigation plan.

## NEW SECTION

### 350-082-0650. General Management Area Sensitive Wildlife Review Criteria

#### (1) Review Uses and Site Plans

(a) Except uses allowed outright, proposed uses may be allowed within 1,000 feet of a Priority Habitat or sensitive wildlife site, subject to compliance with 350-082-0600 through 350-082-0720 and section (3) below. Priority Habitats are listed in 350-082-0690 Table 1 - Priority Habitats.

(b) The approximate locations of sensitive wildlife sites are maintained by the Gorge Commission, Forest Service, and state wildlife agencies. State wildlife biologists will help determine if a new use would adversely affect a Priority Habitat or sensitive wildlife site. Endemic plant species shown in 350-082-0690 Table 2 - Columbia Gorge and Vicinity Endemic Plant Species are considered rare plants even if not contained in the state heritage data.

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

(d) In addition to the information required in all site plans, uses within 1,000 feet of a Priority Habitat or sensitive wildlife site shall include a map prepared at a scale of one inch equals 100 feet (1:1,200), or a scale providing greater detail.

#### (2) Field Survey

(a) A field survey to identify Priority Habitat or sensitive wildlife sites shall be required for:

(A) Land divisions that create four or more parcels;

(B) Recreation facilities that contain parking areas for more than ten 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 and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

(b) Field surveys shall cover all areas affected by the proposed use or recreation development. They shall be conducted by a professional wildlife biologist hired by the project applicant. All Priority Habitat and sensitive wildlife sites

discovered in a project area shall be described and shown on the site plan map.

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

(a) The Executive Director shall submit site plans to the Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife. State wildlife biologists will review the site plan and their field survey records and:

(A) Identify or verify the precise location of the Priority Habitat or sensitive wildlife site;

(B) Ascertain whether the sensitive wildlife site is active or abandoned; and

(C) Determine if the proposed use may compromise the integrity of the wildlife habitat 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 wildlife data and assess the potential effects of a proposed use.

(b) Oregon white oak shall not be removed if practicable alternatives exist. If no practicable alternative exists, a wildlife survey and mitigation plan shall be required. This guideline shall not apply to forest practices that are otherwise allowed and that do not violate conditions of approval for other approved uses.

(c) 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. For example, the Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron and the Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, Oregon white oak and the Larch Mountain salamander;

(C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation;

(D) Historic, current, and proposed uses in the vicinity of the Priority Habitat or sensitive wildlife site; and

(E) Existing condition of the Priority Habitat or sensitive wildlife site and the surrounding habitat.

(d) The wildlife protection process may conclude if the Executive Director, in consultation with the state wildlife agency, determines:

(A) The sensitive wildlife site is not active; or

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

(e) If the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the Priority Habitat or sensitive wildlife site that could be eliminated through measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Executive Director will

incorporate them into the Executive Director's decision and the wildlife protection process may conclude.

(f) The project applicant shall prepare a wildlife mitigation plan if the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a Priority Habitat or sensitive wildlife site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.

(g) The Executive Director shall submit a copy of all field surveys and wildlife mitigation plans to Oregon Department of Fish and Wildlife or Washington Department of Fish and Wildlife. The state wildlife agency will have 30 days from the date that a field survey or management plan is mailed to submit written comments to the Executive Director.

(h) The Executive Director shall record and address any written comments submitted by the state wildlife agency in the Executive Director's decision.

(i) Based on the comments from the state wildlife agency, the Executive Director 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 Executive Director shall justify how the opposing conclusion was reached.

(j) The Executive Director shall require the project applicant to revise the wildlife mitigation plan as necessary to ensure that the proposed use would not adversely affect a Priority Habitat or sensitive wildlife site.

(k) If the Executive Director discovers a new protected wildlife location during the review process, the Executive Director shall submit this information to the appropriate state agency to be updated in its species databases.

#### (4) Wildlife Mitigation Plans

(a) Wildlife mitigation plans shall be prepared when a proposed use is likely to adversely affect a Priority Habitat or sensitive wildlife 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 Priority Habitats and sensitive wildlife sites, maximizes their development options, mitigates temporary impacts to the sensitive wildlife site or buffer zone, and offsets unavoidable negative impacts to Priority Habitats and sensitive wildlife sites.

(b) Wildlife mitigation plans shall meet the following guidelines:

(A) Wildlife mitigation 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 habitat value of the wildlife site.

(C) Where applicable, the core habitat of the rare wildlife species shall be delineated. It shall encompass the sensitive wildlife site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife 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 the rare 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:

(i) 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.

(ii) 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 or enhancement will be completed before a particular species returns.

(F) Rehabilitation or enhancement shall be required when new uses are authorized within wildlife buffer zones. When a buffer zone has been altered 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 mitigation plan and shall include a map and text.

(G) The applicant shall prepare and implement a 3-year monitoring plan when the affected Priority Habitat or sensitive wildlife 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 Priority Habitat or sensitive wildlife site and the success of rehabilitation or enhancement actions.

(H) At the end of three 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 wildlife mitigation plan guidelines.

#### (5) New fences in deer and elk winter range

(a) New fences in deer and elk winter range may 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 the Forest Service document, *Specifications for Structural Range Improvements* (Sanderson, et al. 1990), as summarized below and as may be revised from time to time, unless the applicant demonstrates the need for an alternative design. To allow deer and other wildlife safe passage:

(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 ten 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.

#### NEW SECTION

#### 350-082-0660. General Management Area Rare Plant Review Criteria

##### (1) Review Uses and Site Plans

(a) Except uses allowed outright, proposed uses may be allowed within 1,000 feet of a rare plant, subject to compliance with 350-082-0600 through 350-082-0720 and section (3) below.

(b) The approximate locations of rare plants are shown in rare plant species data maintained by the Oregon Biodiversity Information Center and the Washington Natural Heritage Program. State heritage staff will help determine if a new use would invade the buffer zone of rare plants. Endemic plants species shown in 350-082-0690 Table 2 - Columbia Gorge and Vicinity Endemic Plant Species are considered rare plants even if not contained in the state heritage data.

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

(d) In addition to the information required in all site plans, uses within 1,000 feet of a rare plant site shall include a map prepared at a scale of one inch equals 100 feet (1:1,200) or a scale providing greater detail.

##### (2) Field Survey

(a) A field survey to identify rare plants shall be required for:

(A) Land divisions that create four or more parcels;

(B) Recreation facilities that contain parking areas for more than ten cars, overnight camping facilities, boat ramps, or 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 and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

(b) 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. They shall be conducted when plants are expected to be flowering or most easily detectable. Field surveys shall identify the precise location of the rare plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map and kept confidential as required by state law.

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

(a) The Executive Director shall submit site plans to the Oregon Biodiversity Information Center or Washington Natural Heritage Program. State heritage staff will review the site plan and their field survey records and identify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan.

(b) 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.

(c) The rare plant protection process may conclude if the Executive Director, in consultation with the state heritage staff, determines that the proposed use would be located outside of a rare plant buffer zone.

(d) New uses shall be prohibited within rare plant buffer zones, except for those uses that are allowed outright.

(e) If a proposed use must be allowed within a rare plant buffer area in accordance with 350-082-0590, the project applicant shall prepare a mitigation plan pursuant to section (4) below.

(f) The Executive Director shall submit a copy of all field surveys and mitigation plans to the Oregon Biodiversity Information Center or Washington Natural Heritage Program. The state heritage staff will have 20 days from the date that a field survey is mailed to submit written comments to the Executive Director.

(g) The Executive Director shall record and address any written comments submitted by the state heritage staff in the Executive Director's decision.

(h) Based on the comments from the state heritage staff, the Executive Director will make a final decision on whether the proposed use would be consistent with the rare plant guidelines. If the final decision contradicts the comments submitted by the state heritage staff, the Executive Director shall justify how the opposing conclusion was reached.

##### (4) Rare Plant Mitigation Plans

(a) Rare plant mitigation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a rare plant buffer zone as the result of a variance.

(b) Rare plant mitigation plans shall meet the following guidelines:

(A) Rare plant mitigation 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) Rare plants that will be altered 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.

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

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

(F) Habitat of a rare plant that will be affected by temporary uses shall be rehabilitated to a natural condition.

(G) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.

(H) Rare plant mitigation plans shall include maps, photographs, and text. The text shall:

(i) Describe the biology of rare plant species that will be affected by a proposed use.

(ii) Explain the techniques that will be used to protect rare plants and their surrounding habitat that will not be altered.

(iii) Describe the mitigation actions that will minimize and offset the impacts that will result from a proposed use.

(iv) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Executive Director an annual report that documents milestones, successes, problems, and contingency actions.

#### (5) Rare Plant Buffer Zones

(a) A 200-foot buffer zone shall be maintained around rare 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, human-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.

(A) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:

(i) Identifies the precise location of the rare plants;

(ii) Describes the biology of the rare plants; and

(iii) 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.

(B) 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 Executive Director shall submit all requests to reduce rare plant buffer zones to the Oregon Biodiversity Information Center or Washington Natural Heritage Program. The state heritage staff will have 20 days from the date

that such a request is mailed to submit written comments to the Executive Director.

(e) The Executive Director shall record and address any written comments submitted by the state heritage staff in the Executive Director's decision.

(f) Based on the comments from the state heritage staff, the Executive Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the state heritage staff, the Executive Director shall justify how the opposing conclusion was reached.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

### 350-082-0670. Special Management Areas Natural Resource Review Criteria

(1) All new development and uses, as described in a site plan prepared by the applicant, shall be evaluated using the following guidelines to ensure that natural resources are protected from adverse effects. Cumulative effects analysis is not required for expedited review uses or development. Comments from state and federal agencies shall be carefully considered.

(2) Water Resources (Wetlands, Streams, Ponds, Lakes, and Riparian Areas)

(a) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in subsections (2)(a)(B)(i) and (ii) below. These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined below.

(A) All buffer zones shall be retained undisturbed and in their natural condition, except as permitted with a mitigation plan.

(B) Buffer zones shall be measured outward from the bank full flow boundary for streams, the high water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the wetlands, stream, pond or lake boundary. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

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

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

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

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

(2) The wetland is not critical habitat; and

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

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

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

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

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

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

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

(F) The Executive Director shall submit all requests to re-configure rare wildlife or plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the project file. Based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reconfigured buffer zones are justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached.

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

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

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

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

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

(C) The project applicant shall be responsible for determining the exact location of a wetlands boundary. Wetlands

boundaries shall be delineated using the procedures specified in the *Corps of Engineers Wetlands Delineation Manual* (online edition) and applicable Regional Supplements.

(D) All wetlands delineations shall be conducted by a professional who has been trained to use the federal delineation procedures.

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

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

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

(A) The proposed use must have no practicable alternative as determined by 350-082-0680.

(B) Those portions of a proposed use that have a practicable alternative will not be located in water resources or their buffer zone.

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

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

(ii) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration or enhancement project; and

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

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

(h) Proposed uses and development within water resources and their buffer zones shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse shall be prohibited.

(3) Wildlife and Plants

(a) Protection of wildlife and plant areas and sites shall begin when proposed new development or uses are within 1000 feet of a rare wildlife or rare plant area or site. Rare wildlife areas are those areas depicted in wildlife and plant data and all Priority Habitats and endemic plant species listed in 350-082-0690 tables 1 and 2. The approximate locations of rare wildlife and plant areas and sites are shown in wildlife and rare plant data.

(b) The Executive Director shall submit site plans (of uses that are proposed within 1,000 feet of a rare wildlife or rare plant area or site) for review to the Forest Service and the

appropriate state agencies (Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife for wildlife issues and by the Oregon Biodiversity Information Center or Washington Natural Heritage Program for plant issues).

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

(A) Identify and verify the precise location of the wildlife or plant area or site,

(B) Determine if a field survey will be required,

(C) Determine, based on the biology and habitat requirements of the affected wildlife or plant species, if the proposed use would compromise the integrity and function of or result in adverse effects (including cumulative effects) to the wildlife and plant area or site. This would include considering the time of year when wildlife and plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season, and,

(D) Delineate the undisturbed 200-foot buffer on the site plan for rare plants or the appropriate buffer for rare wildlife areas or sites, including nesting, roosting, and perching sites.

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

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

(iii) The Executive Director shall submit all requests to re-configure rare wildlife or plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the record of application and based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reduced buffer zone is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached

(d) The Executive Director, in consultation with the state and federal wildlife biologists and botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the proposed development or uses do not compromise the integrity and function of or result in adverse effects to the wildlife and plant area or site:

(A) Published guidelines regarding the protection and management of the affected wildlife or plant species. Examples include: the Oregon Department of Forestry management guidelines for osprey and great blue heron and the Washington Department of Fish and Wildlife guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander.

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

(C) Historic, current, and proposed uses in the vicinity of the rare wildlife or plant area or site.

(D) Existing condition of the wildlife or plant area or site and the surrounding habitat of the area or site.

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

(F) The site plan is consistent with published guidance documents such as "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife 2008 or most recent version) and Washington's Aquatic Habitat Guidelines (2002 or most recent version).

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

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

(I) Maintain, protect, and enhance the integrity and function of Priority Habitats as listed in 350-082-0690 Table 1 - Priority Habitats. This includes maintaining structural, species, and age diversity, maintaining connectivity within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function.

(e) The wildlife and plant protection process may conclude if the Executive Director, in consultation with the Forest Service and state wildlife agency or heritage program, determines (1) the rare wildlife area or site is not active, or (2) the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife or plant area or site, or (3) the proposed use is within the buffer and could be easily moved out of the buffer by simply modifying the project proposal (site plan modifications). If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife and plant protection process may conclude.

(f) If the above measures fail to eliminate the adverse effects, the proposed project shall be prohibited, unless the project applicant can meet the practicable alternative test in 350-082-0680 and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.

(g) The Executive Director shall submit a copy of all field surveys (if completed) and mitigation plans to the Forest Service and appropriate state agencies. The Executive Director shall include all comments in the record of application and

address any written comments submitted by the state and federal wildlife agency and heritage programs in the Executive Director's decision.

(h) Based on the comments from the state and federal wildlife agency and heritage program, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife and plant policies and guidelines. If the final decision contradicts the comments submitted by the state and federal wildlife agency and heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(i) The Executive Director shall require the project applicant to revise the mitigation plan as necessary to ensure that the proposed use would not adversely affect a rare wildlife or plant area or site.

(j) Proposed uses and developments within 1,000 feet of rare wildlife areas and sites or within 1,000 feet of rare plants shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse shall be prohibited.

(4) Soil Productivity. Soil productivity shall be protected using the following guidelines:

(a) The application shall include a description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.

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

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

(d) 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.

(5) SMA Mitigation Plans

(a) Mitigation Plan shall be prepared when:

(A) The proposed development or use is within a buffer zone (water resources, or wildlife or plant areas or sites).

(B) There is no practicable alternative as determined by 350-082-0680.

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

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

(d) The applicant shall submit the mitigation plan to the Executive Director. The Executive Director shall submit a copy of the mitigation plan to the Forest Service, and appropriate state agencies. If the final decision contradicts the comments submitted by the state and federal wildlife agency and heritage program, the Executive Director shall justify how the opposite conclusion was reached.

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

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

(A) Describe the biology and function of the protected resources (*e.g.*, wildlife or plant species, or wetland) that will be affected by a proposed use. An ecological assessment of the protected resource and the condition of the resource that will result after restoration shall be required. Reference published protection and management guidelines.

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

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

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

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

(g) At a minimum, a project applicant shall provide to the Executive Director a progress report every three years until all conditions are met. The progress report shall document milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress.

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

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

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

(B) All natural vegetation within the buffer zone shall be retained to the greatest extent practicable. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation buffers, livestock management, and noxious weed control. Within five years, at least 75 percent of the replacement vegetation shall survive. All plantings shall be with native plant species that replicate the original vegetation community.

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

(D) If no net loss is not feasible or practical because of technical constraints, a protected resource of equal or greater benefit may be substituted, provided that no net loss of protected resource functions occurs and provided the Executive Director, in consultation with the appropriate state and federal agencies, determines that such substitution is justified.

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

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

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

(ii) Stream channels shall not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to hydrologic and biologic functions. Culverts shall only be permitted if there are no practicable alternatives as demonstrated by 350-082-0680.

(iii) Fish passage shall be protected from obstruction.

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

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

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

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

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

(ix) The size of restored, enhanced, and created 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.

(1) Restoration: 2:1

(2) Creation: 3:1

(3) Enhancement: 4:1

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

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

#### NEW SECTION

#### **350-082-0680. GMA and SMA Practicable Alternative Test for Natural Resource Review Guidelines**

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

(2) A practicable alternative does not exist if a project applicant satisfactorily demonstrates 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 water resources, wildlife areas and sites, or plant areas and sites.

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

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

#### NEW SECTION

#### **350-082-0690. GMA and SMA Natural Resources Tables**

Tables 1 and 2 in 350-082-0690 apply to general and special management area guidelines as specified in this land use ordinance.

350-082-0690 Table 1 - Priority Habitats	
Priority Habitats	Criteria
Aspen stands	High fish and wildlife species diversity, limited availability, high vulnerability to habitat alteration.
Caves	Significant wildlife breeding habitat, limited availability, dependent species.
Old-growth forest	High fish and wildlife density, species diversity, breeding habitat, seasonal ranges, and limited and declining availability, high vulnerability.
Oregon white oak woodlands	Comparatively high fish and wildlife density, species diversity, declining availability, high vulnerability
Prairies and steppe	Comparatively high fish and wildlife density, species diversity, important breeding habitat, declining and limited availability, high vulnerability.
Riparian	High fish and wildlife density, species diversity, breeding habitat, movement corridor, high vulnerability, dependent species.
Wetlands	High species density, high species diversity, important breeding habitat and seasonal ranges, limited availability, high vulnerability.
Snags and logs	High fish and wildlife density, species diversity, limited availability, high vulnerability, dependent species.
Talus	Limited availability, unique and dependent species, high vulnerability.
Cliffs	Significant breeding habitat, limited availability, dependent species.
Dunes	Unique species habitat, limited availability, high vulnerability, dependent species.
Winter Range	Provides important wintering habitat for deer and elk.

350-082-0690 Table 2 - Columbia Gorge and Vicinity Endemic Plant Species	
Common Name	Scientific Name
Howell's bent-grass	<i>Agrostis howellii</i>
Hood River milk-vetch	<i>Astragalus hoodianus</i>

Smooth-leaf douglasia	<i>Douglasia laevigata</i> var. <i>laevigata</i>
Howell's daisy	<i>Erigeron howellii</i>
Columbia Gorge daisy	<i>Erigeron oregonus</i>
Klickitat biscuitroot	<i>Lomatium klickitatense</i>
Long-beard hawkweed	<i>Hieracium longiberbe</i>
Smooth desert parsley	<i>Lomatium laevigatum</i>
Suksdorf's desert parsley	<i>Lomatium suksdorfii</i>
Barrett's penstemon	<i>Penstemon barrettiae</i>
Obscure buttercup	<i>Ranunculus reconditus</i>
Oregon sullivantia	<i>Sullivantia oregana</i>
Columbia kit-tentails	<i>Synthyris stellate</i>

**Recreation Resources Guidelines**

**NEW SECTION**

**350-082-0700. General Management Area Recreation Resources Review Criteria**

- (1) Recreation Intensity Class 1 (Very Low Intensity)
  - (a) Social Setting: Visitors in this designation have a high chance of finding solitude and opportunities to experience activities that rely on self-reliance, challenge and risk. Encounters with other visitors is low throughout the designation. Perceived crowdedness is low to non-existent away from roads and recreation sites. Visitor encounters and perceived crowdedness is low to moderate at or near (within one mile) roads and recreation sites.
  - (b) Physical and Managerial Setting: Predominately natural or natural appearing landscapes with rustic improvements characterize this designation. Nodes of developed recreation facilities are allowed. Developed recreation site regulations and controls (signing, regulations or other regimentation) are noticeable but harmonize with the natural environment. Away from developed recreation sites there is minimal or subtle control of users.
  - (c) Trail development is simple and typically accommodate low use levels. Users are highly skilled with a high degree of orienteering skills.
  - (d) The following uses may be permitted subject to compliance with 350-082-0720.
    - (A) Parking areas, not to exceed a site-wide capacity of ten vehicles, when associated with any allowed uses in Recreation Intensity Class 1. Accommodations for mass transportation facilities should be considered where compatible with the social and physical settings.
    - (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 and botanical viewing and nature study areas.

(G) River access areas.

(H) Boat docks, piers, or wharfs.

(I) Picnic areas.

(J) Restrooms and comfort facilities.

(2) Recreation Intensity Class 2 (Low Intensity)

(a) Social Setting: RIC 2 is characterized by opportunities to experience relaxation, physical fitness and outdoor learning and where there is a moderate probability to experience solitude. Typically encounters with other visitors throughout the designation is Low to Moderate. Visitor encounters are low to moderate on trails and away from developed recreation sites and roads, and moderate to high near (within one mile) recreation sites and roads.

(b) Physical and Managerial Setting: Predominately natural or natural appearing landscapes with rustic improvements characterize this designation. Nodes of highly developed recreation facilities may be allowed. Developed recreation site regulations and controls (signing, regulations or other regimentation) are noticeable but harmonize with the natural environment. Away from developed recreation sites there is minimal or subtle control of users.

(c) Trails are moderately developed (native surface or gravel, trail bridges and other facilities are provided for user convenience). Trail use is typically low to moderate. Trails are suitable for a wide range of users and are challenging and involve intermediate to advance skills.

(d) The following uses may be permitted subject to compliance with 350-082-0720.

(A) All uses permitted in Recreation Intensity Class 1.

(B) Parking areas, not to exceed a site-wide capacity of 25 vehicles, when associated with any allowed uses in Recreation Intensity Class 2. Parking spaces for campground units shall be included in this number. Accommodations for mass transportation facilities should be considered where compatible with the social and physical settings.

(C) Boat ramps, not to exceed two lanes.

(D) Campgrounds for 20 units or less, tent sites only.

(3) Recreation Intensity Class 3 (Moderate Intensity)

(a) Social Setting: A high degree of interaction with other visitors with opportunities to experience relaxation and activities that provide little challenge or risk in a natural appearing environment characterizes this designation. Visitor encounters are moderate to high on trails away from developed recreation sites and roads.

(b) Physical and Managerial Setting: Changes to the natural landscape may be evident but in harmony with characteristics of the landscape setting. Highly developed recreation facilities and trails are constructed for visitor convenience. On-site regulation and controls are noticeable but harmonize with the natural characteristics of the landscape.

(c) Trails typically accommodate moderate to high use and are well developed (native, gravel or paved surfaces, trail facilities such as bridges are provided for convenience).

Trails are easily traveled by a wide range of users who have intermediate skill level and minimal orienteering skills.

(d) The following uses may be permitted subject to compliance with 350-082-0720.

(A) All uses permitted in Recreation Intensity Classes 1 and 2.

(B) Parking areas, not to exceed a site-wide capacity of 75 vehicles, when associated with any allowed uses in Recreation Intensity Class 3. Parking spaces for campground units shall be included in this number.

(C) Accommodation of facilities for mass transportation (bus parking, etc.) shall be required for all new Recreation Intensity Class 3 day-use recreation sites, and improvements to existing Class 3 day-use recreation sites where the improvement would increase the use of the site, except for sites predominantly devoted to boat access. The number and size of the mass transportation facilities shall reflect the physical capacity of the site.

(D) Boat ramps, not to exceed three lanes.

(E) Concessions stands consistent with the following:

(i) Private concessions and other commercial uses at public recreation sites may be allowed pursuant to adopted policies of the public agency owning or managing the site. If a different agency manages the site, that agency's policies shall apply, unless superseded by provisions of the owning agency's policies.

(ii) For commercial recreation sites and public recreation sites not owned or managed by a public park agency with adopted concession policies, the following policies shall apply:

(1) Retail sales at campgrounds shall be limited to camping supplies for overnight guests in dedicated space within the registration or central office building.

(2) Private concessions in permanent structures shall be limited to one structure per park site. Sales shall be limited to those items necessary for enjoyment and use of recreation opportunities at the site, including food and beverages and recreation equipment rental.

(3) Mobile vendors may be permitted, subject to local government approvals. Local government review shall address solid waste disposal, visual impacts of signs, traffic circulation, and safety. Such uses shall be limited to the term of the recreation season, and sales shall be limited to food and beverages and recreation equipment rental.

(F) Campgrounds for 50 individual units or less, for tents and recreational vehicles, with a total density of no more than ten 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 allowed individual campground units or parking area maximums.

(4) Recreation Intensity Class 4 (High Intensity)

(a) Social Setting: This designation is characterized by highly developed facilities where there is little challenge or risk associated with being in the outdoors. There is a high degree of interaction with other visitors. Encounters are high in recreation sites, on roads and trails within in this designation.

(b) Physical and Managerial Setting: Changes to the natural landscape may be evident but in harmony with character-

istics of the landscape setting. Highly developed recreation facilities and trails are constructed for visitor convenience and ease of movement. On-site regulation and controls are noticeable but harmonize with the natural characteristics of the landscape.

(c) The maximum site design capacity for parking areas shall not exceed 250 vehicles for any allowed uses in Recreation Intensity Class 4. Parking spaces for campground units are to be included in this number.

(d) Trails are highly developed (gravel or paved surfaces, trail facilities such as bridges are provided for convenience) and accommodate heavy to intensive use. Users are typically inexperienced with little or no orienteering skills. Trails are easily traveled by a wide range of users.

(e) The following uses may be permitted subject to compliance with 350-082-0720.

(A) All uses permitted in Recreation Intensity Classes 1, 2, and 3.

(B) Parking areas, not to exceed a site-wide capacity of 250 vehicles, when associated with any allowed uses in Recreation Intensity Class 4. Parking spaces for campground units shall be included in this number.

(C) Accommodation of facilities for mass transportation (bus parking, etc.) shall be required for all new Recreation Intensity Class 4 day-use recreation sites and improvements to existing Class 4 day-use recreation sites where the improvement would increase the use of the site, except for sites predominantly devoted to boat access. The number and size of the mass transportation facilities shall reflect the physical capacity of the site.

(D) Horseback riding stables and associated facilities.

(E) Boat ramps.

(F) Campgrounds for 175 individual units or less, for tents and recreational vehicles, with a total density of no more than ten 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 three group campsite areas, in addition to allowed individual campsite units or parking area maximums.

(5) Approval Criteria for Recreation Uses. All proposed recreation projects outside of Public or Commercial Recreation designations shall comply with the following:

(a) Compliance with 350-082-0600 through 350-082-0720.

(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 Agriculture, Small-Scale Agriculture, Commercial Forest Land, Large Woodland, 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 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 Agriculture, Small-Scale Agriculture, Commercial Forest Land, Large Woodland, or Small Woodland.

(d) For proposed projects including facilities for outdoor fires for cooking or other purposes, or for proposed campgrounds, compliance with the following:

(A) 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.

(B) To provide access for firefighting 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 firefighting equipment.

(e) For proposed trail or trailhead projects, compliance with the following:

(A) Where applicable, new trails should incorporate existing segments of older or historic trails, abandoned roads and railroad rights-of-way, and other previously developed areas suitable for recreation use to the maximum extent practicable.

(B) Trails that are intended for multiple user groups shall be required to post signs at trailheads alerting users that multiple user groups may be present on the trail. Trails shall be designed such that user conflicts and safety issues are minimized.

(C) Applications for new trails or trailheads shall include measures to minimize the potential spread of noxious weeds.

(D) Applications for new trails or trailheads shall consider the potential of fire risk during critical fire hazard periods in developing the physical and managerial setting of the site.

(f) For proposed projects providing recreation access to the Columbia River or its tributaries, applicants shall demonstrate that the new facility is consistent with and does not affect or modify tribal treaty rights.

(g) For proposed projects on public lands or proposed projects providing access to the Columbia River or its tributaries: compliance with the guidelines in 350-082-0130.

(h) For proposed projects that 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) Applications for public recreation development in Recreation Intensity Classes 3 and 4 shall demonstrate how the proposed recreation development will be equitable and accessible (regardless of income level, ethnicity, gender, ability, or age). Applications for public recreation develop-



ment in Recreation Intensity Classes 1 and 2 shall meet this standard to the maximum extent practicable.

(j) Applications shall demonstrate compliance with the social, physical and managerial setting characteristics in the applicable Recreation Intensity Class description.

#### NEW SECTION

#### **350-082-0710. Special Management Area Recreation Resources Review Criteria**

(1) The following shall apply to all new recreation developments and land uses in the SMAs:

(a) New development and land uses shall not displace existing recreational use.

(b) Recreation resources shall be protected from adverse effects by evaluating new development and land uses as proposed in the site plan. An analysis of both onsite and offsite cumulative effects shall be required.

(c) New pedestrian or equestrian trails shall not have motorized uses, except for emergency services.

(d) Mitigation measures shall be provided to preclude adverse effects on the recreation resource.

(e) The Facility Design Guidelines are intended to apply to individual recreation facilities. Development or improvements within the same Recreation Intensity Class are considered as separate facilities if they are separated by at least 1/4 mile of undeveloped land (excluding trails, pathways, or access roads).

(f) New development and reconstruction of scenic routes shall include provisions for bicycle lanes.

(g) Proposals to change the Recreation Intensity Class of an area shall require a Management Plan amendment.

(2) Recreation Intensity Class Guidelines in the SMAs

(a) Recreation Intensity Class 1 (Very Low Intensity)

(A) Social Setting: Visitors in this designation have a high chance of finding solitude and opportunities to experience activities that rely on self-reliance, challenge and risk. Encounters with other visitors is low throughout the designation. Perceived crowdedness is low to non-existent away from roads recreation sites. Visitor encounters and perceived crowdedness is low to moderate at or near (within one mile) roads and recreation sites.

(B) Physical and Managerial Setting: Predominately natural or natural appearing landscapes with rustic improvements characterize this designation. Nodes of developed recreation facilities may be allowed. Developed recreation site regulations and controls (signing, regulations or other regimentation) are noticeable but harmonize with the natural characteristics of the landscape setting. Away from developed recreation sites there is minimal or subtle control of users.

(C) Trail development is simple and typically accommodate low use levels. Users are highly skilled with a high degree of orienteering skills.

(D) The maximum design capacity for parking areas shall be ten vehicles.

(E) The following uses may be permitted subject to compliance with 350-082-0720.

(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) Restrooms.

(ix) Accommodations for mass transportation facilities should be considered where compatible with the social and physical settings.

(b) Recreation Intensity Class 2 (Low Intensity)

(A) Social Setting: This designation is characterized by opportunities to experience relaxation, physical fitness and outdoor learning and where there is a moderate probability to experience solitude. Visitor encounters are low to moderate on trails and away from developed recreation sites and roads and usually moderate to high near (within one mile) recreation sites and roads.

(B) Physical and Managerial Setting: Predominately natural or natural appearing landscapes with rustic improvements characterize this designation. Nodes of highly developed recreation facilities may be allowed. Developed recreation site regulations and controls (signing, regulations or other regimentation) harmonize with the natural characteristics of the landscape setting. Away from developed recreation sites there is minimal or subtle control of users.

(C) Trails are moderately developed (native surface or gravel, trail bridges and other facilities are provided for user convenience). Trail use is typically low to moderate. Trails are suitable for a wide range of users and are challenging and involve intermediate to advance skills.

(D) The maximum design capacity for parking areas shall be 25 vehicles.

(E) The following uses may be permitted subject to compliance with 350-082-0720.

(i) All uses permitted in Recreation Intensity Class 1 are permitted in Recreation Intensity Class 2.

(ii) Campgrounds for twenty (20) units or less, tent sites only.

(iii) Boat anchorages designed for no more than ten boats at one time.

(iv) Swimming areas.

(v) Accommodations for mass transportation facilities should be considered where compatible with the social and physical settings.

(c) Recreation Intensity Class 3 (Moderate Intensity)

(A) Social Setting: A high degree of interaction with other visitors with opportunities to experience relaxation and activities that provide little challenge or risk in a natural appearing environment characterizes this designation. Visitor encounters are moderate to high on trails away from developed recreation sites and roads.

(B) Physical and Managerial Setting: Changes to the natural landscape may be evident but in harmony with natural characteristics of the landscape setting. Highly developed recreation facilities and trails are constructed for visitor convenience. On-site regulation and controls are noticeable but harmonize with the natural environment.

(C) Trails typically accommodate moderate to high use and are well developed (native, gravel or paved surfaces, trail facilities such as bridges are provided for convenience).

Trails are easily traveled by a wide range of users who have intermediate skill level and minimal orienteering skills.

(D) 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.

(E) The maximum design capacity for parking areas shall be 50 vehicles. The GMA 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 ten percent of the site.

(F) Accommodation of facilities for mass transportation (bus parking, etc.) shall be required for all new Recreation Intensity Class 3 day-use recreation sites and improvements to existing Recreation Intensity Class 3 day-use recreation sites where the improvement would increase the use of the site, except for sites predominantly devoted to boat access. The number and size of the mass transportation facilities shall reflect the physical capacity of the site.

(G) The following uses may be permitted subject to compliance with 350-082-0720.

(i) All uses permitted in Recreation Intensity Classes 1 and 2 are permitted in Recreation Intensity Class 3.

(ii) Campgrounds with improvements that may include vehicle access, water, power, sewer, and sewage dump stations. Campgrounds shall not exceed a combination of 50 single or group campsites (tent or recreational vehicle) and a total design capacity of 250 people at one time.

(iii) Boat anchorages designed for not more than 15 boats.

(iv) Public visitor, interpretive, historic, and environmental education facilities.

(v) Full-service restrooms that may include showers.

(vi) Boat ramps.

(vii) Riding stables.

(d) Recreation Intensity Class 4 (High Intensity)

(A) Social Setting: This designation is characterized by highly developed facilities where there is little challenge or risk associated with being in the outdoors. There is a high degree of interaction with other visitors. Encounters are high in recreation sites, on roads and trails within in this designation.

(B) Physical and Managerial Setting: Landscapes with natural appearing backdrop are characterized by this designation. Highly developed recreation facilities and trails are constructed for visitor convenience and ease of movement. On-site regulation and controls are noticeable but harmonize with the natural characteristics of the landscape setting.

(C) Trails are highly developed (gravel or paved surfaces, trail facilities such as bridges are provided for convenience) and accommodate heavy to intensive use. Users are typically inexperienced with little or no orienteering skills. Trails are easily traveled by a wide range of users.

(D) 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.

(E) The maximum design capacity for parking areas shall be 200 vehicles. The GMA vehicle capacity level of 250 vehicles shall be allowed if enhancement or mitigation mea-

asures for scenic, cultural, or natural resources are approved for at least 20 percent of the site.

(F) Accommodation of facilities for mass transportation (bus parking, etc.) shall be required for all new Recreation Intensity Class 4 day-use recreation sites and improvements to existing Recreation Intensity Class 4 day-use recreation sites where the improvement would increase the use of the site, except for sites predominantly devoted to boat access. The number and size of the mass transportation facilities shall reflect the physical capacity of the site.

(G) The following uses may be permitted subject to compliance with 350-082-0720.

(i) All uses permitted in Recreation Intensity Classes 1, 2, and 3 are permitted in Recreation Intensity Class 4.

(ii) Campgrounds with improvements that may include vehicle access, water, power, sewer, and sewage dump stations. Campgrounds shall not exceed a combination of 100 single or group campsites (tent or recreational vehicle) and a total design capacity of 500 people at one time.

#### NEW SECTION

#### 350-082-0720. Facility Design Guidelines for All GMA and SMA Recreation Projects

(1) Recreation facilities that are not resource-based in nature may be included at sites providing resource-based recreation uses consistent with 350-082-0720, as long as such facilities comprise no more than one-third of the total land area dedicated to recreation uses or facilities. Required landscaped buffers may be included in calculations of total land area dedicated to recreation uses or facilities.

(2) The facility design guidelines are intended to apply to individual recreation facilities. Development or improvements within the same Recreation Intensity Class are considered as separate facilities if they are separated by at least 1/4 mile of undeveloped land (excluding trails, pathways, or access roads).

(3) Existing vegetation, particularly mature trees, shall be maintained to the maximum extent practicable. These trees may be used to satisfy requirements for perimeter and interior landscaped buffers.

(4) Parking areas providing over 50 spaces shall be divided into discrete "islands" separated by unpaved, landscaped buffer areas.

(5) Lineal frontage of parking areas and campsite loops on scenic travel corridors shall be minimized.

(6) Ingress and egress points shall be consolidated to the maximum extent practicable, providing for adequate emergency access pursuant to applicable fire and safety codes.

(7) Signs shall be limited to those necessary to provide relevant recreation or facility information, interpretive information, vehicular and pedestrian direction, and for safety purposes.

(8) Innovative designs and materials that reduce visual impacts (such as "turf blocks" instead of conventional asphalt paving) shall be encouraged through incentives such as additional allowable parking spaces and reduced required minimum interior or perimeter landscaped buffers. If the county determines that potential visual impacts have been substantially reduced by use of such designs and materials, it may allow either a) reductions of up to 50 percent of required min-

imum interior or perimeter landscape buffers, or b) up to ten percent additional parking spaces.

(9) A majority of trees, shrubs, and other plants in landscaped areas shall be species native to the landscape setting in which they occur. The landscape setting descriptions and design guidelines are found in Part I, Chapter 1. Project applicants that are required to use new landscaping are encouraged to place trees, shrubs and other plants in a manner approximating their natural condition.

(10) For any parking area with over 50 spaces, interior landscaped buffers breaking up continuous areas of parking into discrete "islands" shall be provided. The minimum width of interior landscaped buffers separating each subarea of 50 spaces or less shall be 20 feet.

(11) 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.

(12) Project applicants shall use measures and equipment necessary for the proper maintenance and survival of all vegetation used to meet landscape standards, and shall be responsible for such maintenance and survival.

(13) 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.

**WSR 21-22-005**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed October 21, 2021, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-133.

Title of Rule and Other Identifying Information: New WAC 230-23-001 Purpose, 230-23-005 Definitions, 230-23-010 Request for self-exclusion, 230-23-015 Period of enrollment, 230-23-020 Voluntary self-exclusion, 230-23-025 Disclosure of self-exclusion information, 230-23-030 Licensee responsibilities, 230-23-035 Sharing the self-exclusion list, and 230-23-040 Annual reporting.

Hearing Location(s): On December 7, 2021, at 9:00 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location will be posted approximately one week prior to the meeting on our website at [www.wsgc.wa.gov](http://www.wsgc.wa.gov). Select "The Commission" and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: December 7, 2021.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by November 29, 2021.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email [julie.anderson@wsgc.wa.gov](mailto:julie.anderson@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by November 29, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling

commission has been directed by the legislature through SHB 1302 to adopt rules to establish a statewide self-exclusion program. The gambling commission has discretion in establishing the scope, process, and requirements of the program; however, the program must: (1) Allow persons to voluntarily exclude themselves from gambling at authorized gambling establishments that offer house-banked social card games and (2) any individual registered with the self-exclusion program is prohibited from participating in gambling activities associated with this program and forfeits all moneys and things of value obtained by the individual or owed to the individual by an authorized gambling establishment as a result of prohibited wagers or gambling activities. The gambling commission may adopt rules for forfeiture of any moneys or things of value, including wagers obtained by an authorized gambling establishment while an individual is registered with the self-exclusion program.

Reasons Supporting Proposal: Individuals and families impacted by a gambling problem or gambling disorder will benefit from the availability of a uniform self-exclusion program where people may voluntarily exclude themselves from gambling at multiple gambling establishments by submitting one self-exclusion form to the state from one location for all gambling activities.

Statutory Authority for Adoption: RCW 9.46.070, 9.46-071.

Statute Being Implemented: RCW 9.46.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Adam Teal, LLM, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3475; Implementation: Tina Griffin, Interim Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. A small business economic impact statement was completed on August 6, 2021. Implementation of this new chapter, chapter 230-23 WAC Self-exclusion rules, is not anticipated to impose more-than-minor costs on house-banked card room licensees. Initial costs will likely be higher as licensees will be required to notify individuals already enrolled in operator-level programs, develop procedures for implementation, and train staff. Monthly costs of implementation are expected to be relatively low and will depend on how many individuals enroll in the program. Initial and monthly costs will vary between

licensees depending on location, clientele, and staffing structure. Minor cost threshold was determined to be between \$10,126.91 and \$33,690.22. Initial costs are estimated to be \$6,969.46 with a monthly implementation cost of \$1,693.49.

October 15, 2021  
Ashlie Laydon  
Rules Coordinator

**Chapter 230-23 WAC**  
**SELF-EXCLUSION**

NEW SECTION

**WAC 230-23-001 Purpose.** The purpose of this chapter is to establish a centralized, statewide self-exclusion program, administered by the commission, allowing a person with a gambling problem or gambling disorder to voluntarily exclude themselves from licensed house-banked card rooms and participating tribal gaming facilities.

NEW SECTION

**WAC 230-23-005 Definitions.** The following definitions apply only to this chapter:

- (1) "Licensee" means a house-banked card room licensee.
- (2) "Participant" means a person who has enrolled in the voluntary self-exclusion program.
- (3) "Self-exclusion list" means a list maintained by the commission of persons who have requested to be voluntarily excluded from house-banked card room licensees and participating tribal gaming facilities in the state of Washington.
- (4) "Voluntary self-exclusion program" or "program" means the voluntary self-exclusion program authorized under RCW 9.46.071, and does not apply to gambling via horse-racing or lottery.

NEW SECTION

**WAC 230-23-010 Request for self-exclusion.** (1) Any person may request to be placed on the self-exclusion list voluntarily excluding themselves from house-banked card room licensees:

(a) In person at our office, 4565 7th Avenue S.E., Lacey, Washington 98503, or at a house-banked card room licensee by:

- (i) Submitting a completed form, which we provide on our website at [www.wsgc.wa.gov](http://www.wsgc.wa.gov); and
- (ii) Providing proof of identity. Acceptable forms of identification include:
  - (A) A valid driver's license from any state;
  - (B) A government-issued identification card containing the person's name, photograph, and date of birth; or
  - (C) A valid passport; and
- (iii) Submitting a photograph showing only the head and shoulders; or

(b) Through the mail to Washington State Gambling Commission, P.O. Box 42400, Olympia, Washington 98504 by:

(i) Submitting a completed form, which we provide on our website at [www.wsgc.wa.gov](http://www.wsgc.wa.gov); and

(ii) Submitting a photograph showing only the head and shoulders.

(2) The form must be:

(a) Completed with no areas left blank; and

(b) Signed under penalty of perjury by the person seeking self-exclusion.

(3) Upon receipt of a completed form, the licensee will forward it to us within 72 hours.

(4) The commission must begin exploring an online self-exclusion enrollment process within six months of modernizing legacy information technology systems.

NEW SECTION

**WAC 230-23-015 Period of enrollment.** (1) At the time of enrollment, the participant must select a period of enrollment for self-exclusion:

(a) One year;

(b) Three years;

(c) Five years; or

(d) Ten years.

(2) The enrollment period selected begins and the participant is considered enrolled:

(a) Upon receipt of the form by mail; or

(b) The date the completed form was accepted by the licensee or by us when submitted in person.

(3) Once enrolled, the participant cannot be removed from the program prior to the initial selected period of enrollment for voluntary self-exclusion.

(4) We will send a notice to the participant 45 days prior to the end of their initial enrollment period indicating the end of their enrollment period. If the participant chooses to end their enrollment in the self-exclusion program, they must return the form requesting to be removed from the self-exclusion list. If no response is received by the end of the enrollment period, the participant will remain on the self-exclusion list until they request to be removed. The participant may request to be removed from the self-exclusion list at any time after their initial enrollment period has ended by notifying us in the format we require.

NEW SECTION

**WAC 230-23-020 Voluntary self-exclusion.** Participants who voluntarily self-exclude acknowledge the following during the period of enrollment:

(1) The ultimate responsibility to limit access to all house-banked card rooms and participating tribal gaming facilities within the state remains theirs alone; and

(2) The self-exclusion request is irrevocable during the initial enrollment period selected and cannot be altered or rescinded for any reason; and

(3) The exclusion is in effect at all licensed house-banked card rooms and participating tribal gaming facilities in the state of Washington, which is subject to change, and all services and/or amenities associated with these gaming facilities including, but not limited to, restaurants, bars, bowling alleys, check cashing services, cash advances; and

(4) Player club memberships and accounts will be closed and all accumulated points immediately redeemed for non-gaming items as the licensee's policy allows at the licensed location the participant initially enrolls for self-exclusion. All player club memberships and accounts held at other licensees and participating tribal gaming facilities will be closed and zeroed out; and

(5) New player club memberships, direct mail and marketing service complimentary goods and services and other such privileges and benefits will be denied; and

(6) Disclosure of certain information is necessary to implement the participant's request for self-exclusion; and

(7) If found on the premises of a house-banked card room licensee or participating tribal gaming facility, for any reason other than to carry out their duties of employment, they will be escorted from the premises; and

(8) All money and things of value, such as gaming chips, obtained by or owed to the participant as a result of prohibited wagers or the purchase of chips and/or participating in authorized gambling activities will be confiscated under RCW 9.46.071 and WAC 230-23-030; and

(9) To not recover any losses from the purchase of chips and/or participating in authorized gambling activities.

#### NEW SECTION

**WAC 230-23-025 Disclosure of self-exclusion information.** (1) Personal information submitted by a participant under the self-exclusion program is exempt from public disclosure under the Public Records Act and may not be disseminated for any purpose other than the administration of the self-exclusion program or as otherwise permitted by law.

(2) No house-banked card room licensee, employee, or agent thereof shall disclose the name of, or any information about any participant who has requested self-exclusion to anyone other than employees and agents of the house-banked card room licensee whose duties and functions require access to such information.

(3) The licensee may release the names and identifying information of participants on the self-exclusion list to contracted service providers that provide check cashing, cash advances, marketing, automated teller machines, and other financial services.

(a) The identifying information must be limited to the address, driver's license or state-issued identification number, photograph, and physical description; and

(b) Only the name and identifying information may be disclosed to contracted service providers. The licensee must neither disclose the reasons for providing the name and identifying information nor disclose that the person is on the self-exclusion list; and

(c) The licensee must require by written contract that the contracted service provider implement measures designed to ensure the confidentiality of the names and identifying information and to prohibit the release of the names and identifying information to any other person or entity; and

(d) The licensee must immediately report to us all instances of a participant accessing or attempting to access the services provided by the contracted service providers.

#### NEW SECTION

**WAC 230-23-030 Licensee responsibilities.** Each licensee must:

(1) Make available to all patrons the self-exclusion form developed and provided by us; and

(2) Accept completed self-exclusion forms, including:

(a) Verifying the participant's identity as required on the form; and

(b) Forwarding the form to us within 72 hours of receipt; and

(3) Upon enrollment, provide the participant with information and resources for treatment of gambling problems or gambling disorders; and

(4) Designate a person or persons to be the contact person with us for purposes of self-exclusion procedures, including receipt and maintenance of the self-exclusion list, submission of the licensee's procedures, and all other communications between us and the licensee for self-exclusion purposes; and

(5) Implement updates to the state-wide self-exclusion list within 48 hours of being notified by us that the self-exclusion list has been modified; and

(6) Upon discovery that a participant has breached their self-exclusion and obtained access to the licensed premises, the licensee must take steps to:

(a) Immediately remove the participant from the premises; and

(b) Confiscate all money and things of value, such as gaming chips, obtained by or owed to the participant as a result of prohibited wagers or the purchase of chips and/or participating in authorized gambling activities; and

(c) Notify us of the breach within 72 hours; and

(7) Train all new employees, within three days of hiring, and annually retrain all employees who directly interact with gaming patrons in gaming areas. The training must, at a minimum, consist of:

(a) Information concerning the nature of gambling disorders; and

(b) The procedures for requesting self-exclusion; and

(c) Assisting patrons in obtaining information about gambling problem and gambling disorder treatment programs.

This section must not be construed to impose a duty upon employees of the licensee to identify individuals with gambling problems or gambling disorders or impose a liability for failure to do so; and

(8) Notify participants who have requested to be excluded from house-banked card room licensees of this rule of the new statewide program, provide them with the form, and information on how they can participate in the statewide self-exclusion program. This must be accomplished within three business days following the effective date of this rule; and

(9) Establish procedures and systems for our review and approval, which:

(a) Utilize player tracking systems and other electronic means, including checking all taxable patron winnings against the self-exclusion list, to assist in determining whether a participant has engaged in any authorized activities; and

(b) Close player club memberships and accounts. All accumulated points may be immediately redeemed by the participant for nongaming items as the licensee's policy allows at the licensed location the participant initially enrolls for self-exclusion. All player club memberships and accounts held at other licensees and participating tribal gaming facilities will be closed and zeroed out; and

(c) Deny check cashing privileges, player club membership, complimentary goods and services, and other similar privileges and benefits to any participant; and

(d) Ensure participants do not receive targeted mailings, telemarketing promotions, player club materials, or other promotional materials relative to gaming activities at house-banked card room licensees; and

(e) Verify patrons who win a jackpot prize are not participants of the program before payment of funds; and

(f) Ensure participants are not gambling in their establishment; and

(g) Ensure the confidentiality of the identity and personal information of participants; and

(h) All money and things of value, such as gaming chips, obtained by or owed to the participant as a result of prohibited wagers or the purchase of chips and/or participating in authorized gambling activities are confiscated under RCW 9.46.071, in which the licensee will:

(i) Issue check(s) for the same monetary value confiscated within three business days after collecting or refusing to pay any winnings from gambling or chips in the possession of a participant on the self-exclusion list as follows:

(A) A minimum of 70 percent of the confiscated funds must be dispersed to the problem gambling account created in RCW 41.05.751; and

(B) The remainder of the confiscated funds, if any, must be distributed to a charitable or nonprofit organization that provides problem gambling services or increases awareness about problem gambling; and

(ii) Document and retain for one year:

(A) Surveillance evidence identifying the date, time, and amount of money or things of value forfeited, the name and identity verification of the participant on the self-exclusion list; and

(B) A copy of the canceled check remitting the forfeited funds as required above.

#### NEW SECTION

**WAC 230-23-035 Sharing the self-exclusion list.** We may enter into mutual sharing agreements with federally recognized Indian tribes or tribal enterprises that own gambling operations or facilities with class III gaming compacts who wish to voluntarily participate in the self-exclusion program.

#### NEW SECTION

**WAC 230-23-040 Annual reporting.** Commission staff must report within 12 months of the effective date of these rules and then annually thereafter on the efficacy of the self-exclusion program.

#### WSR 21-22-013

#### PROPOSED RULES

#### EASTERN WASHINGTON UNIVERSITY

[Filed October 21, 2021, 2:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-19-016.

Title of Rule and Other Identifying Information: WAC 172-121-122 Full hearing procedures.

Hearing Location(s): On December 7, 2021, at 9:00 a.m., at 215A Tawanka Commons, Eastern Washington University, Main Campus, 526 5th Street, Cheney, WA 99004.

Date of Intended Adoption: December 10, 2021.

Submit Written Comments to: Annika Scharosch, Eastern Washington University, Main Campus, 526 5th Street, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by December 7, 2021.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by December 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revises the rules for the admissibility of evidence in formal Title IX hearings.

Reasons Supporting Proposal: Modifies the admissibility and cross-examination rules for formal Title IX hearings under the student conduct code to be consistent with a recent federal court decision and updated guidance from the Department of Education's Office of Civil Rights.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Hall, 509-359-6724; Implementation and Enforcement: Dr. David May, 214 Showalter Hall, 509-359-6362.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.[0]5.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

October 21, 2021  
Annika Scharosch  
Associate Vice President

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

**WAC 172-121-122 Full hearing procedures.** (1) Scheduling and notification. Full hearings are used for allegations which, if substantiated by a preponderance of the evidence, could be a felony-level crime, involve a Title IX complaint, or could result in a sanction of suspension or expulsion. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a prehearing conference.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO. The CRO chairs the disciplinary council.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the council may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. Solely for Title IX complaints, if a party or witness does not appear at the hearing and submit to cross-examination, the council must not rely on any statement of that party or witness in reaching a determination regarding responsibility; additionally, the council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. For Title IX complaints, the university will provide an advisor to a party upon request for the purposes of conducting cross-examination.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Remote appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by a

method that allows the person to be seen and heard by the council.

(4) Standard of evidence. The council shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office or designee will arrange for a prehearing conference with the parties to advise them about the student conduct process. During the prehearing conference, the SRR office or designee will:

(a) Review the written list of allegations;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent and complainant with a copy of the student conduct code and any other relevant university policies;

(d) Explain the respondent's and complainant's rights and responsibilities under the student code;

(e) Explain the conduct review procedures;

(f) Explain possible penalties under the student conduct code;

(g) Schedule a date for the full hearing; and

(h) Address any preliminary matters or motions.

(6) Notice of hearing. Following the prehearing conference, the director shall schedule the hearing and notify the respondent and complainant of the date, time, location, participants, and purpose of the hearing. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the council in accordance with RCW 34.05.452. Any investigation conducted by the university will be admitted into evidence as long as the investigator testifies at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs(~~(; however,)~~). Solely for Title IX complaints, ((statements obtained from a person who does not testify at the hearing shall not be considered by the council)) a party or witness's statement made outside of the hearing should not be considered by the board unless: (i) The statement itself is the alleged misconduct (such as a text message, video, or verbal statement); (ii) the party or witness who made the statement appears at the hearing and is willing to answer questions from the parties; or (iii) the statement is adverse to the party who does not appear or is not willing to answer questions (such as a confession of responsibility or admission of providing false information). The CRO shall

exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude irrelevant material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. For Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for the exclusion.

(b) The respondent and complainant have the right to view all material presented during the course of the hearing, except a respondent's previous disciplinary history which shall be used solely for the purpose of determining the appropriate sanction.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452, except for the additional restrictions on the admission of evidence required by Title IX.

(8) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents in the university's possession as long as such request is submitted at least five business days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(9) Subpoenas.

(a) Subpoenas may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least ten days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form.

Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(c) The CRO, upon motion by a party or at his or her own discretion, may quash or modify the subpoena if it is unreasonable or oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(10) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A motion for summary judgment is not permitted for Title IX complaints.

(11) Witnesses.

(a) The complainant, respondent, and the university's presenter may call witnesses at full hearings.

(b) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be irrelevant. For Title IX complaints, any decision to exclude a witness shall be explained on the record.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five business days prior to the hearing. The CRO will comply with WAC 10-08-150.

(12) Questioning:

(a) The complainant's advisor, the respondent's advisor, and the university's presenter may ask questions of any witness, or party, including cross-examination questions. For cases that do not involve Title IX complaints, if the student does not have an advisor, the complainant and respondent may submit questions in writing to the CRO and the CRO may ask the questions. For Title IX complaints, if a party does not have an advisor, the university will provide the party with an advisor aligned with that party for the purposes of conducting cross-examination as long as the party requests such an advisor at least five business days in advance of the



hearing. The CRO may also ask questions, but is not required to do so. The CRO may preclude any questions which they consider irrelevant, and for Title IX cases such decision must be explained on the record. The CRO must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) The council may ask their own questions of any witness or party called before them.

(13) Remote appearance. The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate, subject to subsection (3)(b) of this section.

(14) Deliberations and sanctions. Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. If the council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies shall be imposed. The CRO may review the respondent's previous disciplinary history solely for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the CRO shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be issued within ten business days from the date of the hearing. The written decision shall also:

- (a) Be correctly captioned identifying EWU and the name of the proceeding;
- (b) Designate all parties and representatives participating in the proceeding;
- (c) Identify the allegations at issue;
- (d) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and

witnesses, site visits, methods used to gather other evidence, and hearings held;

(e) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(f) Contain appropriately numbered conclusions regarding the application of university policies and this code to the facts;

(g) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant in a Title IX complaint to restore or preserve equal access to the university's educational programs or activities;

(h) Contain a statement describing rights to appeal and the procedures for appealing.

(15) Finality. The council's and CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be timely.

(16) Notification to the respondent. The CRO shall serve the respondent with a copy of the decision and notice of the right to appeal.

(17) Notification to the complainant. In cases of sexual misconduct or interpersonal violence, simultaneous with notification of the decision to the respondent, the complainant shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct or interpersonal violence occurred;

(b) The complainant's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f));

(d) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

(e) Any remedies provided to the complainant. For Title IX complaints, the complainant shall receive a copy of the decision provided to the respondent under subsection (14) of this section.

(18) **Notification to Title IX coordinator.** For Title IX complaints, the Title IX coordinator must be provided with notice of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.

**WSR 21-22-038**

**PROPOSED RULES**

**DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed October 27, 2021, 9:13 a.m.]

Continuance of WSR 21-20-002.

Preproposal statement of inquiry was filed as WSR 19-20-096.

Title of Rule and Other Identifying Information: WAC 110-04-0020 What definitions apply to WAC 110-04-0030 through 110-04-0180 of this chapter?, 110-04-0040 Who must have background checks?, 110-04-0080 What does the background check cover?, 110-04-0090 Who pays for the background check?, 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?, 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?, 110-04-0120 If I have a conviction, may I ever be authorized to be employed at a group care facility or have unsupervised access to children?, 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?, 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or I have been pardoned for a crime?, 110-04-0160 What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization based on the results of the background check?, 110-04-0170 Is the background check information released to my employer or prospective employer?, 110-06-0010 Purpose and scope, 110-06-0020 Definition, 110-06-0040 Background clearance requirements, 110-06-0042 Departmental investigation and redetermination, 110-06-0043 Failure to report nonconviction and conviction information, 110-06-0044 Background check fees, 110-06-0045 Background checks for minor individuals under sixteen years of age, 110-06-0046 Requirements for license-exempt in-home/relative providers, 110-06-0050 Department action following completion of background inquiry, 110-06-0070 Disqualification. Background information that will disqualify a subject individual, 110-06-0080 Notification of disqualification, 110-06-0100 Request for administrative hearing, 110-06-0110 Limitations on challenges to disqualifications, 110-06-0115 Reconsideration of disqualification, and 110-06-0120 Secretary's list.

Hearing Location(s): On November 10, 2021, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where department of children, youth, and families (DCYF) will send its response. Comments received through and including November 10, 2021, will be considered.

Date of Intended Adoption: November 13, 2021.

Submit Written Comments to: DCYF Rules Coordinator, P.O. Box 40975, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), submit comments online at <https://www.dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by November 10, 2021.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email [dcyf.dcyfrulescoordinator@dcyf.wa.gov](mailto:dcyf.dcyfrulescoordinator@dcyf.wa.gov) [[dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov)], by November 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amend-

ments to chapters 110-04 and 110-06 WAC explain when certificates of restoration of opportunity (CROP) and certificates of parental improvement (CPI) will be included in criminal history record reports, qualifying letters, or other assessments during a background check and when they will not.

Proposed amendments to chapter 110-06 WAC also:

- Better clarifies that the background check process includes requesting information from other states in which an applicant has lived during the five years before their background check;
- Allows DCYF to disqualify a previously authorized provider who:
  - Used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present, or presented a risk of harm to any child receiving early learning services, or
  - Attempted, committed, permitted, or assisted in an illegal act on child care premises; and
- More clearly explains which criminal convictions must disqualify an individual from being licensed, contracted, certified, or authorized to have unsupervised access to children and which trigger further review to determine whether the background check results demonstrate that an applicant possesses the character, suitability, and competence to have unsupervised access to children.

Reasons Supporting Proposal: RCW 9.97.020(4) directs the department to adopt rules that implement CROP consideration during the background check process and it is necessary to align chapters 110-04 and 110-06 WAC with chapter 270, Laws of 2020, that authorized licensing of providers regulated by the department who have been issued CPIs.

The additional proposed amendments to chapter 110-06 WAC better explain for potential applicants when the background check will include history from other states in which they have lived, and, for providers authorized to have unsupervised access to children, the proposed rules clearly explain under what circumstances the department will redetermine authorization.

Finally, proposed revisions to the mandatory and potential disqualifying crimes lists in WAC 110-06-0120 align with the federal child care development fund disqualifying crimes lists and are necessary to preserve federal appropriations that fund Washington state's child care subsidy programs.

Statutory Authority for Adoption: RCW 43.43.832(2), 43.216.065, and 43.216.271.

Statute Being Implemented: RCW 9.97.020, 43.216.170, 43.216.270, 43.43.837.

Rule is necessary because of federal law, 42 U.S.C. § 9858.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Parvin, Olympia, Washington, 360-890-0464; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as

required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of these rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: For sections contained in chapter 110-06 WAC: 42 U.S.C. § 9858. Failure to comply jeopardizes receipt of federal funds that are used for child care subsidies.

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

October 27, 2021  
Brenda Villarreal  
Rules Coordinator

## Chapter 110-04 WAC

### BACKGROUND CHECK REQUIREMENTS (~~FOR CHILDREN'S ADMINISTRATION~~)—CHILD WELFARE

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

**WAC 110-04-0020** What definitions apply to (~~WAC 110-04-0030 through 110-04-0180 of~~) this chapter? The following definitions apply to (~~WAC 110-04-0030 through 110-04-0180 of~~) this chapter:

"**Authorized**" or "**authorization**" means not disqualified by the department to work in a group care facility or have unsupervised access to children. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

"**Certification**" means department or child placing agency (CPA) approval of a person, foster home, or facility that is exempt from licensing but meets the licensing requirements.

"**Certificate of parental improvement (CPI)**" means a certificate issued under chapter 74.13 RCW.

"**Certificate of restoration of opportunity (CROP)**" means a certificate issued under chapter 9.97 RCW.

"**Child,**" "**children,**" or "**youth**" means a person who is one of the following:

(a) Under eighteen years old;

(b) Up to twenty-one years of age and enrolled in services through the department of social and health services (DSHS) developmental disabilities administration (DDA) the day prior to their eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC) or vocational program;

(c) (~~Up to twenty-one years of age and~~) Participating in the extended foster care program; (~~or~~)

(d) Up to twenty-one years of age with intellectual and developmental disabilities; or

(e) Up to twenty-five years of age and under the custody of DCYF in juvenile rehabilitation.

"**Civil adjudication proceeding**" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"**Department**" or "**DCYF**" means the department of children, youth, and families.

"**I**" and "**you**" refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"**Licensing division**" or "**LD**" means the licensing division within DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"**Licensors**" means either:

(a) An LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies that provide or certify foster family homes or group care facilities under chapters 110-145, 110-147, and 110-148 WAC; or

(b) An employee of a child-placing agency who certifies or monitors foster homes supervised by the child-placing agency.

"**Negative action**" means a court order, court judgment or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the subject individual reasonably related to the subject individual's character, suitability, and competence to care for or have unsupervised access to children receiving child welfare services. This may include, but is not limited to:

(a) A decision issued by an administrative law judge.

(b) A final determination, decision or finding made by an agency following an investigation.

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) A revocation, denial, or restriction placed on any professional license.

(e) A final decision of a disciplinary board.

"**Secretary's list**" means a list of crimes or negative actions that are federally disqualifying or may relate directly to child safety, permanence, or well-being and require DCYF to assess a subject individual's character, suitability, and

competence to care for or have unsupervised access to children receiving child welfare services. The secretary's list is available at <https://www.dcyf.wa.gov/sites/default/files/pdf/secretaryslist.pdf>.

"**Unsupervised**" means will not or may not be in the presence of:

(a) The licensee, another employee, or volunteer from the same business or organization as the applicant who has not been disqualified by the background check; or

(b) Another individual who has been previously approved by DCYF.

"**We**" refers to the department, including licensors and caseworkers.

"**WSP**" refers to the Washington state patrol.

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

**WAC 110-04-0040 Who must have background checks?** (1) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33-020.

(2) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes~~(;)~~ or facilities that provide care, except for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. ~~((However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.))~~

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ~~((ensure))~~ verify the safety of children in out-of-home care. ~~((The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.))~~

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, prior to returning a dependent child home, the department requires a background check on all adults residing in the home, including the parents.

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

**WAC 110-04-0080 What does the background check cover?** (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include, but is not limited to, the following information sources:

(a) Washington state patrol.

(b) Washington courts.

(c) Department of corrections.

(d) Department of health.

(e) Civil adjudication proceedings.

(f) Applicant's self-disclosure.

(g) Out-of-state law enforcement and court records.

(2) Background checks conducted for DCYF also includes:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) and (2) of this section, background checks conducted by DCYF for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home, all staff working in a group care facility, including those not directly working with children, and group care volunteers who provide direct care:

(a) Child abuse ~~((and))~~ or neglect registries in each state in which a person has lived ~~((in;))~~ in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington state.

(4) Except as required in subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-04-0090 Who pays for the background check?** (1) ~~((Children's administration (CA)))~~ DCYF pays the DSHS general administrative costs ~~((for background checks for))~~ and WSP and FBI fingerprint processing fees for foster home applicants, ((CA)) DCYF relative and other suitable caregivers, ~~((and CA))~~ DCYF adoptive home applicants, and other adults associated with the home requiring clearances under chapter 13.34 RCW.

(2) ~~((Children's administration pays the WSP and FBI fingerprint processing fees for foster home applicants, CA relative and other suitable caregivers, CA adoptive home applicants, and other adults associated with the home requiring background clearances under chapter 13.34 RCW.~~

~~((Children's administration))~~ DCYF does not pay WSP and FBI fingerprint processing fees or expenses for:

(a) Employees, contractors, or volunteers associated with facilities other than foster homes(~~(s)~~);

(b) Adoptive homes proposed by (~~(the children's administration,))~~ DCYF; or

(c) Relative or other suitable caregiver homes.

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

**WAC 110-04-0120** If I have a pending criminal charge, conviction, or negative action may I ever be authorized to be (~~((employed at a group care facility or))~~) licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children? (1) (~~(In two situations, DCYF may find))~~ DCYF must disqualify a person with convictions (~~(able to be authorized to be employed at a group care facility or have unsupervised access to children))~~) on the DCYF secretary's list that are:

(a) (~~(If the conviction for any crime listed in WAC 110-04-0110 occurred more than five years ago))~~) Permanently disqualifying; or

(b) (~~(If the conviction was for a crime other than those listed in WAC 110-04-0100 or 110-04-0110))~~) Five-year disqualifying if less than five years have passed since the date of conviction.

(2) (~~(In both of these situations))~~) DCYF may authorize a person with convictions or negative actions on the DCYF secretary's list that are not listed in subsection (1) of this section. In this situation, DCYF must review your background (~~(to determine))~~) information and assess your character, suitability, and competence to have unsupervised access to children. In this (~~(review))~~) assessment, DCYF (~~((must))~~) will consider the following factors, among others, related to your background information:

(a) The amount of time that has passed since (~~(you were convicted))~~) the conviction information or negative action;

(b) The seriousness of the crime or incident that led to the conviction or negative action;

(c) The number (~~(and))~~) types, and age of other convictions or negative actions in your background;

(d) Your age at the time of conviction or negative action;

(e) (~~(Documentation indicating you have successfully completed all court-ordered programs and restitution))~~) Completion of services or other evidence of rehabilitation since conviction or negative action; and

(f) Your (~~(behavior since the conviction; and~~

(g) The vulnerability of those that would be under your care) role or purpose of the background check.

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

**WAC 110-04-0140** Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, ((or)) I have been pardoned for a crime, I have a CPI, or CROP? (1) If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, con-

tracting, certification, authorization for employment at a group care facility, or authorization for unsupervised access to children.

(2) When the background information contains a CPI or CROP, DCYF must:

(a) Disqualify if background information contains a pending charge or conviction of a crime or pending negative action on the secretary's list; or

(b) Assess character, suitability, or competence under WAC 110-04-0120.

(3) A CROP does not apply to founded findings of child abuse or neglect. No finding of child abuse or neglect may be destroyed based solely on a CROP.

(4) A CROP must be included as part of the criminal history record reports, qualifying letters, or other assessments pursuant to RCW 43.43.830 through 43.43.838.

(5) If you have a CPI, DCYF may still consider the facts that led to any founded findings for child abuse or neglect in determining whether you have the character, suitability, or competence to have unsupervised access to children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-04-0160** What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization to have unsupervised access based on the results of the background check? (1) If you are seeking a license(~~(s)~~) or employment with a home or facility licensed by (~~(the children's administration))~~) DCYF, you may (~~(request))~~) appeal the department's decision by requesting an administrative hearing to dispute a denial of authorization for unsupervised access to children (~~((chapter 34.05 RCW)))~~). You cannot contest the conviction or negative action in the administrative hearing.

(2) Prospective volunteers or interns, contractors or their employees, or those seeking certification do not have the right to appeal the department's decision to deny authorization for unsupervised access to children.

(3) The employer or prospective employer cannot (~~(contest))~~) appeal the department's decision on your behalf.

(4) The administrative hearings (~~((will take place before an))~~) are conducted by administrative law judges employed by the office of administrative hearings (~~((chapter 34.05 RCW)))~~), pursuant to chapters 34.05 RCW and 110-03 WAC.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-04-0170** Is the background check information released to my employer or prospective employer?

(1) (~~(Children's administration))~~) DCYF will share with employers or approved care providers only that:

(a) You are disqualified; or

(b) You have not been disqualified by the background check.

(2) The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter (~~((42-17))~~) 42.56 RCW) when releasing any information.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?
- WAC 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?
- WAC 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?

**Chapter 110-06 WAC****~~(DEL)~~ BACKGROUND CHECKS—EARLY LEARNING PROGRAMS**

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0010 Purpose and scope.** (1) The purpose of this chapter is to establish rules for background checks conducted by the department of children, youth, and families (DCYF).

(2) The department conducts background checks on subject individuals who ~~((are authorized to))~~:

(a) Currently have a background clearance and are seeking to renew the authorization; and

(b) Are seeking a background check authorization for the first time.

(3) A background clearance authorizes a subject individual to:

(a) Work at a child care agency;

(b) Care for ~~((or))~~ children receiving early learning services;

(c) Have unsupervised access to children receiving early learning services;

(d) Reside on the premises of a child care agency or certified facility; or

~~((b))~~ (e) Care for children in the child's or provider's home. These providers, also known as family, friends, and neighbors (FFN) or in-home/relative care providers are exempt from licensing and receive ~~((working connections child care-))~~ WCCC~~((t))~~ subsidies.

~~((3))~~ (4) The department conducts background checks to reduce the risk of harm to children from subject individuals who have been convicted of certain crimes or who pose a risk to children.

~~((4) The department's rules and)~~ (5) State law requires the evaluation of background information to determine the character, suitability, ~~((or))~~ and competence of persons who will work at an agency, or care for or have unsupervised access to children receiving early learning services or other agency authorized services.

~~((5))~~ (6) Subject to federal law, if any provision of this chapter conflicts with any substantive provision in any ~~((chapter containing a substantive))~~ rule relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children receiving early learning services, the provisions in this chapter ~~((shall))~~ will govern.

~~((6) These rules)~~ (7) This chapter implements chapters 43.216 and 43.43 RCW~~((s))~~ including, but not limited to, DCYF responsibilities in RCW 43.216.260, 43.216.270 through 43.216.273, and 43.43.830 through 43.43.832.

~~((7) These rules are amended)~~ (8) This chapter is intended to allow for the increased and continued portability of background check clearances for subject individuals who are authorized to care for or may have unsupervised access to children receiving early learning services.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0020 Definitions.** The following definitions apply to this chapter:

~~("Agency" has the same meaning as "agency" in RCW 43.216.010.~~

~~"Appellant" means only those with the right of appeal under this chapter.~~

~~"Applicant" means an individual who is seeking DCYF background check authorization as part of:~~

~~(a) An application for a child care agency license or DCYF certification or who seeks DCYF authorization to care for or have unsupervised access to children receiving early learning services; or~~

~~(b) A continuation of a nonexpiring license or renewal of a certificate, or renewal of DCYF's authorization to care for or have unsupervised access to children receiving early learning services, with respect to an individual who is a currently licensed or certified child care provider.)~~

**"Authorized" or "authorization"** means approval by DCYF to work at a child care agency, care for ~~((or have unsupervised access to))~~ children receiving early learning services from an agency, have unsupervised access to children receiving early learning services, or to ~~((work in or))~~ reside on the premises of a child care agency or certified facility.

**"Certificate of parental improvement (CPI)"** has the same meaning as "certificate of parental improvement" in RCW 43.216.010.

**"Certificate of restoration of opportunity (CROP)"** means a certificate issued by a court under chapter 9.97 RCW that may restore an individual's eligibility for a license, certification, or background check authorization issued under chapter 43.216 RCW.

**"Certification" or "certified by DCYF"** means an agency that is legally exempt from licensing that has been

certified by DCYF as meeting minimum licensing requirements.

**"Child care agency" or "agency"** has the same meaning as "agency" in RCW 43.216.010.

**"Conviction or other disposition adverse to the subject"** has the same meaning as "conviction or other disposition adverse to the subject" in RCW 10.97.030.

**"Conviction information"** means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject individual.

**("DCYF") "Department of children, youth, and families (DCYF)" or "department"** means the Washington state department of children, youth, and families.

**"Department of social and health services (DSHS)"** means the Washington state department of social and health services.

**"Disqualified" or "disqualify"** means a DCYF ((has determined that a person's)) determination or finding was issued to a subject individual that because of their background information ((prevents that person from being authorized by DCYF to care for or have)) history, they are prohibited from:

(a) Caring for or having unsupervised access to children receiving early learning services;

(b) Working at a child care agency; or

(c) Residing at the premises of a child care agency or certified facility.

**"Early learning ((service(s))) services"** ((for purposes of this chapter)) means programs and services for child care including, but not limited to, the early childhood education and assistance program (ECEAP), head start, licensed child care, and license-exempt child care services.

**"In-home/relative provider" or "family, friends, and neighbors provider" or "FFN provider"** means an individual who is exempt from child care licensing standards, meets the requirements of chapter 110-16 WAC, and is approved for working connections child care (WCCC) payments under WAC 110-15-0125.

**"Licensee"** means the individual, person, organization, or legal entity named on the child care license issued by DCYF and responsible for operating the child care facility or agency.

**"Negative action"** ((means)) has the same meaning as "negative action" in RCW 43.216.010. A negative action includes a court order(;) or court judgment ((or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the subject individual reasonably related to the subject individual's character, suitability and competence to care for or have unsupervised access to children receiving early learning services. This may include, but is not limited to:

(a) A decision issued by an administrative law judge.

(b) A final determination, decision or finding made by an agency following an investigation.

(c) An adverse agency action, including termination, revocation or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) A revocation, denial or restriction placed on any professional license.

(e) A final decision of a disciplinary board)) that finds the subject individual's child dependent and the basis for such finding is RCW 13.34.030(6) or other equivalent state or federal statute.

**"Nonconviction information"** ((means arrest, pending charges, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the subject individual)) has the same meaning as "nonconviction information" in RCW 43.216.010.

**"Nonexpiring license" or "nonexpiring full license"** means a license authorized under RCW 43.216.305 that is issued to a licensee following the initial licensing period((, as provided in chapter 110-300 WAC, as appropriate)).

**"Premises"** has the same meaning as "premises" in WAC 110-300-0005.

**"Secretary's list"** means ((a list of crimes, the commission of which disqualifies a subject individual from being authorized by DCYF to care for or have unsupervised access to children receiving early learning services,)) the conduct and crimes described in WAC 110-06-0120 and the federal disqualifying crimes and conduct described in 42 U.S.C. Sec. 9858f and C.F.R. Sec. 98.43.

**"Subject individual" means:**

(a) ((Means)) An individual who is sixteen years of age or older and is seeking:

(i) ((Is seeking)) A background check authorization ((or upon whom the department may conduct a background check authorization;

(ii) Is sixteen years of age or older;

(iii) Is an in-home/relative provider or is employed, contracted with, or volunteers to provide early learning services; and

(iv) Will care for or)) to have unsupervised access to children receiving early learning services; ((and

(b) Includes, but is not limited to, the following:

(i) Personnel, including employees and staff;

(ii) Contractors, including contracted providers;

(iii) Temporary workers;

(iv) Assistants;

(v) Volunteers;

(vi) Interns;

(vii) Each person who is sixteen years of age or older residing on, or moving into, the premises where early learning services are provided;

(viii) All other individuals who are sixteen years of age or older who will care for or have unsupervised access to children receiving early learning services;

(ix) All owners, operators, lessees, or directors of the agency or facility, or their designees;

(x) Applicants;

(xi) Licensees; or

(xii) In-home/relative providers and their household members who are sixteen years of age or older.))

(ii) A background check authorization to care for children receiving early learning services;

(iii) A background check authorization to work at a child care agency;

(iv) A background check authorization to reside at the premises of a child care agency or certified facility;

(v) A reauthorization of a background check authorization previously issued by DCYF; or

(vi) A new background check authorization, having been previously issued a background check authorization.

(b) A person who is thirteen through fifteen years of age who is seeking or has obtained a background check authorization under WAC 110-06-0045.

(c) Examples of "subject individual" include, but are not limited to:

(i) A person who is seeking an application for a child care agency license or a DCYF certification;

(ii) An individual who is currently a licensed or certified child care provider who is seeking:

(A) A continuation of a nonexpiring license or renewal of a certificate; or

(B) A renewal of DCYF's authorization to care for or have unsupervised access to children receiving early learning services;

(iii) A person who is a relative provider, in-home provider, or is employed by an early learning provider, including assistants and other persons who are temporarily employed by an early learning provider;

(iv) A person who is a volunteer or intern that provides early learning services;

(v) A person who contracts with an early learning provider;

(vi) A person who is sixteen years of age or older who:

(A) Resides at, or will be moving onto, the premises where early learning services will or are provided; or

(B) Will care for or have unsupervised access to children receiving early learning services;

(vii) All owners, operators, lessees, or directors of the agency or facility, or their designees; and

(viii) Licensees.

**"Unsupervised access"** means(~~:-~~

~~(a) A subject individual will or may have the opportunity to be alone with a child receiving early learning services at any time and for any length of time; and~~

~~(b)) not in the presence of a subject individual who is an employee of a child care agency and is authorized by DCYF to be alone with children receiving early learning services from the same agency. For purposes of this definition, unsupervised access includes, but is not limited to, access to (~~a~~ ~~child~~) ~~children~~ receiving early learning services (~~that is~~) who are not within constant visual or auditory range of the individual authorized by DCYF to be alone with children receiving early learning services.~~

**"WCCC"** means the working connections child care program.

**AMENDATORY SECTION** (Amending WSR 19-21-064, filed 10/11/19, effective 11/11/19)

**WAC 110-06-0040 Background clearance requirements.** This section applies to all subject individuals (~~other than~~), except for in-home/relative providers.

(1) Subject individuals (~~associated with early learning services applying for a first-time background check~~) must

complete the DCYF background check application process (~~including~~) on or before the dates described in WAC 110-06-0041, 110-06-0045, and at least once every three years thereafter. The background check process includes, but is not limited to:

(a) (~~Submitting~~) Filing a completed background check application with the DCYF background check unit;

(b) Completing the required fingerprint process; (~~and~~)

(c) Completing the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application; and

(d) Paying all required fees as provided in WAC 110-06-0044.

(2) All subject individuals (~~qualified by the department to have unsupervised access to children in care~~) who are (~~renewing their applications~~) seeking renewals of their DCYF authorizations must:

(a) Submit (~~the~~) a new background check application (~~through~~) to DCYF;

(b) Submit payment of all required fees (~~as provided~~) described in WAC 110-06-0044; (~~and~~)

(c) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed, or has not previously completed the fingerprint process required by this section; and

(d) Complete the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application.

(3) Each subject individual (~~completing the DCYF~~) who submits a background check (~~process~~) application and is seeking a background check authorization, or reauthorization, must disclose whether they have:

(a) Been convicted of any crime;

(b) Any pending criminal charges; and

(c) Been or are the subject to any negative action(~~as defined by WAC 110-06-0020~~).

(4) Subject individuals must not have unsupervised access to children in care unless they have obtained DCYF authorization under this chapter.

(5) (~~A~~) Subject individuals who (~~has~~) have been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

**AMENDATORY SECTION** (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0042 Departmental investigation and redetermination.** (1) The department will investigate and conduct a redetermination of the background clearance of a subject individual if the department receives a complaint or information that causes the department to conclude a background check clearance redetermination is necessary to verify that the subject individual has the appropriate character, suitability, and competence to have unsupervised access to children who receive early learning services. The complaint or information may be received from an individual(~~s~~), a law



enforcement agency, or other federal, state, or local government agency.

(2) In addition to the requirements described in subsection (1) of this section, the department will determine whether to disqualify a subject individual whose initial background check revealed a negative action or conviction information but who was granted authorization, and the subject individual subsequently:

(a) Used illegal drugs or misused or abused prescription drugs or alcohol that either affected the subject individual's ability to perform their job duties while on the premises when children were present, or presented a risk of harm to any child receiving early learning services; or

(b) Attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, a subject individual attempted, committed, permitted, or assisted in an illegal act if they knew or reasonably should have known that the illegal act occurred or would occur.

(3) Subject to the requirements in RCW 43.216.270, and based on a determination that an individual lacks the appropriate character, suitability, or competence to be approved for a background check authorization, the department may (immediately):

(a) Invalidate a background check authorization; or

(b) Suspend ~~((or)),~~ modify ~~((the subject individual's background clearance)),~~ or revoke any child care license issued by DCYF.

~~((3) Subject to the requirements in RCW 43.216.300 and 43.216.305, and based on a determination that a subject individual lacks the appropriate character, suitability, or competence to provide early learning services to children, the department may disqualify the subject individual from having any unsupervised access to children:))~~

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0043 Failure to report nonconviction and conviction information.** (1) The early learning services provider must report to the department within twenty-four hours if ~~((he or she))~~ the provider has knowledge ~~((of the following with respect to))~~ that a subject individual ~~((associated with their services;))~~ who has a background check ~~((clearance))~~ authorization ~~((with the department))~~ has a background that includes any of the following:

(a) Any nonconviction and conviction information ~~((for a))~~ that is related to a crime ~~((listed in WAC 110-06-0120)),~~ negative action, or conduct that is included on the secretary's list; or

(b) Any other conduct, or nonconviction ~~((and))~~ or conviction information ~~((for a crime)),~~ that could be reasonably related to the subject individual's suitability to provide care for or have unsupervised access to children in care~~((or~~

~~((e) Any negative action as defined in WAC 110-06-0020)).~~

(2) A subject individual who has been issued a background check ~~((clearance))~~ authorization ~~((pursuant to WAC 110-06-0040))~~ under this chapter must report to the department the following information about themselves within twenty-four hours after becoming aware of such information:

~~((a) Any nonconviction ~~((and))~~ or conviction information ~~((to the department involving a disqualifying))~~ that is related to a crime ~~((under WAC 110-06-0120 against that subject individual within twenty-four hours after he or she becomes aware of the event constituting the nonconviction or conviction information))~~ negative action, or conduct that is included on the secretary's list; and~~

~~((b) Any other conduct, or nonconviction or conviction, information that could be reasonably related to the individual's suitability to provide care for or have unsupervised access to children in care.~~

(3) ~~((A subject individual who))~~ An individual's background check authorization may be disqualified if the individual intentionally or knowingly fails to report to the department as ~~((provided in))~~ required under subsection (1) or (2) of this section ~~((may have his or her background check clearance suspended)).~~ This ~~((penalty))~~ disqualification will be in addition to any other ~~((penalty))~~ agency action that may be imposed as a result of a violation of this chapter ~~((or of the)),~~ applicable provisions ~~((of any chapter of))~~ within Title 110 WAC ~~((that implement the authority and requirements of)),~~ or chapter 43.216 RCW.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0044 Background check fees.** This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals ~~((associated with early learning services))~~ must pay for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation, DSHS, and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee of:

(i) Twelve dollars for an electronic submission; or

(ii) Twenty-four dollars for a paper submission.

(2) DCYF administrative fee payments may be paid by:

(a) ~~((By))~~ Debit or credit card;

(b) ~~((In the form of))~~ Mailing a personal check, cashier's check, or money order~~((, which shall be sent by mail))~~ to:

Department of Children, Youth, and Families (DCYF)

Attn: PBC

P.O. Box 40971

Olympia, WA 98504-0971; or

(c) ~~((By))~~ Electronic funds transfer that does not involve a debit or credit card. ~~((As used in))~~ For purposes of this section, "electronic funds transfer" means ~~((any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account))~~ an online system that allows for the secure transfer of money from one bank account to an account designated by DCYF.

(3) The department will not issue a background check ~~((clearance))~~ authorization to a subject individual~~((~~

~~((a)))~~ who fails to pay the required fees in subsection (1) of this section~~((~~

~~(b) Whose payment is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.~~

~~An additional)),~~

~~(4) A processing fee of twenty-five dollars will be charged by ((the department)) DCYF for any check, money order, or electronic funds transfer that is reported as not having sufficient funds.~~

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0045 Background checks for minor individuals under sixteen years of age.** (1) ~~((When applicable within chapter 110-300 WAC, an agency, licensee, or certified facility must have subject individuals complete the required DCYF minor individual background check application process for subject individuals))~~ All agencies, licensees, and certified facilities must be in possession of a copy of a background check authorization for minor subject individuals who work or reside at the licensed or certified agency. The requirements described in this subsection apply to minor subject individuals who are:

(a) ~~Fourteen ((to sixteen)) through fifteen years of age, ((prior to)) before the date ((of hire by)) the subject individual begins working for a licensed or certified child care((-); or~~

(b) ~~Thirteen ((to sixteen)) through fifteen years of age ((residing)) on or before the date the subject individual begins or continues to reside in a licensed or certified family home child care. ((e)) For a subject individual who is thirteen ((to sixteen)) through fifteen years of age((-); and who begins to reside in a licensed or certified facility after the individual's thirteenth birthday, the subject individual must complete the required DCYF minor individual background check application process within seven days after moving into the licensed family home child care.~~

(2) A subject individual identified in subsection (1) (a)(~~;~~) or (b) ~~((or e))~~ of this section must not have unsupervised access to children ~~((in child care)) receiving early learning services.~~

(3) ~~((When conducting)) The background check application for a minor subject individual ((background check, the department:~~

~~(a) Requires the minor's)) must be signed by the minor and their parent or guardian ((to sign the noncriminal background check application;~~

~~(b) Does not review convictions or pending charges for immediate disqualification for crimes under WAC 110-06-0050(1), unless the conviction was the result of prosecution of the juvenile as an adult; and~~

~~(c) Does not immediately disqualify an individual for a conviction under WAC 110-06-0070 (1) and (2), unless the conviction was the result of prosecution of the juvenile as an adult).~~

(4) The minor subject individual's character, suitability, and competence determination will be made pursuant to the requirements described in this chapter.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0046 Requirements for license-exempt in-home/relative providers.** (1) This section applies to license-exempt in-home/relative providers. The background check process must be completed for:

(a) All license-exempt in-home/relative providers who apply to care for a ~~((WCCC))~~ consumer's child who is eligible to receive WCCC benefits; ((and))

(b) Any individual sixteen years of age or older who is residing with a license-exempt in-home/relative provider ~~((when))~~ if the provider cares for the child eligible to receive WCCC benefits in the provider's ((own)) home, and the home is not where the child ((does not reside.

~~(2) Additional background checks must be completed for individuals listed in subsection (1)(a) and (b) of this section when an individual sixteen years of age or older is newly residing)) resides; and~~

~~(c) Any individual sixteen years of age or older who begins to reside with a license-exempt in-home/relative provider ((when the provider)) after the date the provider begins to care((s)) for the child eligible to receive WCCC benefits in the provider's ((own)) home, and the home is not where the child ((does not)) resides.~~

~~((3) The background check process for license-exempt in-home/relative providers requires:)) (2) A subject individual who is seeking a background check authorization must complete the background check application process by:~~

~~(a) Submitting a completed background check application; ((and))~~

~~(b) Completing the required fingerprint process; and~~

~~(c) Completing the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application.~~

~~((4)) (3) Each subject individual completing the DCYF background check process must disclose whether they have:~~

~~(a) ((Whether he or she has)) Been convicted of any crime;~~

~~(b) ((Whether he or she has)) Any pending criminal charges; and~~

~~(c) ((Whether he or she has)) Been or are the subject ((to)) of any negative actions((-; as defined by WAC 110-06-0020)).~~

~~((5)) (4) A subject individual must not have unsupervised access to children in care ((unless he or she has obtained)) before obtaining a DCYF background check ((clearance)) authorization under this chapter.~~

~~((6)) (5) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.~~

~~((7)) (6) DCYF ((pays for)) will pay the cost of the background check process. The fees include:~~

~~(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation, DSHS, and the DCYF fingerprint contractor; and~~

~~(b) The DCYF administrative fee.~~

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0050 Department action following completion of background inquiry.** (1) As part of the background check process the department will conduct ~~((a character, suitability or competence assessment as follows:~~

~~(1) Compare the background information with the DCYF secretary's list, WAC 110-06-0120, to determine whether the subject individual must be disqualified under WAC 110-06-0070 (1) and (2). In doing this comparison, the department will use the following rules)) the background check investigation and evaluation described in this section to determine whether the subject individual should be disqualified or not.~~

~~(2) A subject individual must be disqualified when their background information includes conviction information described in WAC 110-06-0070(2) or conduct described in WAC 110-06-0070 (7) or (8).~~

~~(3) Subject to the requirements of WAC 110-06-0070(5) and after comparing the subject individual's background information with the secretary's list to determine whether to disqualify under WAC 110-06-0070 (3) or (4), DCYF may conduct a character, suitability, and competence assessment of the subject individual.~~

~~(4) Subject to the requirements of this chapter and after comparing the subject individual's background information with the secretary's list to determine whether to disqualify under WAC 110-06-0070(6), the department must conduct a character, suitability, and competence assessment of the subject individual.~~

~~(5) For purposes of DCYF's investigation, evaluation, and determination, the following standards apply:~~

~~(a) A pending charge for a crime ~~((or))~~ that has been filed in the appropriate court, a deferred prosecution ~~((is))~~, or a deferred sentence must be given the same weight as a conviction.~~

~~(b) If the conviction has been renamed it is given the same weight as the previous named conviction.~~

~~(c) Convictions whose titles ~~((are preceded with))~~ include the word "attempted," "conspiracy," or "solicitation" are given the same weight as those titles without the word "attempted," "conspiracy," or "solicitation."~~

~~(d) The term "conviction" ~~((has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and))~~ may include convictions or dispositions for crimes committed as either an adult or juvenile. ~~((It may also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.))~~~~

~~(e) Convictions and pending charges from other states or jurisdictions will be treated the same as a crime or pending charge in Washington state. If the elements of the crime from the foreign jurisdiction are not identical or not substantially similar to its Washington equivalent or if the foreign statute is broader than the Washington definition of the particular crime, the ~~((defendant's))~~ subject individual's conduct, as evidenced by the indictment or information, will be analyzed to determine whether the conduct would have violated the comparable Washington statute.~~

~~((The))~~ A crime will not be considered a conviction ~~((for the purposes of the department when))~~ if the conviction has been the subject of an expungement, pardon, annulment, certification of rehabilitation, vacated, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or the conviction has been vacated, the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

~~((2) Evaluate any negative action information to determine whether the subject individual has any negative actions requiring disqualification under WAC 110-06-0070(3).~~

~~(3) Evaluate any negative action information and any other pertinent background information, including nondisqualifying criminal convictions, to determine whether disqualification is warranted under WAC 110-06-0070 (5), (6), or (7))~~ (g) If the subject individual's background information contains a CPI or CROP, DCYF must not disqualify the subject individual solely based on the information that pertains to the CPI, or solely based on the information that pertains to the CROP. For a subject individual who has obtained a CPI or CROP, the department should:

(i) Assess the subject individual's character, suitability, and competence to determine whether the subject individual should be disqualified if his or her background information contains a pending charge or conviction, unrelated to the CROP, that is listed in WAC 110-06-0120(2); or

(ii) If the subject individual's background does not include a pending charge or conviction listed in WAC 110-06-0120(2), assess the subject individual's character, suitability, and competence to determine whether to disqualify the subject individual under WAC 110-06-0070.

(h) A CROP does not apply to founded findings of child abuse or neglect. A child abuse or neglect finding must be considered by the department.

(i) A CROP and CPI must be included as part of the criminal history record reports, qualifying letters, assessments, or other reports.

(j) A subject individual's background check authorization may be suspended if the subject individual is the subject of a child protective services investigation. The length of the suspension may not exceed the following time period:

(i) As defined in RCW 26.44.020, the department makes an unfounded determination; or

(ii) The date a negative action determination is issued or the date a negative action becomes final, whichever is longer.

(k) If the department suspends a subject individual's background check authorization for the time period described in (j)(ii) of this subsection, the department may disqualify the subject individual pursuant to the requirements described in this chapter.

(l) A subject individual who makes a request for a hearing or appeals a department decision to disqualify will not be authorized to care for or have unsupervised access to children receiving early learning services during the time period the hearing request or appeal is pending.

~~((4))~~ (6) If DCYF has reason to believe that additional information ~~((is))~~ or reports are needed to determine whether the subject individual has the character, suitability ~~((or))~~, and competence ~~((of the subject individual))~~ to care for or have unsupervised access to children receiving early learning ser-

vices, DCYF may request that the subject individual provide such reports or additional information ((will be requested. The)). A subject individual ((must)) who does not provide ((to the department any additional reports or)) the requested information ((that it requests)) may be disqualified.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0070 (~~(Disqualification-)) Background check decision.~~**

**Background information that ~~((will))~~ may or must disqualify a subject individual.**

~~(1) A subject individual ((who has a background containing any of the permanent convictions on the secretary's list, WAC 110-06-0120(1), will be permanently disqualified from caring for children or having unsupervised access to children receiving early learning services.~~

~~(2) A) must be permanently disqualified if the subject individual has a background that includes conviction information of a crime listed in WAC 110-06-0120(2).~~

~~(2) Subject to the requirements described in subsection (3) of this section, if a subject individual who is thirteen years of age or older has a background that includes conviction information of a crime listed in WAC 110-06-0120(2), the subject individual may be permanently disqualified from having unsupervised access to children receiving early learning services at a child care facility.~~

~~(3) For the purposes of subsections (1) and (2) of this section, if there is not an unusually high risk of an erroneous disqualification without an individualized assessment, the determination that an individual is permanently disqualified may be solely based on a permanently disqualifying crime listed in WAC 110-06-0120(2). To determine whether there is an unusually high risk of an erroneous disqualification, the department must consider the factors described in subsection (7) of this section.~~

~~(4) If a subject individual has a background that includes a negative action, or conviction information, that involves any of the conduct described in the secretary's list under WAC 110-06-0120 (3) or (4), DCYF may disqualify the subject individual if it makes a determination the subject individual does not have the appropriate character, suitability, or competence to be authorized or reauthorized.~~

~~(5) A subject individual who knowingly makes a materially false statement in connection with the criminal background check application must be disqualified.~~

~~(6) A subject individual who is registered, or is required to be registered, on a state sex offender registry or repository, or the national sex offender registry, must be disqualified.~~

~~(7) DCYF must consider the following factors related to a subject individual's background when assessing character, suitability, and competence:~~

~~(a) Whether the subject individual ((who)) has a background containing any of the ((nonpermanent)) permanent convictions on the secretary's list((;)) that are described in WAC 110-06-0120(2)((, will be disqualified from providing licensed child care, caring for children or having unsupervised access to children receiving early learning services for five years after the conviction date.~~

~~(3) A subject individual will be disqualified when his or her background contains a negative action, as defined in WAC 110-06-0020 that relates to:~~

~~(a) An act, finding, determination, decision, or the commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 110-30 WAC.~~

~~(b) An act, finding, determination, decision, or commission of abuse or neglect or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW.~~

~~(4) A subject individual who has a "founded" finding for child abuse or neglect will not be authorized to care for or have unsupervised access to children during the administrative hearing and appeals process.~~

~~(5) Background information that may disqualify a subject individual. A subject individual may be disqualified for other negative action(s), as defined in WAC 110-06-0020 which reasonably relate to his or her character, suitability, or competence to care for or have unsupervised access to children receiving early learning services.~~

~~(6) A subject individual may be disqualified from caring for or having unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.~~

~~(7) The department may also disqualify a subject individual if that person has other noneconviction background information that renders him or her unsuitable to care for or have unsupervised access to children receiving early learning services. Among the factors the department may consider are:~~

~~(a) The subject individual attempts to obtain a license, certification, or authorization by deceitful means, such as making false statements or omitting material information on an application.~~

~~(b) The subject individual used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present or presented a risk of harm to any child receiving early learning services.~~

~~(c) The subject individual attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, a subject individual attempted, committed, permitted, or assisted in an illegal act if he or she knew or reasonably should have known that the illegal act occurred or would occur.~~

~~(d) Subject to federal and state law, the subject individual lacks sufficient physical or mental health to meet the needs of children receiving early learning services.~~

~~(e) The subject individual had a license or certification for the care of children or vulnerable adults terminated, revoked, suspended or denied.));~~

~~(b) Whether the subject individual has a background containing any of the convictions on the secretary's list that are described in WAC 110-06-0120(3) or negative actions described in WAC 110-06-0120(4);~~

~~(c) Whether the subject individual has obtained a CROP or CPI for any of the subject individual's background that is described in WAC 110-06-0120 (3) or (4);~~

~~(d) The amount of time that has passed since the conviction information or negative action;~~

~~(e) The seriousness of the crime or subject individual's actions that led to the conviction or negative action;~~

(f) The number, types, and age of other convictions or negative actions in the subject individual's background;

(g) The subject individual's age at the time of conviction or the issuance of the negative action determination;

(h) The length and consistency of employment history before and after the conviction or negative action;

(i) The employment or character references and any other information regarding the subject individual's fitness to be authorized;

(j) The completion of services or other evidence of rehabilitation since the conviction or negative action;

(k) The subject individual's role or purpose in delivering early learning services; and

(l) How the subject individual's conduct that is the basis for the subject individual's conviction or negative action, is conduct that shows the subject individual does not have the appropriate character, suitability, and competence to receive a background check authorization.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0080 Notification of disqualification.**

(1) ~~((The department))~~ DCYF will ~~((notify the))~~ send written notice to a subject individual ~~((in writing if he or she))~~ who is disqualified by the background check.

(2) If ~~((the department))~~ DCYF sends a notice of disqualification, the subject individual will not be authorized to care for or have unsupervised access to children receiving early learning services, or to be present on the early learning service's premises during the hours for which child care is provided.

(3) Any decision by ~~((the department))~~ DCYF to disqualify a subject individual under this chapter is effective immediately upon receipt of written notice from the department to the subject individual.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0100 Request for administrative hearing.**

(1) ~~((Any))~~ A subject individual has a right to contest ~~((the department's))~~ a disqualification decision under WAC 110-06-0070 ~~((and))~~. The subject individual must request a hearing within twenty-eight days of receipt of the written disqualification decision ~~((, regardless of whether the subject individual requests a department reconsideration of the disqualification under WAC 110-06-0115)).~~

(2) A request for a hearing must meet the requirements of chapter 110-03 WAC.

(3) Any decision by the department to disqualify a subject individual under this chapter will remain in effect pending the outcome of the administrative hearing or review under chapter 110-03 WAC, notwithstanding any provision of chapter 110-03 WAC to the contrary.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0110 Limitations on challenges to disqualifications.** (1) If the disqualification is based on a crimi-

nal conviction, the subject individual cannot contest the conviction in the administrative hearing.

(2) If the disqualification is based on a finding of child abuse or neglect as defined in chapter 26.44 RCW, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, the subject individual cannot contest the finding if:

(a) The subject individual ~~((was notified of))~~ failed to request a hearing to contest the finding after receiving notice of the finding ~~((by the department of social and health services))~~ from DSHS ~~((and failed to request a hearing to contest the finding))~~; or

(b) The subject individual was notified of the finding ~~((by DSHS))~~ and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the disqualification is based on a court order finding the subject individual's child to be dependent as defined in chapter 13.34 RCW, the subject individual cannot contest the finding of dependency in the administrative hearing.

(4) If the disqualification is based on a negative action ~~((as defined in WAC 110-06-0020))~~, the subject individual cannot contest the underlying negative action in the administrative hearing if the subject individual was previously given the right of review or hearing right and a final decision or finding has been issued.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0115 ((Reconsideration of)) Department decision to vacate disqualification decision.**

(1) Subject to the requirements contained in this chapter ~~((110-06 WAC))~~, the department may not reconsider whether an earlier decision to disqualify a subject individual will be vacated unless the department determines a change has occurred in the circumstances of the subject individual between the date of disqualification and the date the request to vacate the disqualification is made. Subject to the requirements contained in this chapter, to receive a background check authorization under this section, the department must review the subject individual's background and assess their character, suitability, and competence to determine whether the change in circumstances demonstrates the subject individual should receive an authorization.

(2) ~~((For a disqualification based on WAC 110-06-0070 (5) or (7)(a), (e), or (e), a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would prevent the subject individual from caring for or having unsupervised access to children receiving early learning services. For purposes of subsection (2) of this section a disqualification based on a "negative action," WAC 110-06-0070 (5) or (7)(e) or (e) does not include a decision, final determination, or finding made by an agency or administrative law judge that relates to:~~

~~(a) The commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC; or~~

~~(b) The commission of abuse or neglect of a vulnerable adult as defined in chapter 74.34 RCW.) To determine whether there has been a change in circumstances, the department must consider the factors described in subsection (3) of this section. A change in circumstances includes, but is not limited to, the following:~~

~~(a) Two years have passed since the issuance of a disqualification.~~

~~(b) The issuance of a valid CROP that pertains to a crime that was the sole basis of the subject individual's disqualification.~~

~~(c) If the sole basis for the disqualification was for a conviction that has been dismissed, vacated, the subject of a pardon, annulment, or other equivalent procedure.~~

~~(d) The issuance of a valid CPI that pertains to a negative action that was the sole basis of the subject individual's disqualification. The CPI must pertain to conduct by the subject individual that resulted in a founded finding of negligent treatment or maltreatment, physical abuse, or a dependency finding that was the result of a finding that the subject individual abused or neglected the child under RCW 13.34.030 (6)(b).~~

~~(e) If the sole basis for the disqualification was a negative action that has been dismissed, vacated, annulled, or other equivalent procedure.~~

~~(3) ((For a disqualification based on any of the circumstances described in WAC 110-06-0070 (3) and (7)(b) or (d), a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would constitute a danger to a child's welfare if the individual is allowed to care for or have unsupervised access to children in care.)) Before a subject individual is issued a background check authorization under this section, the department must review the subject individual's background and assess their character, suitability, and competence. In this assessment, the department considers the following factors related to the subject individual's background:~~

~~(a) Whether the subject individual has a background containing any of the permanent convictions on the secretary's list described in WAC 110-06-0120(2);~~

~~(b) Whether the subject individual has a background containing any of the information described in the secretary's list in WAC 110-06-0120 (3) or (4);~~

~~(c) The amount of time that has passed since the negative action or conviction information that is the sole basis, or partial basis, of the subject individual's prior disqualification;~~

~~(d) The seriousness of the crime or subject individual's actions that led to the conviction or negative action that was the sole basis, or partial basis, of the subject individual's prior disqualification;~~

~~(e) The number, types, and age of other conviction information or negative actions in the subject individual's background;~~

(f) The subject individual's age at the time of the negative action determination or conviction that is the sole basis, or partial basis, of the subject individual's prior disqualification;

(g) The completion of services or other evidence of rehabilitation since the conviction or negative action that is the sole basis, or partial basis of the subject individual's prior disqualification;

(h) The subject individual's role or purpose in delivering early learning services;

(i) The length and consistency of employment history between the date the disqualification was issued and the date the subject individual asks the department to vacate the disqualification decision;

(j) The employment or character references and any other information regarding the subject individual's fitness to be authorized.

~~(4) ((The department will not reconsider qualifying a subject individual that was disqualified under WAC 110-06-0120(1).)) If a CROP or CPI has been issued for a crime or negative action that was the sole basis for a disqualification, the department must vacate the disqualification. If a disqualification is vacated for any reason under this section, the department must conduct a new background check investigation and evaluation as described in this chapter.~~

~~(5) ((The department will not reconsider qualifying a subject individual that was disqualified under WAC 110-06-0120(2) for a period of five years from the date of the disqualifying conviction.)) As part of the background check process under this section, the department will conduct the background check investigation, evaluation, and assessment as described in this chapter.~~

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0120 Secretary's list.** ~~((1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify him or her from authorization to care for or have unsupervised access to children receiving early learning services.~~

~~(2) A subject individual's conviction for any crime listed in column (b) in the table below will disqualify him or her from authorization to care for or have unsupervised access to children receiving early learning services for a period of five years from the date of conviction.~~

<del>(a) Crimes that permanently disqualify a subject individual</del>	<del>(b) Crimes that disqualify a subject individual for five years from date of conviction</del>
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary

<b>(a) Crimes that permanently disqualify a subject individual</b>	<b>(b) Crimes that disqualify a subject individual for five years from date of conviction</b>
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
	Extortion 2
Child buying or selling	Forgery
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	Identity theft
Controlled substance homicide	Leading organized crime
Criminal mistreatment	Malicious explosion 3
Custodial interference	Malicious mischief
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	Patronizing a prostitute
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	Prostitution
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	Theft
Malicious explosion 2	Theft welfare
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation-Controlled Substances Act (manufacture/deliver/intent)

<b>(a) Crimes that permanently disqualify a subject individual</b>	<b>(b) Crimes that disqualify a subject individual for five years from date of conviction</b>
Manslaughter	Violation of the Uniform-Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform-Legend Drug Act (manufacture/deliver/intent)
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse-restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism))	

(1) The crimes and conduct described in this section constitute the secretary's list.

(2) Subject to the requirements described in this chapter, the department must permanently disqualify a subject individual who has a conviction for any of the crimes listed in this subsection.

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.42.060</u>	<u>Abandonment of a dependent person in the first degree (if the victim is a child)</u>
<u>RCW 9A.42.070</u>	<u>Abandonment of a dependent person in the second degree (if the victim is a child)</u>
<u>RCW 10.95.020</u>	<u>Aggravated murder</u>
<u>RCW 9A.48.020</u>	<u>Arson in the first degree</u>
<u>RCW 9A.48.030</u>	<u>Arson in the second degree</u>
<u>RCW 9A.36.011</u>	<u>Assault in the first degree</u>
<u>RCW 9A.36.021</u>	<u>Assault in the second degree</u>
<u>RCW 9A.36.031</u>	<u>Assault in the third degree (if causes bodily harm)</u>
<u>RCW 9A.36.120</u>	<u>Assault of a child in the first degree</u>
<u>RCW 9A.36.130</u>	<u>Assault of a child in the second degree</u>
<u>RCW 9A.36.140</u>	<u>Assault of a child in the third degree</u>
<u>RCW 9A.52.020</u>	<u>Burglary in the first degree (if child or spouse is assaulted)</u>
<u>RCW 9A.44.083</u>	<u>Child molestation in the first degree</u>
<u>RCW 9A.44.086</u>	<u>Child molestation in the second degree</u>
<u>RCW 9A.44.089</u>	<u>Child molestation in the third degree</u>
<u>RCW 9A.64.030</u>	<u>Child buying or selling</u>
<u>RCW 9.68A.100</u>	<u>Commercial sexual abuse of a minor</u>
<u>RCW 9.68A.090</u>	<u>Communication with minor for immoral purposes (if a felony)</u>
<u>RCW 69.50.415</u>	<u>Controlled substances homicide (if the victim is a child)</u>
<u>RCW 9A.42.020</u>	<u>Criminal mistreatment in the first degree (if the victim is a child)</u>
<u>RCW 9A.42.030</u>	<u>Criminal mistreatment in the second degree (if the victim is a child)</u>
<u>RCW 9A.36.100</u>	<u>Custodial assault (if causes bodily harm)</u>
<u>RCW 9A.40.060</u>	<u>Custodial interference in the first degree (if the victim is a child)</u>
<u>RCW 9A.40.070</u>	<u>Custodial interference in the second degree (if the victim is a child; and the conviction is the subject individual's second or subsequent conviction of custodial interference in the second degree)</u>
<u>RCW 9A.44.160</u>	<u>Custodial sexual misconduct in the first degree (if the victim is a child)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9.68A.050</u>	<u>Dealing in depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9A.36.045</u>	<u>Drive-by shooting (if the victim is a child)</u>
<u>RCW 9A.42.100</u>	<u>Endangerment with a controlled substance (if the victim is a child)</u>
<u>RCW 9A.56.120</u>	<u>Extortion in the first degree (if the victim is a child)</u>
<u>RCW 9A.56.130</u>	<u>Extortion in the second degree (if the victim is a child)</u>
<u>RCW 9A.36.080</u>	<u>Hate crime offense (if the victim is a child)</u>
<u>RCW 9A.32.055</u>	<u>Homicide by abuse (if the victim is a child)</u>
<u>RCW 9A.64.020</u>	<u>Incest in the first degree or second degree (if the victim is a child)</u>
<u>RCW 9A.88.010</u>	<u>Indecent exposure (if a felony and the victim is a child)</u>
<u>RCW 9A.44.100</u>	<u>Indecent liberties</u>
<u>RCW 9A.40.020</u>	<u>Kidnapping in the first degree</u>
<u>RCW 9A.40.030</u>	<u>Kidnapping in the second degree</u>
<u>RCW 9A.40.090</u>	<u>Luring (if the victim is a child)</u>
<u>RCW 9A.32.060</u>	<u>Manslaughter in the first degree (if the victim is a child)</u>
<u>RCW 9A.32.070</u>	<u>Manslaughter in the second degree (if the victim is a child)</u>
<u>RCW 9A.32.030</u>	<u>Murder in the first degree</u>
<u>RCW 9A.32.050</u>	<u>Murder in the second degree</u>
<u>RCW 9.68A.070</u>	<u>Possession of depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9.68A.101</u>	<u>Promoting commercial sexual abuse of a minor</u>
<u>RCW 9.68.140</u>	<u>Promoting pornography (if the victim is a child)</u>
<u>RCW 9A.88.070</u>	<u>Promoting prostitution in the first degree (if the victim is a child)</u>
<u>RCW 9.68A.102</u>	<u>Promoting travel for commercial sexual abuse of a minor</u>
<u>RCW 9A.44.040</u>	<u>Rape in the first degree</u>
<u>RCW 9A.44.050</u>	<u>Rape in the second degree</u>
<u>RCW 9A.44.060</u>	<u>Rape in the third degree</u>
<u>RCW 9A.44.073</u>	<u>Rape of a child in the first degree</u>
<u>RCW 9A.44.076</u>	<u>Rape of a child in the second degree</u>
<u>RCW 9A.44.079</u>	<u>Rape of a child in the third degree</u>



<u>Citation</u>	<u>Description</u>
<u>RCW 9A.56.200</u>	<u>Robbery in the first degree (if the victim is a child)</u>
<u>RCW 9A.56.210</u>	<u>Robbery in the second degree (if the victim is a child)</u>
<u>RCW 9.68A.060</u>	<u>Sending, bringing into state depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9.68A.040</u>	<u>Sexual exploitation of a minor</u>
<u>RCW 9A.44.093</u>	<u>Sexual misconduct with a minor in the first degree</u>
<u>RCW 9A.40.040</u>	<u>Unlawful imprisonment (if the victim is a child)</u>
<u>RCW 46.61.520</u>	<u>Vehicular homicide (if the victim is a child)</u>

(3) Subject to the requirements described in this chapter, the department may disqualify a subject individual who has a conviction for a crime listed in this subsection.

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.42.060</u>	<u>Abandonment of a dependent person in the first degree (if the victim is not a child)</u>
<u>RCW 9A.42.070</u>	<u>Abandonment of a dependent person in the second degree (if the victim is not a child)</u>
<u>RCW 9A.42.080</u>	<u>Abandonment of a dependent person in the third degree</u>
<u>RCW 16.52.205</u>	<u>Animal cruelty in the first degree</u>
<u>RCW 16.52.207</u>	<u>Animal cruelty in the second degree</u>
<u>RCW 9A.36.031</u>	<u>Assault in the third degree (if no bodily harm)</u>
<u>RCW 9A.36.041</u>	<u>Assault in the fourth degree</u>
<u>RCW 9A.52.020</u>	<u>Burglary in the first degree (if a child or spouse is not assaulted)</u>
<u>RCW 9A.52.030</u>	<u>Burglary in the second degree</u>
<u>RCW 9A.36.070</u>	<u>Coercion</u>
<u>RCW 9.68A.090</u>	<u>Communication with minor for immoral purposes (if a gross misdemeanor)</u>
<u>RCW 69.50.415</u>	<u>Controlled substances homicide (if the victim is not a child)</u>
<u>RCW 9A.46.120</u>	<u>Criminal gang intimidation</u>
<u>RCW 9A.60.040</u>	<u>Criminal impersonation in the first degree</u>
<u>RCW 9A.42.020</u>	<u>Criminal mistreatment in the first degree (if the victim is not a child)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.42.030</u>	<u>Criminal mistreatment in the second degree (if the victim is not a child)</u>
<u>RCW 9A.42.035</u>	<u>Criminal mistreatment in the third degree</u>
<u>RCW 9A.42.037</u>	<u>Criminal mistreatment in the fourth degree</u>
<u>RCW 9.05.060</u>	<u>Criminal sabotage</u>
<u>RCW 9A.36.100</u>	<u>Custodial assault (if no bodily harm)</u>
<u>RCW 9A.40.060</u>	<u>Custodial interference in the first degree (if the victim is not a child)</u>
<u>RCW 9A.40.070</u>	<u>Custodial interference in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.160</u>	<u>Custodial sexual misconduct in the first degree (if the victim is not a child)</u>
<u>RCW 9A.44.170</u>	<u>Custodial sexual misconduct in the second degree</u>
<u>RCW 9.61.260</u>	<u>Cyberstalking</u>
<u>RCW 9A.36.045</u>	<u>Drive-by shooting (if the victim is not a child)</u>
<u>RCW 46.61.502</u>	<u>Driving under the influence of intoxicating liquor, marijuana, or any drug (if the conviction was for a felony or the conviction occurred within three years of the date of the subject individual's request for authorization)</u>
<u>RCW 46.52.020</u>	<u>Duty in case of personal injury or death or damage to attended vehicle or other property - Penalties (if a felony)</u>
<u>RCW 9A.42.100</u>	<u>Endangerment with a controlled substance (if the victim is not a child)</u>
<u>RCW 9A.56.120</u>	<u>Extortion in the first degree (if the victim is not a child)</u>
<u>RCW 9A.56.130</u>	<u>Extortion in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.132</u>	<u>Failure to register as sex offender or kidnapping offender</u>
<u>RCW 66.44.270</u>	<u>Furnishing liquor to minors (only if the subject individual sells, gives, or otherwise supplies liquor to a person under the age of twenty-one years; or permits any person under that age to consume liquor on the subject individual's property or on any property under the subject individual's control)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.46.020</u>	<u>Harassment</u>
<u>RCW 9A.36.080</u>	<u>Hate crime offense (if the victim is not a child)</u>
<u>RCW 9A.32.055</u>	<u>Homicide by abuse (if the victim is not a child)</u>
<u>RCW 79A.60.050</u>	<u>Homicide by watercraft</u>
<u>RCW 9.40.120</u>	<u>Incendiary devices</u>
<u>RCW 9A.64.020</u>	<u>Incest in the first degree or second degree (if the victim is not a child)</u>
<u>RCW 9A.88.010</u>	<u>Indecent exposure (if felony and victim is not a child, or if a misdemeanor)</u>
<u>RCW 9A.82.060</u>	<u>Leading organized crime</u>
<u>RCW 46.61.685</u>	<u>Leaving children unattended in standing vehicle with motor running</u>
<u>RCW 9.91.060</u>	<u>Leaving children unattended in parked automobile</u>
<u>RCW 9A.40.090</u>	<u>Luring (if the victim is not a child)</u>
<u>RCW 70.74.270</u>	<u>Malicious placement of an explosive in the first, second, or third degree</u>
<u>RCW 70.74.272</u>	<u>Malicious placement of an imitation device in the first degree or second degree</u>
<u>RCW 9A.32.060</u>	<u>Manslaughter in the first degree (if the victim is not a child)</u>
<u>RCW 9A.32.070</u>	<u>Manslaughter in the second degree (if the victim is not a child)</u>
<u>RCW 46.61.5249</u>	<u>Negligent driving in the first degree (if the conviction occurred within three years of the date of the subject individual's request for authorization)</u>
<u>RCW 46.61.504</u>	<u>Physical control of vehicle under the influence (if felony)</u>
<u>RCW 9.68.140</u>	<u>Promoting pornography (if the victim is not a child)</u>
<u>RCW 9A.88.070</u>	<u>Promoting prostitution in the first degree (if the victim is not a child)</u>
<u>RCW 9A.88.080</u>	<u>Promoting prostitution in the second degree</u>
<u>RCW 9A.36.060</u>	<u>Promoting a suicide attempt</u>
<u>RCW 9A.36.050</u>	<u>Reckless endangerment</u>
<u>RCW 9A.76.070</u>	<u>Rendering criminal assistance in the first degree</u>
<u>RCW 9A.52.025</u>	<u>Residential burglary</u>
<u>RCW 9A.56.200</u>	<u>Robbery in the first degree (if the victim is not a child)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.56.210</u>	<u>Robbery in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.096</u>	<u>Sexual misconduct with a minor in the second degree</u>
<u>RCW 9A.44.105</u>	<u>Sexually violating human remains</u>
<u>RCW 9A.46.110</u>	<u>Stalking</u>
<u>RCW 9.61.230</u>	<u>Telephone harassment (if felony)</u>
<u>RCW 9A.40.100</u>	<u>Trafficking in the first degree or second degree</u>
<u>RCW 13.32A.080</u>	<u>Unlawful harboring of a minor</u>
<u>RCW 9A.40.040</u>	<u>Unlawful imprisonment (if the victim is not a child)</u>
<u>RCW 69.53.010</u>	<u>Unlawful use of a building for drug abuse purposes</u>
<u>RCW 9.41.225</u>	<u>Use of machine gun or bump-fire stock in felony</u>
<u>RCW 46.61.522</u>	<u>Vehicular assault</u>
<u>RCW 46.61.520</u>	<u>Vehicular homicide (if the victim is not a child)</u>
<u>RCW 9.68A.075</u>	<u>Viewing depictions of minor engaged in sexually explicit conduct in the first or second degree</u>
<u>RCW 26.50.110</u>	<u>Violation of sexual assault protection order under chapter 7.90 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of stalking no-contact order or stalking protection order under chapter 7.92 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of human trafficking no-contact order under chapter 9A.40 if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of an order restricting contact under RCW 9A.46.080.</u>
<u>RCW 26.50.110</u>	<u>Violation of promoting prostitution no-contact order under chapter 9A.88 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of domestic violence no-contact order under chapter 10.99 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of dissolution proceeding restraining order under chapter 26.09 RCW if a felony under RCW 26.50.110.</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 26.50.110</u>	<u>Violation of paternity proceeding restraining order under chapter 26.26A or 26.26B RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of a domestic violence order for protection under chapter 26.50 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of an order for protection of a vulnerable adult under chapter 74.34 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 10.14.170</u>	<u>Violation of civil antiharassment protection order</u>
<u>RCW 69.52.030</u>	<u>Violation of the Uniform Controlled Substances Act (manufacture, distribute, or possess with intent to distribute)</u>
<u>Chapter 69.50 RCW (Article IV Offenses and penalties)</u>	<u>Except for controlled substance homicide if the child is a victim (RCW 69.50.415), any violation of the Uniform Controlled Substances Act</u>
<u>RCW 69.41.020</u>	<u>The unlawful obtaining or attempting to obtain a legend drug, or procure or attempt to procure the administration of a legend drug</u>
<u>RCW 69.41.030</u>	<u>Sale or delivery of legend drug without prescription or order</u>
<u>RCW 69.43.070</u>	<u>Sale, transfer, or furnishing of any substance listed in RCW 69.43.010 with knowledge or intent the recipient will use the substance to unlawfully manufacture a controlled substance; or the receipt of any substance listed in RCW 69.43.010 with intent to use the substance unlawfully to manufacture a controlled substance.</u>
<u>RCW 9A.44.115</u>	<u>Voyeurism</u>
<u>RCW 69.41.030</u>	<u>Sale or delivery of legend drug without prescription or order</u>

(4) Subject to the requirements described in this chapter, the department may disqualify a subject individual who has a background that includes any negative action that is based on the conduct described in this subsection includes any negative action that is based on the conduct described in this subsection.

(a) The abuse, neglect, exploitation, or abandonment of a vulnerable adult, child, or juvenile.

(b) The suspension, termination, revocation, denial, or restriction of a license, professional license, or certification.

(c) The suspension, termination, or revocation of a state or federal contract.

(d) The relinquishment of a license, certification, or contract in lieu of an agency negative action.

(5) Under 42 U.S.C. § 9858f (c)(1)(B) a subject individual must be disqualified and not authorized for employment at a licensed or certified child care facility, if the subject individual knowingly makes a materially false statement in connection with their criminal background check.

(6) Under 42 U.S.C. § 9858f (c)(1)(C) a subject individual must be disqualified and not authorized for employment at a licensed or certified child care facility, if the subject individual is registered, or is required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.).

**WSR 21-22-058**  
**PROPOSED RULES**  
**BOARD OF TAX APPEALS**  
 [Filed October 28, 2021, 2:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17 [21-17-075].

Title of Rule and Other Identifying Information: Chapter 456-11 WAC, Hearings—Practice and procedure.

Hearing Location(s): On December 10, 2021, at 10:00 a.m., electronic meeting via Teams, information on agency website.

Date of Intended Adoption: December 31, 2021.

Submit Written Comments to: Keri Lamb, 360-586-9020, email bta@bta.wa.gov, fax 360-586-9020, by hearing date minus seven calendar days.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, TTY 360-753-5446, email bta@bta.wa.gov, by hearing date minus seven calendar days.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this change is to remove the one provision in this section, and move it to chapter 456-09 WAC (formal hearings), and chapter 456-10 WAC (informal hearings), for clarity in the hearings process. As such, no effects are anticipated.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 82.03.170.

Statute Being Implemented: None.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board itself has drafted the proposed changes, and therefore recommends them in full. The board implements and enforces its own rules, so the proposed changes have no fiscal impact.

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting: Andrea Vingo, Board of Tax Appeals, 360-753-5446; Imple-

mentation and Enforcement: Board of Tax Appeals, 360-753-5446.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No changes in the board's administrative process.

October 4, 2021  
Andrea Vingo  
Tax Referee

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 456-11-015 Record evidence.

**WSR 21-22-059**  
**PROPOSED RULES**  
**BOARD OF TAX APPEALS**

[Filed October 28, 2021, 2:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17 [21-17-074].

Title of Rule and Other Identifying Information: Chapter 456-12 WAC, Administrative processes.

Hearing Location(s): On December 10, 2021, at 10:00 a.m., electronic meeting via Teams information on agency website.

Date of Intended Adoption: December 31, 2021.

Submit Written Comments to: Keri Lamb, 360-586-9020, email bta@bta.wa.gov, fax 360-586-9020, by hearing date minus seven calendar days.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, TTY 360-753-5446, email bta@bta.wa.gov, by hearing date minus seven calendar days.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose if [is] threefold. First, this section was edited for clarity and flow. Second, provisions from other of the board's WAC sections have been relocated here if they pertain to the board's administrative functions. Third, the sections pertaining to the Public Records Act have been expanded and edited to reflect current law. These changes are anticipated to improve the public's

comprehension of the rules, and to outline a detailed process for public records requests.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 82.03.170.

Statute Being Implemented: Chapters 42.30 and 42.56 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board itself has drafted the proposed changes, and therefore recommends them in full. The board implements and enforces its own rules, so the proposed changes have no fiscal impact.

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting: Andrea Vingo, Board of Tax Appeals, 360-753-5446; Implementation and Enforcement: Board of Tax Appeals, 360-753-5446.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Changes have no fiscal impact.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No changes in the board's administrative process.

October 4, 2021  
Andrea Vingo  
Tax Referee

AMENDATORY SECTION (Amending WSR 19-21-045, filed 10/9/19, effective 11/9/19)

**WAC 456-12-015 Purpose of this chapter.** The purpose of this chapter is to ~~((set forth rules on))~~ outline the organization and administration of the board of tax appeals (board), and to set forth rules that comply with the Open Public Meetings Act, chapter 42.30 RCW, ~~((regarding open public meetings,))~~ and the Public Records Act, chapter 42.56 RCW ~~((regarding public records))~~.

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

**WAC 456-12-035 Description of the board.** (1) ~~((As an independent state agency,))~~ The board is an independent state agency that reviews, holds hearings on, and decides state tax appeals filed by taxpayers and taxing authorities. The board consists of three members, an executive director, tax referees, and staff ~~((hired by the board))~~. The three members of the board serve on a full-time basis, and are appointed

by the governor, with the consent of the senate, for a term of six years.

(2) The executive director is the board's chief executive officer and is responsible for implementing board directions and for directing the board's staff.

~~((3) The board holds regular meetings at 10:00 a.m. on the second Thursday of each March, June, September, and December. The meetings are held at the board's office at 910 5th Avenue S.E., Olympia, WA 98504-0915.))~~

#### NEW SECTION

**WAC 456-12-037 Communication and contact with the board.** (1) The board's office is located at 1110 Capitol Way South, Suite 307, Olympia, WA 98501. The board's mailing address is P.O. Box 40915, Olympia, WA 98504-0915. The board's telephone number is 360-753-5446. The board's fax number is 360-586-9020. The board's email address is [bta@bta.wa.gov](mailto:bta@bta.wa.gov), and the board's website is [bta.wa.gov](http://bta.wa.gov).

(2) The board's primary method of communication is by electronic mail.

(3) Decisions and other correspondence will be sent by electronic mail unless an individual or party has made prior arrangements with the board.

### PUBLIC MEETINGS

#### NEW SECTION

**WAC 456-12-039 Meetings and quorums.** (1) The board holds regular meetings at 9:30 a.m. on the third Friday of each month. The meetings are held at the board's office.

(2) All meetings of the board are open to the public. Anyone is allowed to attend except as limited by the Open Public Meetings Act, chapter 42.30 RCW.

(3) Two members of the board constitute a quorum for the purpose of making orders or decisions, or for promulgating rules and regulations relating to the board's procedures. A quorum of the board may act even though one position is vacant.

#### NEW SECTION

**WAC 456-12-041 Meeting agendas and minutes.** (1) The agenda for a board meeting is available at least 24 hours in advance of the meeting, and is posted on the board's website at [bta.wa.gov](http://bta.wa.gov).

(2) The minutes of any meeting are available for public inspection as provided in RCW 42.30.035. Meeting minutes are available by emailing the clerk of the board at [bta@bta.wa.gov](mailto:bta@bta.wa.gov).

### PUBLIC RECORDS

#### NEW SECTION

**WAC 456-12-043 Purpose and intent.** (1) These rules provide information to those who want to request access to public records of the board, and to establish processes for

both requestors and the board. They are designed to best assist members of the public in obtaining such access.

(2) The board will respond promptly to requests for records made under chapter 42.56 RCW, Public Records Act.

AMENDATORY SECTION (Amending WSR 19-17-042, filed 8/15/19, effective 9/15/19)

**WAC 456-12-045 ((Public records available.)) Hours for inspection and copying.** ~~((Unless exempt under chapter 42.17 RCW or other law, all public records and indexes of the board are available for public inspection and copying at the board's main office during customary office hours.))~~ Public records of the board are available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays and the days the board is closed.

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

**WAC 456-12-055 Public records officer.** (1) The board's executive director is ~~((identified as))~~ the board's public records officer and is responsible for reviewing requests for public records.

(2) The public records officer will oversee compliance with the act, but a designee may process a request. The public records officer or designee and the board will provide the fullest assistance to requestors; ensure that public records are protected from damage or disorganization; and prevent the fulfilling of public records requests to cause excessive interference with the essential functions of the board.

(3) The board encourages communication with the public records officer if a requestor has not received a response in writing or has questions or concerns about a records request.

#### NEW SECTION

**WAC 456-12-073 Public Records Act requests to the board.** (1) **Website records.** Before submitting a records request, those seeking public records of the board are strongly encouraged to first review the board's website at [bta.wa.gov](http://bta.wa.gov). This website includes the board's decisions from 1967 to the present, board policies, and public meeting schedules, and agendas. These are free for viewing and downloading at any time, and are accessible without making a Public Records Act request.

(2) **Public Records Act requests.** Public Records Act requests must be sent or submitted to the public records officer in one of the following ways:

(a) Online: <http://www.bta.wa.gov>

(b) Email: [bta@bta.wa.gov](mailto:bta@bta.wa.gov) with subject line indicating "public records request"

(c) U.S. Mail or Delivery: Public Records Officer

Washington State Board of Tax Appeals

P.O. Box 40915

Olympia, WA 98504-0915

(d) In person: 1110 Capitol Way South, Suite 307

Olympia, WA 98501

Communications that seek the board's records, but which are sent or provided to unauthorized addresses or staff, will

not be accepted or processed as Public Records Act requests. The board will instead process such communications as general informal inquiries, general correspondence, or general requests for information.

(3) **Manner of requests.** Requestors are strongly encouraged to make requests in writing. If the board receives an oral request, the board will reduce the request to writing and verify with the requestor in writing that it correctly memorializes the request. Requestors are also urged to include a description of the records requested by docket number, appellant name, subject matter, suggested search terms, or other means that will allow the public records officer or designee to identify the requested records. The board accepts in-person requests at its office during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days the board's office is closed.

#### NEW SECTION

##### **WAC 456-12-078 Response to Public Records Act requests.**

(1) Within five business days of receiving a Public Records Act request, the board will assign the request a tracking number and log it. The public records officer or designee will evaluate the request according to the nature of the request, clarity, volume, and availability of requested records.

(2) Following the initial evaluation of the request, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) Providing an internet address and link on the website to specific records requested if copies are available on the office's website;

(ii) Sending copies to the requestor, if requested and where a payment or a deposit has been made, if any, or other terms of payment are agreed upon and have been satisfied.

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available. The public records officer or designee may revise the estimate.

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for all or part of a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of time the board will need to respond to the unclear request or unclear part of a request if it is not clarified.

(i) Clarification may be requested and provided by phone and memorialized in writing, or by email or letter;

(ii) If the requestor fails to respond to a request for clarification within 30 calendar days and the entire request is unclear, the office need not respond to it. The board will only respond to those portions of a request that are clear.

(d) Deny the request.

(3) The board may request additional time to respond to a request because of the need to clarify the request, locate and assemble the records requested, notify third persons or agencies affected by the request, or determine whether any of the

information requested is exempt and that a denial should be made as to all or part of the request.

(4) The board will provide an estimate of the time required to respond to a request, and may provide an estimate of copying costs specific to a request seeking an estimate of cost. If the requestor believes the amount of time or estimated costs are not reasonable, the requestor may petition the board for review as outlined in WAC 456-12-115(2).

#### NEW SECTION

**WAC 456-12-083 Providing responsive records to a Public Records Act request.** (1) **Inspecting records.** Consistent with other demands, the board will provide space to inspect public records at a designated location. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor must indicate which documents he or she wishes the office to copy.

(a) The requestor must claim or review the assembled records within 30 days of the board's notification that the records are available for inspection or copying. The board will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the board to make arrangements to claim or review the records.

(b) If the requestor fails to claim or review the records within the 30-day period or make other arrangements, the board may close the request and refile the assembled records.

(2) **Providing copies of records.** After inspection is complete and the requestor asks for copies of some or all of the inspected records, or where copies are otherwise requested, the public records officer or designee will make the requested copies or arrange for copying.

(a) If the board charges for copies, the requestor must pay for the copies before the copies are provided.

(b) Electronic records will be provided as a link to the records if the records are located on the website, or in a format used by the board which is generally commercially available to the public. Records will generally not be provided by email for records responses with multiple records, or where records may not be successfully delivered or received via the board's or the requestor's email systems.

(3) **Providing records in installments.** When a request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within 30 days, the requestor fails to inspect or pay for the entire set of records or for one or more of the installments, the public records officer or designee may stop searching for or producing the remaining records and close the request.

(4) **Multiple requests.** Multiple public records requests from the same requestor will be processed in a manner so as not to interfere with essential agency functions including processing records requests from other requestors. The board may process such requests in the order received, and may complete one request before searching for records for a subsequent request.

(5) **Completion of inspection.** When the review of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate

that the board has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

**WAC 456-12-085 Costs and fees.** (1) No fee will be charged for inspecting the board's public records.

(2) The board ~~((will charge ten cents per page for copies of requested public records. Payment will be made by check payable to the board. The board may require that all charges be paid before the copies are released. The executive director may decide that no fee will be charged for the copies if the expense of processing the payment is greater than the cost of providing the copies.))~~ does not calculate all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The board does not have the resources to conduct a study to determine all its actual copying costs; and

(b) Conducting such a study would interfere with other essential agency functions.

(3) The board will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The board may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The board may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(4) The board requires requestors to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests. The public records officer has the discretion to waive fees when:

(a) All of the records responsive to an entire request are paper copies and are 25 or fewer pages; or

(b) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(c) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of 10 percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds \$25.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The board will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the board. The board prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The board will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

**WAC 456-12-105 Exemptions and denying requests for public records.** (1) The board may determine that all or part of a requested public record is exempt under the Public Records Act, chapter 42.17 RCW, or other law and may not be inspected or copied.

~~(2) ((All denials of a request for public records will contain a written statement from the executive director stating the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.))~~ If the board believes that a record or part of a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief written explanation as to why it is being withheld. If only a portion of a record is exempt from disclosure, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

~~(3) ((The board may remove identifying details when it makes available or publishes any public record when there is reason to believe that revealing such details would be an invasion of personal privacy protected by chapter 42.17 RCW.))~~ If the requested records contain information that may affect the rights of others, the public records officer or designee may give notice to those whose rights may be affected by the disclosure under RCW 42.56.540 before providing the records. Notice should be given to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) The board is prohibited by statute from disclosing lists of individuals for commercial purposes.

#### NEW SECTION

**WAC 456-12-112 Closing a request for public records.** (1) When the requestor either withdraws a request, or fails to clarify an entirely unclear request, or fails to fulfill his or her obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make a final payment for the requested copies, the public records officer or designee will close the request and, unless the board has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the office has closed the request.

(2) If, after the board has informed the requestor that it has provided all available records, the board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor.

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

**WAC 456-12-115 Reviewing denials of requests for public records, estimates of time, and estimates of cost.**

~~((1) Any person objecting to a denial of a request for public records may submit a written request for review to the board.~~

~~(2) Upon receiving the written request for review, the executive director will call a meeting of the board to review the denial.~~

~~(3) The board will issue a written decision within two business days of receiving the request for review.~~

~~(4) The board's written decision regarding the request for review will be the final action by the agency.)~~ (1) Requestors are encouraged to communicate with the public records officer or assigned designee about denials of public records requests, estimates of time, or estimates of costs. If unsatisfied, a requestor may seek review of the issue.

(2) Any person who objects to the board's denial or partial denial of a request for public records or contends an estimate of time to provide records or copying costs to provide records is not reasonable, may petition for prompt review of the decision by submitting a written request to the executive director for a review by the board.

(3) The written request for review must specifically refer to the written statement by the public records officer or designee which accompanied the denial or estimate.

(4) Within two business days of receiving a written request for review, the executive director will schedule a meeting of the board to review the denial.

(5) The board will issue a written decision or order within two business days of the board's meeting where the request for review is considered. The board will affirm, reverse, or amend the denial or estimate.

(6) The board's written decision regarding a request for review will be the final action by the board.

(7) The board will have concluded a public record is exempt from disclosure for purposes of WAC 44-06-160 only after the review conducted under this section has been completed.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 456-12-025 Definitions.
- WAC 456-12-065 Communications with the board.
- WAC 456-12-075 Records indexes.
- WAC 456-12-095 Requesting public records.
- WAC 456-12-125 Electronic correspondence.

#### WSR 21-22-062

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

[Filed October 28, 2021, 3:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-18-067.

Title of Rule and Other Identifying Information: WAC 182-532-530 Family planning only programs—Covered services; other related rules as appropriate.

Hearing Location(s): On December 7, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance for this public hearing [https://zoom.us/webinar/register/WN\\_02NigG27RGGZF3b8fcFbJw](https://zoom.us/webinar/register/WN_02NigG27RGGZF3b8fcFbJw). After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than December 8, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by December 7, 2021.

Assistance for Persons with Disabilities: Contact HCA Rules Coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), by November 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this rule to add the HPV vaccine as a covered service under the family planning only program.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Melissa Kundur, P.O. Box 55109, Olympia, WA 98504-5109, 360-725-5297.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose any costs on businesses.

October 28, 2021

Wendy Barcus  
Rules Coordinator



AMENDATORY SECTION (Amending WSR 19-18-024, filed 8/28/19, effective 10/1/19)

**WAC 182-532-530 Family planning only programs—Covered services.** The medicaid agency covers all of the following services:

(1) One comprehensive preventive family planning visit once every twelve months, based on nationally recognized clinical guidelines. This visit must have a primary focus and diagnosis of family planning and include counseling, education, risk reduction, and initiation or management of contraceptive methods;

(2) Assessment and management of family planning or contraceptive problems, when medically necessary;

(3) Contraception, including:

(a) Food and Drug Administration (FDA)-approved contraceptive methods, as described under WAC 182-530-2000;

(b) Education and supplies for Federal Drug Administration (FDA)-approved contraceptive, natural family planning, and abstinence; and

(c) Sterilization procedures, as described under WAC 182-531-1550.

(4) The following services, when appropriate, during a visit focused on family planning:

(a) Pregnancy testing;

(b) Cervical cancer screening, according to nationally recognized clinical guidelines;

(c) Gonorrhea and chlamydia screening and treatment for clients age thirteen through twenty-five, according to nationally recognized clinical guidelines;

(d) Syphilis screening and treatment for clients who have an increased risk for syphilis, according to nationally recognized guidelines; and

(e) Sexually transmitted infection (STI) screening, testing, and treatment, when medically indicated by symptoms or report of exposure, and medically necessary for the client's safe and effective use of their chosen contraceptive method.

(5) Human papillomavirus (HPV) vaccines.

### WSR 21-22-063

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

[Filed October 28, 2021, 3:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-047.

Title of Rule and Other Identifying Information: WAC 182-508-0005 Eligibility for Washington apple health medical care services eligibility and scope of coverage and 182-508-0150 Enrollment cap for medical care services (MCS).

Hearing Location(s): On December 7, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. Register in advance for this webinar

[https://zoom.us/webinar/register/WN\\_02NigG27RGGZF3b8fcFbJw](https://zoom.us/webinar/register/WN_02NigG27RGGZF3b8fcFbJw). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than December 8, 2021.

Submit Written Comments to: HCA rules coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by December 7, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by November 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To comply with 3SSB 5164, chapter 136, Laws of 2020, HCA is amending these rules to include eligibility for persons covered under the survivors of certain crimes program.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; and 3SSB 5164, chapter 136, Laws of 2020.

Statute Being Implemented: RCW 41.05.021, 41.05.160; and 3SSB 5164, chapter 136, Laws of 2020.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Dody McAlpine, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-9964.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The changes to the proposed rules apply to clients and do not impose any costs on businesses.

October 28, 2021

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-16-019, filed 7/24/14, effective 8/24/14)

**WAC 182-508-0005 (~~Eligibility for~~) Washington apple health medical care services—Eligibility and scope of coverage.** (1) A person is eligible for state-funded Washington apple health (~~((WAH))~~) medical care services (MCS) coverage to the extent of available funds if the person is:

(a) Determined by the department of social and health services to be eligible for benefits under (~~((either))~~):

(i) The aged, blind, or disabled program as described in WAC 388-400-0060 (~~((or))~~);

(ii) The housing and essential needs referral program as described in WAC 388-400-0070; or

(iii) The survivors of certain crimes (SCC) program, as described in WAC 388-424-0035, including victims of human trafficking; and

(b) Not eligible for another federally funded categorically needy (CN) (as defined in WAC 182-500-0020) or alternative benefits plan (ABP) (as defined in WAC 182-500-0010) (~~(WAH)~~) Washington apple health program.

(2) If an enrollment cap exists under WAC 182-508-0150, a waiting list of (~~persons~~) people may be established.

(3) A person's period of eligibility for MCS is the same as (~~either~~) the person's period of eligibility for:

(a) The aged, blind, or disabled program as described in WAC 388-449-0150 (~~or~~);

(b) The person's incapacity authorization period for the housing and essential needs referral program as described in WAC 388-447-0110; or

(c) The person's period of eligibility for the SCC program as described in WAC 388-424-0035.

(4) The MCS program covers only the medically necessary services defined in WAC 182-501-0060.

(5) The MCS program does not cover medical services received outside the state of Washington unless the medical services are provided in a border city listed in WAC 182-501-0175.

AMENDATORY SECTION (Amending WSR 14-16-019, filed 7/24/14, effective 8/24/14)

**WAC 182-508-0150 Enrollment cap for medical care services (MCS).** (1) Enrollment in medical care services (MCS) coverage is subject to available funds.

(2) The medicaid agency may limit enrollment into MCS coverage by implementing an enrollment cap and wait list.

(3) If a person is denied MCS coverage due to an enrollment cap:

(a) The person is added to the MCS wait list based on the date the person applied.

(b) Applicants with the oldest application date will be the first to receive an opportunity for enrollment when MCS coverage is available as long as the person remains on the MCS wait list.

(4) A person is exempted from the enrollment cap and wait list rules when:

(a) MCS was terminated due to agency error;

(b) The person is in the thirty-day reconsideration period for incapacity reviews under WAC 388-447-0110(4);

(c) The person is being terminated from a categorically needy (CN) medical program and was receiving and eligible for CN coverage prior to the date a wait list was implemented and at the time their CN coverage ended, the person met eligibility criteria to receive benefits under either the aged, blind, or disabled program as described in WAC 388-400-0060 or the housing and essential needs referral program as described in WAC 388-400-0070; or

(d) The person applied for a determination by the department of social and health services (DSHS) to be eligible for benefits under (~~either~~) one of the following programs, but

the determination was not completed before the enrollment cap effective date:

(i) The aged, blind, or disabled program as described in WAC 388-400-0060 (~~or~~);

(ii) The housing and essential needs referral program as described in WAC 388-400-0070(~~, but the determination was not completed prior to the enrollment cap effective date~~); or

(iii) The survivors of certain crimes (SCC) program, as described in WAC 388-424-0035, including victims of human trafficking.

(5) The person is removed from the MCS wait list if the person:

(a) Is not a Washington resident;

(b) Is deceased;

(c) Requests removal from the wait list;

(d) Is found eligible for categorically or medically needy coverage; or

(e) Is no longer determined by DSHS to be eligible for benefits under (~~either~~);

(i) The aged, blind, or disabled program as described in WAC 388-400-0060 (~~or~~);

(ii) The housing and essential needs referral program as described in WAC 388-400-0070; or

(iii) The SCC program as described in WAC 388-424-0035.

## WSR 21-22-071

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Division of Child Support)

[Filed October 29, 2021, 2:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-05-061.

Title of Rule and Other Identifying Information: Implements incarceration abatement and modification request/hearing notification service as enacted in SHB 2302 (chapter 227, Laws of 2020): WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-3900 Does DCS review my support order to see if it should be modified?, 388-14A-3901 Under what circumstances does DCS review a support order for modification?, 388-14A-3903 How does DCS decide whether to petition for modification of a support order?, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-3935 What does DCS do with respect to abatement when it learns the noncustodial parent is an incarcerated parent?, 388-14A-3940 Who can ask to add abatement language to an administrative order?, 388-14A-3945 How does DCS administer abatement of an incarcerated person's child support order?, 388-14A-3950 What does DCS do to reinstate the support order when the NCP is released from confinement?, 388-14A-3955 What does DCS do when it determines an incarcerated person's support order should not be abated?, 388-

14A-3960 What happens at a hearing on a notice regarding non-abatement of child support?, 388-14A-3965 What happens at a hearing on a notice of abatement?, 388-14A-3970 Who may request to terminate or reverse an abatement?, 388-14A-3975 What happens at a hearing to terminate or reverse an abatement?, and 388-14A-6100 The division of child support accepts oral requests for hearing or conference board.

Hearing Location(s): On December 21, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than January 1, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., December 21, 2021.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email [tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov), by 5:00 p.m., on December 7, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Implements incarceration abatement and modification request/hearing notification service as enacted in SHB 2302 (chapter 227, Laws of 2020). Establishes the process by which qualifying incarcerated individuals have their child support obligations abated. Also clarifies under WAC 388-14A-3925 that the office of administrative hearings (OAH), not the division of child support (DCS), serves copies of requests for modification and notice of hearings.

Reasons Supporting Proposal: This rule making is required to implement SHB 2302 (chapter 227, Laws of 2020). It will ensure sufficient processes exist for incarceration abatement. It also ensures the correct entity (OAH) serves certain notices as required by law.

Statutory Authority for Adoption: RCW 26.09.916, 74.08.090, 74.20A.055.

Statute Being Implemented: RCW 26.09.170, 26.09.320, 26.09.325, 26.09.330, 26.09.335, 26.09.340, 74.20A.059.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: DSHS, economic services administration, DCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brady Horenstein, DCS Rules Coordinator, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5291.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt under RCW 34.05.328 (5)(b)(vii) because they are rules of DSHS concerning liability for care of dependents.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4) and 34.05.328 (5)(b)(vii).

Explanation of exemptions: This proposal does not affect small businesses. These rules are exempt under RCW 34.05.328 (5)(b)(vii) because they are concerning liability for care of dependents.

October 28, 2021  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-23 issue of the Register.

**WSR 21-22-079**  
**PROPOSED RULES**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**

[Filed November 1, 2021, 1:53 p.m.]

Original Notice.

Proposal is exempt under chapter 36.78 RCW.

Title of Rule and Other Identifying Information: Amending chapter 136-60 WAC to update for changes to the master county road log control fields and items necessary for the implementation of the new GIS-Mo system.

Hearing Location(s): On January 27, 2022, at 2:00 p.m., at 2404 Chandler Court S.W., Olympia, WA 98504.

Date of Intended Adoption: January 27, 2022.

Submit Written Comments to: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, email [drew.woods@crab.wa.gov](mailto:drew.woods@crab.wa.gov), by January 21, 2022.

Assistance for Persons with Disabilities: Contact Drew Woods, phone 360-753-5989, TTY 800-883-6384, email [drew.woods@crab.wa.gov](mailto:drew.woods@crab.wa.gov), by January 21, 2022.

Reasons Supporting Proposal: Housekeeping changes.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Mike Clark, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989; Enforcement: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Is exempt under chapter 36.78 RCW.

November 1, 2021

Jane Wall

Executive Director

AMENDATORY SECTION (Amending WSR 03-05-009, filed 2/7/03, effective 3/10/03)

**WAC 136-60-020 Definitions.** For ~~((purposes of implementing procedures for updating, validating and maintaining the county road log.))~~ this chapter the following definitions shall apply:

(1) County road log - The listing, by county, of all roads under county jurisdiction including their description, length, milepost identification, functional class, surface type, traffic volume, Federal Highway Administration MIRE FDE, and other administrative and physical inventory items that may be included.

(2) ~~((Computer database application software))~~ Asset management system - The suite of computer database application software by which the county road log data is updated and maintained by all counties and the county road administration board.

(3) Updates - Periodic changes to the county road log involving any or all of the included data elements.

(4) Control fields - Those fields within the county road log for which all updates need to be verified by the county road administration board prior to inclusion in the master county road log. ~~((Control fields are those fields utilized for the computation of gas tax allocations in accordance with RCW 46.68.124.))~~ The control fields are: Unique identifier (county road number, beginning milepost, ending milepost), jurisdiction, length, function class, surface type, surface width, structure type, right and left shoulder type, right and left shoulder width, and average daily traffic volume of all roadway elements such as through lane, other lane, bike lane, and shoulder.

(5) Master county road log - The combination of all county road logs as kept by the county road administration board containing the county road log of all counties as of July 1st of each year.

(6) Federal Highway Administration MIRE FDE - Federal Highway Administration Model Inventory Roadway Elements: Fundamental data elements.

AMENDATORY SECTION (Amending WSR 03-05-009, filed 2/7/03, effective 3/10/03)

**WAC 136-60-030 Submittal of annual updates.** Each county shall be responsible for maintaining current information regarding its road log and, no later than ~~((May))~~ April 1st of each year, shall submit an updated road log for its complete road system with all data elements as of December 31st of the preceding year. This annual update must ~~((be on computer-readable medium and written in the computer database application software format))~~ use the asset management system as prescribed by the county road administration board. All updates involving changes in control fields must include supporting documentation as required in WAC 136-60-050.

AMENDATORY SECTION (Amending WSR 14-17-035, filed 8/13/14, effective 9/13/14)

**WAC 136-60-050 Validation requirements for control fields.** Each update of a road log segment that involves a change in a control field (including additions or deletions of road segments) will be validated by the county road administration board. Documentation necessary to support control field changes is as follows:

**Function class** - Notice of FHWA approval from WSDOT.

**Pavement type** - Statement signed by county engineer with list of pavement type changes.

**Responsible agency** - The responsible agency is the legislative authority of the appropriate governmental agency with the authority to make the decision required for the action, or the state or federal government person authorized to approve changes.

**Addition of mileage** - Official document signed by responsible agency authorizing and describing the circumstances of the addition. For example, additions can occur through county legislative approval of new plat, construction/reconstruction on new alignment, or a change in jurisdiction.

**Deletion of mileage** - Official document signed by responsible agency authorizing and describing the circumstances of the deletion. For example, deletions can occur through legislative approval of vacations or a change in jurisdiction.

**Traffic volume** - Statement signed by county engineer with list of segments affected by change in traffic volume above or below 5000 average daily traffic.

All changes to a control field will be located on appropriate map(s) with sufficient detail to identify the location of each change. All map(s) furnished in support of control field changes will be forwarded by the county road administration board to WSDOT for future reference and use.

AMENDATORY SECTION (Amending WSR 14-17-035, filed 8/13/14, effective 9/13/14)

**WAC 136-60-060 Use of common ~~((computer database))~~ asset management system.** Each county shall use the ~~((computer database application software))~~ asset management system for the maintenance and updating of its county road log prescribed by the county road administration board.

Each county shall be responsible for the purchase of additional licenses not otherwise provided by the county road administration board and installation of the requisite software on its own (~~(Windows compatible)~~) computer and/or mobile device(s). To assist each county to meet its eligibility requirements, the county road administration board shall provide technical support and training.

**WSR 21-22-082**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed November 1, 2021, 2:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-067.

Title of Rule and Other Identifying Information: WAC 388-845-2110 Are there limits to the supported employment services you may receive?

Hearing Location(s): On December 7, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than December 8, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 7, 2021.

Assistance for Persons with Disabilities: Contact Shelley Tencza, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email Shelley.Tencza@dshs.wa.gov, by November 23, 2021, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments adjust the criteria for who can receive supported employment services. Rather than requiring a person to be graduated from high school, the criteria in subsection (1)(b) has been broadened to "no longer eligible to enroll in high school."

Additional proposed amendments align with approved home and community-based services (HCBS) waivers by: Replacing "community access" with the service's new name "community inclusion"; and removing prevocational services, which are no longer available through developmental disabilities administration's (DDA) HCBS waivers.

Reasons Supporting Proposal: Broadening eligibility for supported employment is necessary because:

1. It will allow students who didn't graduate from high school to begin receiving services at age 21 rather than age 22; and

2. It will allow students participating in recovery services through the school system to access employment services. (Recovery services are available through office of superintendent of public instruction because of the impact of the COVID-19 public health emergency on educational services.)

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1575; Implementation and Enforcement: Rod Duncan, P.O. Box 45310, Olympia, WA 98504-5310, 360-791-9788.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

November 1, 2021  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

**WAC 388-845-2110 Are there limits to the supported employment services you may receive?** The following limits apply to your receipt of supported employment services:

(1) To receive supported employment services, you must be age ~~((twenty))~~:

(a) 20 and graduating from high school before your July or August twenty-first birthday(~~(; age twenty-one))~~;

(b) 21 and (~~(graduated from)) no longer eligible to enroll in high school(~~(;))~~; or (~~(age twenty-two))~~~~

(c) 22 or older (~~(to receive supported employment services;))~~.

(2) Payment for individual supported employment services excludes the supervisory activities rendered as a normal part of the business setting(~~(;))~~.

(3) You will not be authorized to receive supported employment services in addition to community (~~(access or prevocational)) inclusion services(~~(; and))~~.~~

(4) Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325 and might not equal the number of hours you spend on the job or in job related activities.

**WSR 21-22-095**  
**PROPOSED RULES**  
**COUNTY ROAD**

**ADMINISTRATION BOARD**

[Filed November 2, 2021, 11:07 a.m.]

Original Notice.

Proposal is exempt under chapter 36.78 RCW.

Title of Rule and Other Identifying Information: Creating chapter 136-600 WAC, Equipment rental and revolving (ER&R) fund.

Hearing Location(s): On January 27, 2022, at 2:00 p.m., at 2404 Chandler Court S.W., Olympia, WA 98504.

Date of Intended Adoption: January 27, 2022.

Submit Written Comments to: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, email drew.woods@crab.wa.gov, by January 27, 2022.

Assistance for Persons with Disabilities: Contact Drew Woods, phone 360-753-5989, TTY 800-883-6384, email drew.woods@crab.wa.gov, by January 27, 2022.

Reasons Supporting Proposal: Clarify duties, responsibilities, and submittal requirements and due date regarding the administration of ER&R.

Statutory Authority for Adoption: Chapters 36.78 and 36.33A RCW.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Derek Pohle, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989; Enforcement: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Is exempt under chapter 36.78 RCW.

November 1, 2021  
 Jane Wall  
 Executive Director

**Chapter 136-600 WAC**

**EQUIPMENT RENTAL AND REVOLVING FUND**

NEW SECTION

**WAC 136-600-010 Purpose and authority.** The laws of the state of Washington make detailed provision in chapter 36.33A RCW for the use of an equipment rental and revolving fund for all county road equipment, materials, and supplies. Chapter 36.33A RCW also specifies that the county road administration board has the ability to directly inquire into the process of setting rental rates while performing its statutory oversight responsibility.

NEW SECTION

**WAC 136-600-020 Definitions.** For this chapter, the following definitions shall apply:

(1) Board - County road administration board as defined in chapter 36.78 RCW.

(2) County vehicle ferry - A ferry boat owned by the county for the purpose of carrying vehicles but may also carry walk-on passengers.

(3) CRAB - County road administration board.

(4) Equity - The amount of money that would be returned to a department should they withdraw from the county's ER&R fund.

(5) ER&R - Equipment rental and revolving fund as specified in chapter 36.33A RCW.

(6) MVFT - Motor vehicle fuel tax as defined in chapter 46.68 RCW.

NEW SECTION

**WAC 136-600-030 Applicability.** This chapter is only applicable to that equipment, materials, and supplies within ER&R that are associated with the county road department. Any other county department participating in a county's ER&R program is excluded from the requirements of this chapter.

NEW SECTION

**WAC 136-600-040 Protection of county road funds within ER&R fund.** Only county road departments are required by chapter 36.33A RCW to utilize an ER&R fund. However, a county's legislative authority may choose to allow or require other county departments and offices to participate in the ER&R program. If noncounty road entities participate in the ER&R program, the county must have a system in place to ensure the following:

(1) Identify the equity each department and office has within the ER&R fund balance and ensure one fund does not benefit at the expense of another;

(2) Distribute the direct and indirect cost of maintaining and operating facilities specific for ER&R equipment equitably among the participants;

(3) Distribute the direct and indirect cost of maintaining and operating facilities specific for ER&R material and supplies equitably among the participants;

(4) Distribute the direct and indirect cost of administering the ER&R program equitably among the participants.

#### NEW SECTION

**WAC 136-600-050 Equipment rental rates.** Rental rates of equipment shall be reviewed annually by the county's legislative authority. Rental rates must include, but are not limited to, the following:

- (1) Estimated service life in years and service life remaining;
- (2) Replacement cost;
- (3) Salvage value;
- (4) Estimated operating and maintenance cost;
- (5) Direct and indirect cost of maintaining and operating facilities specific for ER&R equipment;
- (6) ER&R program administration.

ER&R rates for equipment shall be determined by the county engineer or other appointee of the county legislative body. However, if the rates are set by an appointee other than the county engineer, the county engineer shall review the proposed rates and certify to the legislative body that the proposed rates are an appropriate use of county road funds as required by RCW 36.80.030 prior to adoption of the proposed rates by the legislative authority.

The resolution by the legislative authority adopting the rental rates must include reference to the fact that the rental rates for county road equipment have been reviewed by the county engineer and certified as an appropriate use of county road funds as required by RCW 36.80.030.

#### NEW SECTION

**WAC 136-600-060 Materials and supplies rates.** Rates for the sale of any material or supplies which have been administered, purchased, maintained, or manufactured with ER&R funds for the use of the county road department must include, but are not limited to, the following:

- (1) Cost of purchasing, storing, and distributing the material or supplies;
- (2) Direct and indirect cost of maintaining and operating facilities specific for ER&R material and supplies;
- (3) ER&R program administration.

ER&R rates for material and supplies shall be determined by the county engineer or other appointee of the county legislative body. However, if the rates are set by an appointee other than the county engineer, the county engineer shall review the proposed rates and certify to the legislative body that the proposed rates are an appropriate use of county road funds as required by RCW 36.80.030.

#### NEW SECTION

**WAC 136-600-070 Submittals.** Each county engineer shall submit the following documents to CRAB no later than April 1st of each year:

- (1) Adopted county road rental rates as of January 1st of that year;
- (2) The resolution of the legislative authority adopting said rates;
- (3) ER&R management policy.

#### NEW SECTION

**WAC 136-600-080 Support by road fund—County vehicle ferry.** Counties may elect to include vehicle ferry operations as part of their county road system. The operation of a county vehicle ferry is a component of the MVFT distribution calculation to the counties. Because a vehicle ferry operated by a county is considered a part of the county road system, Article 2 section 40 of the Washington state Constitution authorizes the use of county road funds for the operation of ferries which are a part of any county road system.

Should a county elect to use county road funds for the operation of a county vehicle ferry, the ferry boat(s) shall be considered county road equipment and subject to all requirements of chapter 36.33A RCW and this chapter.

### **WSR 21-22-098**

#### **PROPOSED RULES**

#### **DEPARTMENT OF AGRICULTURE**

[Filed November 2, 2021, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-19-073.

Title of Rule and Other Identifying Information: Chapter 16-306 WAC, Hemp program. As a result of the recently passed legislation (ESB 5372, chapter 104, Laws of 2021) the department is proposing amendments to this rule, which will create a process and fee for hemp processors to register their businesses/facilities with the Washington state department of agriculture (WSDA).

Hearing Location(s): On December 7, 2021, at 10:00 a.m., Microsoft Teams conference line. Join by link Click to Join Meeting [contact agency for link], join by phone +1 564-999-2000, Phone Conference ID 840 681 613#. Due to the ongoing COVID-19 pandemic, the public hearing will be held solely over video and teleconference.

Date of Intended Adoption: December 14, 2021.

Submit Written Comments to: Gloriann Robinson, agency rules coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email [wdsrulescomments@agr.wa.gov](mailto:wdsrulescomments@agr.wa.gov), fax 360-902-2092, by December 7, 2021.

Assistance for Persons with Disabilities: Contact Reanna McNamara, phone 360-902-1931, fax 360-902-2085, TTY 800-833-6388, email [rmcnamara@agr.wa.gov](mailto:rmcnamara@agr.wa.gov), by November 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-306 WAC to include a new section, WAC 16-306-055, which outlines the process for hemp processors to voluntarily register with the department, including specifying the information required on the registration application as well as the registration fee.

ESB 5372 requires the department to establish a voluntary hemp processor registration which will allow persons or companies to ship transitional or final hemp products to states and countries that require a hemp processor license or registration. The bill requires the registration application to include:

- (1) The physical address of all locations where hemp is processed or stored;
- (2) A registration fee as set in rule; and
- (3) Any other information required by the department by rule.

The bill also requires hemp processors choosing to register with the department to be a registered business entity in Washington state or a foreign entity compliant with state laws. Hemp processor is defined as a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

RCW 15.140.060 requires the department to establish fees in an amount that will fund the implementation of this chapter and sustain the hemp program. It was determined that the appropriate fee for registration with the department be set at \$1,200 for a three-year registration (\$400 per year).

Additionally, the department added clarifying language to distinguish between hemp processors and hemp producers and removed obsolete language regarding hemp producer licensing fees.

Reasons Supporting Proposal: Registration with the department provides hemp processors with the documentation necessary to reduce barriers to ship transitional and final hemp products to other states or countries that require a hemp processor license or registration as well as for law enforcement, banking needs, insurance companies, and any other entities requesting validation of their status. Without a clear registration process, hemp producers are left with very few buyer options for their crops. The registration process will create more opportunities for processors and manufacturers to jump into the industry. It will also streamline interstate commerce, rendering Washington state hemp products legitimate in the eyes of buyers of other states. Washington state is in a prime position to carry the banner for the national hemp economy and this step is an integral piece to our state's march forward as an industry leader.

Statutory Authority for Adoption: RCW 15.140.030, 15.140.060; and chapter 104, Laws of 2021 (ESB 5372).

Statute Being Implemented: Chapter 15.140 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Reanna McNamara, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1931; Implementation and Enforcement: Trecia Ehrlich, 1111 Washington Street S.E., Olympia, WA 98504, 360-584-3711.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

- Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.
- Is exempt under RCW 34.05.310 (4)(d).

Explanation of exemptions: The department added clarifying language to distinguish between hemp processors and hemp producers and removed obsolete language regarding hemp producer licensing fees.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The department does not currently register hemp processors and hemp processors are not required to become registered with the department, therefore there is no requirement to be compliant with this rule. Hemp processors may voluntarily choose to become registered in order to reduce barriers to shipping their products to other states and countries, and by doing so choose to incur the \$1,200 fee for registration. There is no North American Industry Classification System (NAICS) code assigned specifically to hemp processing. Industries identified by the department as being those most likely to be affected by this rule include codes commonly utilized by marijuana processors and hemp producers.

NAICS Code	Industry Description	Minor Cost Threshold
111419	Other Food Crops Grown Under Cover	\$2,349.42
111998	All Other Misc. Crop Farming	\$9,125.33
325411	Medicinal and Botanical Manufacturing	\$10,275.35
339999	All Other Misc. Manufacturing	\$10,446.42
424590	Other Farm Product Raw Material Merchant Wholesalers	\$6,733.79

The proposed cost of \$1,200/3 yr. registration (\$400 per year) does not exceed the minor cost threshold for any of these industries and therefore a formal SBEIS is not required.

A copy of the detailed cost calculations may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email [wsdarulescomments@agr.wa.gov](mailto:wsdarulescomments@agr.wa.gov).

November 2, 2021  
 Jessica Allenton  
 Assistant Director

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-010 Purpose of chapter.** Under the authority of chapter 15.140 RCW, the department adopts rules to establish a hemp program in accordance with the Agricultural Improvement Act of 2018. These rules include licensing requirements. Licensing is required for persons to produce hemp as provided under this chapter and chapter 15.140 RCW. Registration is voluntary for hemp processors that process hemp for commercial use or sale.



AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-030 Definitions.** "Acceptable hemp THC level" means the application of the measurement of uncertainty to the reported THC concentration level on a dry weight basis producing a distribution or range that includes 0.3 percent or less.

"Agricultural Improvement Act of 2018" means sections 7605, 10113, 10114, and 12619 of the Agricultural Improvement Act of 2018, P.L. 115-334.

"Applicant" means a person who submits an application for a hemp producer license to participate in the hemp program as required under this chapter.

"Contiguous land area" means a specific field with designated boundaries that is planted with hemp. Separate parcels connected only by thin or narrow plantings of hemp or separated by physical barriers such as ditches or roads are not considered contiguous for the purposes of this rule.

"Continuous licensing" means the hemp producer licensee renews their license annually prior to expiration, such that the licensee is continuously operating under a valid license.

"Corrective action plan" means a plan by the department for a licensed hemp producer to correct a negligent violation of, or noncompliance with, a hemp production plan, its terms, or any other regulation set forth under this chapter.

"Department" means the Washington state department of agriculture.

"Destroyed" means incinerated, tilled under the soil, made into compost, or rendered nonretrievable in another manner approved by the department.

"Disposal" means the material is collected for destruction by a person authorized to handle marijuana such as a Drug Enforcement Agency (DEA)-registered reverse distributor, or in another manner approved by the department.

"Hemp" means the plant *Cannabis sativa* L. and any part of the plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

"Hemp processor" means a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

"Key participant" means a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include such management as farm, field, or shift managers.

"Legal description" means a method of locating or describing land in relation to the public land survey system such as section, township, and range.

"Licensee" means any person who holds a license from the department to grow or produce hemp in Washington state.

"Lot" refers to a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, "lot" is a common term in agriculture that refers to the batch or contiguous,

homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this chapter, "lot" is to be defined by the producer in terms of farm location, field acreage, and variety.

"Measurement of uncertainty" means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement. The measurement of uncertainty is similar to a margin of error. When the measurement of uncertainty, normally expressed as a +/- with a number, (e.g., +/- 0.05) is combined with the reported measurement, it produces a range and the actual measurement has a known probability of falling within that range.

"Process" means the processing, compounding, or conversion of hemp into hemp commodities or products.

"Produce" or "production" means the planting, cultivation, growing, or harvesting of hemp, including hemp seed.

"Registered land area" means a contiguous land area, including greenhouses and storage areas registered with the department as a condition of licensing, on which a licensee will conduct licensed activities. A registered land area may include more than one field, greenhouse, or storage area so long as those fields, greenhouses, or storage areas are at the same physical address.

"Storage area" means any area, building, plant or facility registered with the department in which a licensee plans to store hemp.

"THC concentration" means the percent of total delta-9 tetrahydrocannabinol, which is the conversion of delta-9 tetrahydrocannabinolic acid into THC.

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-040 Hemp producer license application.** (1) An applicant for a hemp producer license must:

(a) Provide the information required for a hemp producer license on a form provided by the department that at a minimum includes the following:

- (i) The name and business address of the applicant;
- (ii) For corporate applicants, the type of business entity, such as corporation, LLC, or partnership, the state or country where the business is incorporated, and the name and address of the entity's agent in Washington state;
- (iii) The legal description (section, township, and range) in which any proposed registered land area is located; and
- (iv) Geospatial location coordinates of any proposed field, greenhouse, or other site where hemp is produced.

(b) Apply to the department for participation in the program between January 1st and March 31st. Applications may be received after March 31st but are subject to a late license fee;

- (c) Pay fees as required under this chapter;
- (d) Consent to entrance of their property by the department to inspect their registered land area with or without prior notice; and

(e) Report hemp crop acreage to USDA Farm Service Agency (FSA). A link to FSA information on how to report hemp crop acreage to FSA is available on the United States

Department of Agriculture (USDA) hemp production program website.

(2) Licenses will expire on the last day of April following the year the license is issued.

(3) All applications must be accompanied by a criminal history report completed within ~~((sixty))~~ 60 days of the application date. If the application is for a business entity, a completed criminal history report must be provided for each key participant.

(a) The criminal history report must indicate the applicant has not been convicted of a state or federal felony related to a controlled substance for the ~~((ten))~~ 10 years prior to the date of when the report was completed. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

(b) A person with a prior felony related to controlled substances within ~~((ten))~~ 10 years of applying for a producer license is not eligible for the license. Key participants of associations, corporations, and other business entities with a prior felony related to a controlled substance within ~~((ten))~~ 10 years of applying for a producer license are not eligible for the license under this felony drug conviction limitation. Business entities may still be eligible if the key participant with a prior felony is discharged.

(4) Any person who materially falsifies information in the application shall be ineligible to participate in the program.

#### NEW SECTION

**WAC 16-306-055 Voluntary hemp processor registration.** A hemp processor that processes hemp for commercial use or sale may register with the department if they are a registered business entity in Washington state or a foreign entity compliant with state laws.

(1) An applicant for hemp processor registration must provide the information required for a hemp processor registration on a form provided by the department that at a minimum includes the following:

(a) The name and business address of the registrant;

(b) For corporate registrants, the type of business entity, such as corporation, LLC, or partnership, the state or country where the business is incorporated, and the name and address of the entity's agent in Washington state;

(c) The physical address and the legal description (section, township, and range) of the locations where the hemp is processed or stored; and

(d) If applicable, the Washington state liquor and cannabis board I-502 license number.

(2) The fee for a processor registration is \$1,200.

(3) Processor registrations are valid for three years from date of issuance.

(4) Processors will be provided with a certificate of registration, that includes the business name, registered address, and expiration date.

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-070 Hemp seed and propagules.** (1) A hemp producer licensee must notify the department of the source of the hemp seed or clones solely for the purpose of maintaining a record of the sources of seeds and clones being used or having been used for hemp production in this state.

(2) The department is not responsible for obtaining seeds on behalf of the licensee.

(3) The department is not liable for and does not warrant that the seed is fit for any purpose.

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-080 Hemp inspection and sampling criteria.** (1) All hemp producer licensees are subject to inspection by the department. The department shall inspect registered land areas under a producer license at least once during each license period. The department's inspections of the registered land area may include the following:

(a) Inspections for unauthorized plant growth;

(b) Inspections for hemp in any form on the registered land area;

(c) Inspections for rogue, volunteer, or off-type hemp plants;

(d) Audits of existing business data and reports related to hemp;

(e) Identifying compliance with required signage as specified in WAC 16-306-050; and

(f) Assessing compliance with other applicable licensing terms and conditions.

(2) The department shall take hemp samples from registered land areas licensed under a producer license within ~~((fifteen))~~ 15 days prior to the anticipated harvest of cannabis plants to test for THC concentration.

(3) The licensee or designated employee shall accompany the sampling agent throughout the sampling process.

(4) Registered land areas may be inspected by the department for a period of ~~((three hundred sixty five))~~ 365 days from the end of the license period to check for unauthorized plant growth such as, but not limited to, volunteer plants.

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-130 Transporting hemp.** (1) Hemp produced under this chapter may not be transported from a registered land area as identified on the hemp producer license until THC certification by the department as specified in WAC 16-306-120 is obtained by the applicable licensee prior to transport. During transport of hemp off a producer's registered land area, including to a processor, the person in possession of the hemp during transport must have in his or her possession either:

(a) Copies of the hemp producer license and department-issued THC certification, as required by this chapter; or

(b) A bill of lading or other proper documentation demonstrating that the hemp was legally imported or is other-

wise legally present in the state of Washington under applicable state and federal laws relating to hemp.

(2) Any hemp from a licensed Washington producer that is found in Washington state at any location off the premises of a registered land area of a licensee without department-issued THC certification as specified in WAC 16-306-120 is deemed to be contraband and subject to seizure by the Washington state patrol or any law enforcement officer. Any such contraband material is subject to destruction at the licensee's expense, and may result in suspension or revocation of the hemp producer license.

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-140 Hemp producer license fees.** (1) ~~(Effective January 1, 2020, license fees are as follows:~~

<del>Annual License Fee</del>	<del>License Modification Fee</del>
<del>\$750</del>	<del>\$200/1</del>

~~(2) Effective June 1, 2020,)~~ Hemp producer license fees are as follows:

<b>Annual License Fee</b>	<b>License Modification Fee</b>	<b>Late License Fee (After March 31)</b>
<del>((1200))</del> <b>\$1,200</b>	<del>((200/1))</del> <b>\$200</b>	<del>((200/2))</del> <b>\$200</b>

~~(1 See WAC 16-306-050(8).  
/2 In addition to license fee.)~~

(2) The license modification fee is required when a licensee submits changes to the registered land area(s) as specified in WAC 16-306-050(8).

(3) The late license fee is added to any application submitted after March 31st and is in addition to the annual license fee.

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-150 Hemp inspection fees.** (1) Fees for hemp inspections are paid by the hemp producer licensee.

(2) No renewal licenses will be issued until all fees due to the department are paid in full.

(3) Hemp inspection fees are:

(a) \$200.00 per inspection; plus

(b) Time and mileage per inspection. All time will be charged at a rate of ~~((forty dollars))~~ **\$40** per hour. Mileage will be charged at the rate established by the Washington state office of financial management.

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-170 Hemp noncompliance for THC concentration.** (1)(a) If a hemp producer licensee's hemp tests higher than the acceptable hemp THC level, the licensee may be subject to suspension or revocation of their license. The lot must be destroyed or disposed of in a manner approved by the department. If determined to be appropriate, the department may give notice of noncompliance to appro-

priate law enforcement agencies and the Washington state liquor and cannabis board, with a summary of the actions taken to destroy the noncompliant hemp.

(b) Producers must document the destruction or disposal of all noncompliant hemp. This documentation must be submitted to the department following the completion of the destruction or disposal process.

(2) If a licensee's hemp tests higher than 0.3 percent but less than 0.5 percent THC concentration, the licensee may either request a THC retest within ~~((thirty))~~ **30** days or resampling of the same lot, at their own expense.

(3) If at any time a licensee's hemp tests higher than the acceptable hemp THC level, the licensee may be subject to revocation or suspension of their license.

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-180 License denial, suspension or revocation, and right to adjudicative proceeding.** Upon notice of intent by the department to an applicant to deny a hemp producer license, notice of intent to a licensee to suspend or revoke a license, or notice of intent for destruction of a hemp material or crop, a person may request an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, and chapter 16-08 WAC.

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-190 Suspension of hemp license for noncompliance with a child support order.** (1) If the department receives notice under RCW 74.20A.320 that a hemp producer licensee is not in compliance with a child support order, the department will suspend or not renew the licensee's hemp license(s) until the department of social and health services provides the department with a release stating that the licensee is in compliance with the child support order. If a licensee's license is suspended, all hemp crops and products in the licensee's possession must remain on the licensee's registered land area until the suspension is lifted.

(2) The department may renew, reinstate, or otherwise extend the licensee's hemp license(s) upon receipt of a copy of the release specified in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-200 Corrective action plan.** (1) A hemp producer licensee may be subject to a corrective action plan established by the department to correct negligent violations of this chapter including, but not limited to:

(a) Failing to provide a legal description of land on which the producer produces hemp;

(b) Failing to obtain a license or other required authorization from the department; or

(c) Producing Cannabis sativa L. with delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.

(2) A hemp producer licensee shall comply with a corrective action plan established by the department to correct the negligent violation, including:

(a) A reasonable date by which the hemp producer shall correct the negligent violation;

(b) A requirement that the hemp producer shall periodically report to the department, as applicable, on the compliance of the hemp producer with the regulations under this chapter for a period of at least two calendar years.

(3) Licensees may be subject to license suspension or revocation for violations of chapter 15.140 RCW or this chapter for failing to comply with a corrective action plan.

(4) A hemp producer licensee that negligently fails to comply with the regulations under this chapter three times in a five-year period shall be ineligible to produce hemp for a period of five years beginning on the date of the third violation.

(5) The department will not consider hemp producers as committing a negligent violation by producing plants exceeding the acceptable hemp THC level if they use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 0.5 percent on a dry weight basis. For sampling and testing violations, the department will consider the entire harvest from a distinct lot in determining whether a violation occurred. This means that if testing determines that each sample of five plants from distinct lots has a THC concentration exceeding the acceptable hemp THC level (or 0.5 percent if the hemp producer has made reasonable efforts to grow hemp), USDA considers this as one negligent violation. If an individual produces hemp without a license, this will be considered one violation.

(6) Negligent violations are not subject to criminal enforcement. However, the department will report the production of hemp without a license issued by the department to the United States Department of Agriculture (USDA) and the Attorney General.

(7) Hemp found to be produced in violation of this chapter such as hemp produced on a property not disclosed by the licensed producer, or without a license, would be subject to the same disposal or destruction as for hemp above the acceptable hemp THC level.

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

**WAC 16-306-210 Culpable violations.** If it is determined a violation was committed with a culpable mental state greater than negligence, meaning, acts made intentionally, knowingly or with recklessness, (~~WSDA~~) the department will report the violation to USDA, the attorney general, and the local law enforcement officer as applicable.

**WSR 21-22-099**  
**PROPOSED RULES**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**  
 [Filed November 2, 2021, 12:17 p.m.]

Original Notice.

Proposal is exempt under chapter 36.78 RCW.

Title of Rule and Other Identifying Information: Amending WAC 136-150-021 to change the county road levy certification due date.

Hearing Location(s): On January 27, 2022, at 2:00 p.m., at 2404 Chandler Court S.W., Olympia, WA 98504.

Date of Intended Adoption: January 27, 2022.

Submit Written Comments to: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, email drew.woods@crab.wa.gov, by January 21, 2022.

Assistance for Persons with Disabilities: Contact Drew Woods, phone 360-753-5989, TTY 800-883-6384, email drew.woods@crab.wa.gov, by January 21, 2022.

Reasons Supporting Proposal: Change certification due date.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Derek Pohle, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989; Enforcement: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Is exempt under chapter 36.78 RCW.

November 2, 2021

Jane Wall

Executive Director

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-150-021 Ascertain the road levy.** The county road administration board will require that every county legislative authority submit, no later than (~~February~~) March 1st of each year, a certification showing the amount of the road levy fixed and the amount, if any, budgeted for traffic law enforcement and/or any other purpose in accordance with RCW 36.33.220.

**WSR 21-22-103**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**  
 [Filed November 2, 2021, 2:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-066.

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values—2020 and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): On December 7, 2021, at 10:00 a.m., at Conference Room TBD, 6400 Linderson Way S.W., Tumwater, WA and virtual meeting. Contact Keith Dacus at KeithD@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: December 14, 2021.

Submit Written Comments to: Jennifer Arnold, P.O. Box 47453, Olympia, WA 98504-7453, email JenniferA@dor.wa.gov, fax 360-534-1606, by December 10, 2021.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384, by November 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes the stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply beginning January 1 through June 30, 2022.

The forest land values are updated to reflect land values per acre for 2022.

Reasons Supporting Proposal: This proposal provides the revised stumpage value tables for January 1 through June 30, 2021, and the forest land values for 2021.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Arnold, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1574; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Arnold, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1574, fax 360-534-1606.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees,

filing requirements, or recordkeeping guidelines that are not already established in statute [statute].

November 2, 2021  
 Atif Aziz  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-02-020, filed 12/28/20, effective 1/1/21)

**WAC 458-40-540 Forest land values—~~((2021))~~ 2022.** The forest land values, per acre, for each grade of forest land for the ~~((2021))~~ 2022 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	<del>((2021))</del> 2022 VALUES PER ACRE
1	1	\$218
	2	216
	3	202
	4	148
2	1	186
	2	179
	3	172
	4	122
3	1	144
	2	140
	3	138
	4	106
4	1	112
	2	107
	3	106
	4	81
5	1	81
	2	71
	3	70
	4	50
6	1	41
	2	39
	3	39
	4	37
7	1	18
	2	18
	3	17
	4	17
8	1	1

AMENDATORY SECTION (Amending WSR 21-13-100, filed 6/18/21, effective 7/1/21)

**WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

**(2) Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stump-

age harvested from ((July 1 through December 31, 2021))  
January 1 through June 30, 2022:

**Washington State Department of Revenue**  
**WESTERN WASHINGTON STUMPAGE VALUE TABLE**  
 ((July 1 through December 31, 2021))  
 January 1 through June 30, 2022

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>  
 Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir <sup>(2)</sup>	DF	1	<del>((422))</del> <u>\$455</u>
		2	<del>((520))</del> <u>556</u>
		3	<del>((520))</del> <u>584</u>
		4	<del>((573))</del> <u>603</u>
		5	<del>((539))</del> <u>554</u>
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	9	<del>((408))</del> <u>441</u>
		1	<del>((282))</del> <u>314</u>
		2	<del>((395))</del> <u>386</u>
		3	<del>((419))</del> <u>367</u>
		4	<del>((348))</del> <u>404</u>
Western Red-cedar <sup>(4)</sup>	RC	5	<del>((362))</del> <u>373</u>
		9	<del>((268))</del> <u>300</u>
		1-5	<del>((153))</del> <u>1515</u>
		9	<del>((139))</del> <u>1501</u>
		Ponderosa Pine <sup>(5)</sup>	PP
9	<del>((149))</del> <u>157</u>		
Red Alder	RA	1-5	<del>((363))</del> <u>464</u>
		9	<del>((349))</del> <u>450</u>
Black Cottonwood	BC	1-5	<del>((19))</del> <u>39</u>
		9	<del>((5))</del> <u>25</u>

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Other Hardwood	OH	1-5	<del>((123))</del> <u>198</u>
		9	<del>((109))</del> <u>184</u>
Douglas-fir Poles & Piles	DFL	1-5	<del>((811))</del> <u>841</u>
		9	<del>((797))</del> <u>827</u>
Western Red-cedar Poles	RCL	1-5	<del>((1724))</del> <u>1838</u>
		9	<del>((1710))</del> <u>1824</u>
Chipwood <sup>(6)</sup>	CHW	1-5	1
		9	1
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-9	<del>((301))</del> <u>322</u>
		Posts <sup>(8)</sup>	LPP
DF Christmas Trees <sup>(9)</sup>	DFX	1-9	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1-9	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes all Pines in SVA 1-5 & 9.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

**Washington State Department of Revenue**  
**EASTERN WASHINGTON STUMPAGE VALUE TABLE**  
 ((July 1 through December 31, 2021))  
 January 1 through June 30, 2022

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>  
 Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir <sup>(2)</sup>	DF	6	<del>((299))</del> <u>\$379</u>
		7	<del>((313))</del> <u>393</u>

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	6	<del>((231))</del> <u>266</u>
		7	<del>((245))</del> <u>280</u>
Western Redcedar <sup>(4)</sup>	RC	6	<del>((945))</del> <u>1338</u>
		7	<del>((959))</del> <u>1352</u>
Ponderosa Pine <sup>(5)</sup>	PP	6	<del>((149))</del> <u>157</u>
		7	<del>((163))</del> <u>171</u>
Other Hardwood	OH	6	1
		7	9
Western Redcedar Poles	RCL	6	<del>((1594))</del> <u>1764</u>
		7	<del>((1608))</del> <u>1778</u>
Chipwood <sup>(6)</sup>	CHW	6	1
		7	1
Small Logs <sup>(6)</sup>	SML	6	<del>((20))</del> <u>23</u>
		7	<del>((22))</del> <u>25</u>
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	6-7	<del>((304))</del> <u>322</u>
Posts <sup>(8)</sup>	LPP	6-7	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	6-7	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	6-7	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine in SVA 6-7.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.), over ((2)) two acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ~~((July 1 through December 31, 2021))~~ January 1 through June 30, 2022:

**TABLE 9—Harvest Adjustment Table**  
**Stumpage Value Areas 1, 2, 3, 4, 5, and 9**  
~~((July 1 through December 31, 2021))~~  
January 1 through June 30, 2022

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
<b>II. Logging conditions</b>		
Class 1	Ground based logging a majority of the unit using tracked or wheeled equipment or draft animals.	\$0.00
Class 2	Logging a majority of the unit: Using an overhead system of winch-driven cables and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00
<b>IV. Thinning</b>		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table  
Stumpage Value Areas 6 and 7  
((July 1 through December 31, 2021))  
January 1 through June 30, 2022**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
<b>II. Logging conditions</b>		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$85.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00

Type of Adjustment      Definition      Dollar Adjustment Per Thousand Board Feet Net Scribner Scale

Note: A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.

**III. Remote island adjustment:**

For timber harvested from a remote island      -\$50.00

**TABLE 11—Domestic Market Adjustment**

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass,** has a \$0/ton stumpage value.



**WSR 21-22-115**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed November 3, 2021, 10:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-23-095.

Title of Rule and Other Identifying Information: WAC 308-96A-161 Fleet registration.

Hearing Location(s): On December 7, 2021, at 2:00 p.m., Meeting ID 895 6778 9091, Passcode 815089, Link to join <https://dol-wa.zoom.us/j/89567789091?pwd=WIR5dUNTSHZrVG1obEhoOVpIWdDdDdz09>, Call in (will need Meeting ID and Passcode from above) 253-215-8782.

In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of licensing (DOL) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A telephonic public hearing, without a physical space, will be held instead. Presenters and staff will participate remotely. The public may call into the hearing using the information provided for the telephonic hearing.

Date of Intended Adoption: December 10, 2021.

Submit Written Comments to: Ellis Starrett, DOL, P.O. Box 9030, Olympia, WA 98507-9030, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), fax 360-570-7827.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email [estarrett@dol.wa.gov](mailto:estarrett@dol.wa.gov), by December 1, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendment updates agency rules to allow rental car companies into the fleet registration process and makes technical changes to update the language to current processes.

Reasons Supporting Proposal: This rule change is necessary to streamline the registration process for rental car company vehicles in accordance with stakeholder input and internal process reviews. Removing the fleet registration exclusion in rule that currently applies to rental vehicles will ease the administrative burden for rental car companies and administrative costs for DOL.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3846; and Implementation: George Price, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0120.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Ellis Starrett, DOL, P.O. Box 9030, Olympia, WA 98507-9030, phone 360-902-3846. This rule change eases the

requirements on customers by providing another option for registering rental vehicles under the fleet registration process. This rule change does not require customers to utilize the fleet registration process for their vehicles. Customers who register rental vehicles may still use their existing processes to register rental vehicles if they so choose.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Businesses should not be adversely impacted by this rule change. This rule change provides an additional option for rental car companies to register their rental vehicles but does not require such businesses to utilize the newly available procedure. To the extent that rental car companies choose to utilize the fleet registration process, their costs are expected to be lower because the fleet registration process enhances administrative efficiencies by bundling registrations for multiple vehicles together into a single process.

November 3, 2021

Ellis Starrett

Rules and Policy Manager

AMENDATORY SECTION (Amending WSR 11-20-066, filed 10/3/11, effective 11/3/11)

**WAC 308-96A-161 Fleet registration. (1) What is the purpose of the fleet program?** The purpose of the fleet program is to provide a process for business and individual registered owners to have the same expiration date for all of their vehicles and to receive a single billing notice.

**(2) What types of fleet programs are available?** There are two types of fleet programs, regular and permanent.

**(3) What is the difference between a regular and a permanent fleet?**

(a) Regular fleets consist of five or more vehicles, all currently titled and registered in exact name agreement (letter for letter and space for space). The owner has the option to purchase monthly gross weight license.

(b) Permanent fleets consist of ~~((fifty))~~ 50 or more vehicles, all currently titled and registered in exact name agreement (letter for letter and space for space). The owner must purchase gross weight for the entire year. Gross weight license may NOT be purchased month to month, but may be increased throughout the year.

~~(4) ((When do fleet vehicles expire? All fleet vehicles will be assigned a December 31 expiration date.~~

~~(5))~~ **Who does a fleet owner contact to join the fleet program?** Fleet owners who meet the qualifications may contact the department or their local vehicle licensing office to have a fleet account established and a fleet identifier code issued.

~~((6))~~ **(5) Are there any vehicles that may not be part of a fleet?** Yes, the following vehicles may not be part of the fleet program:

(a) Snowmobiles;

(b) Trailers with permanent license plates issued under RCW 46.16A.450;

~~(c) ((Rental vehicles as defined in RCW 46.04.465;~~

~~(d))~~ Any vehicle not required to renew annually; and

~~((6))~~ (d) Prorate vehicles registered under proportional registration as defined in chapter 46.87 RCW.

~~((7))~~ (6) **Will the department remove a fleet from the fleet program?** Yes, the department will remove a fleet from the program at the request of the owner or if the number of registered vehicles in the fleet drops below the required minimum.

~~((8))~~ (7) **What happens to a fleet once it is removed from the fleet program?** When a fleet is removed from the program the fleet identifier code will be removed from all of the vehicles in the fleet. The owner will then be required to renew them individually.

### WSR 21-22-116

#### PROPOSED RULES

#### DEPARTMENT OF

#### RETIREMENT SYSTEMS

[Filed November 3, 2021, 10:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-18-122.

Title of Rule and Other Identifying Information: WAC 415-103-225 What are my WSPRS Plan 2 retirement benefit options?, 415-104-215 What are my LEOFF Plan 2 retirement benefit options?, 415-106-600 What are my (PSERS) retirement benefit options?, 415-108-326 What are my (PERS) retirement benefit options?, 415-110-610 What are my (SERS) retirement benefit options?, and 415-112-505 What are my TRS Plan 2 or Plan 3 retirement benefit options?

Hearing Location(s): On December 7, 2021, at 1:30 p.m. The hearing will be conducted by Zoom. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details.

Date of Intended Adoption: December 8, 2021.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by December 6, 2021.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by December 3, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement chapter 161, Laws of 2020 (SB 6417), allowing members to change their survivor option one time within 90 calendar days following receipt of the first retirement benefit.

Reasons Supporting Proposal: These rule amendments will describe the 90-day survivor change option.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: Chapter 161, Laws of 2020 (SB 6417).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7288.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

November 3, 2021

Jilene Siegel

Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

**WAC 415-103-225 What are my WSPRS Plan 2 retirement benefit options?** This section applies to WSPRS Plan 2 members. Upon retirement for service under RCW 43.43.250, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section include a survivor option. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly benefit for the duration of his or her life. Your monthly retirement benefit will be actuarially reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit is affected by choosing a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your life. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and ~~((one hundred))~~ 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and ~~((fifty))~~ 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to ~~((fifty))~~ 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit

equal to two-thirds (66.667 percent) of your gross monthly benefit.

**(3) Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must submit your spouse's consent, verified by notarization or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide spousal consent, verified by notarization or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least (~~thirty~~) 30 days before your retirement date, spousal consent is not required.

**(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

**(5) What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

**(6) May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following (~~three~~) four exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a non-spouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

**(d) One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

**(7) Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 43.43.271.

**AMENDATORY SECTION** (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

**WAC 415-104-215 What are my LEOFF Plan 2 retirement benefit options?** If you retire for service under RCW 41.26.430 or nonduty disability under RCW 41.26.470, or if you choose to receive a monthly benefit for duty disability under RCW 41.26.470, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

**(1) Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly bene-

fit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

**(2) What are my benefit options?**

**(a) Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

**(b) Option two: Joint and ~~((one hundred))~~ 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

**(c) Option three: Joint and ~~((fifty))~~ 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to ~~((fifty))~~ 50 percent of your gross monthly benefit.

**(d) Option four: Joint and two-thirds benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

**(3) Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by notarization or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and ~~((fifty))~~ 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide spousal consent, verified by notarization or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and ~~((fifty))~~ 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least ~~((thirty))~~ 30 days before your retirement date, spousal consent is not required.

**(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

**(5) What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may

request to have your benefit increased as described in WAC 415-02-380.

**(6) May I change my benefit option after retirement?**

Your choice of a benefit option is irrevocable with the following ~~((three))~~ four exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a non-spouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

**(d) One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

**(7) Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 41.26.460.

**AMENDATORY SECTION** (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

**WAC 415-106-600 What are my retirement benefit options?** Upon retirement for service under RCW 41.37.210 or retirement for disability under RCW 41.37.230, you must choose to have your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and (~~one hundred~~) 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and (~~fifty~~) 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to (~~fifty~~) 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department

will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least (~~thirty~~) 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following (~~three~~) four exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.37.050(3).

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

**(7) Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate. See RCW 41.37.170.

**AMENDATORY SECTION** (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

**WAC 415-108-326 What are my retirement benefit options?** Upon retirement for service under RCW 41.40.180, 41.40.630, or 41.40.820, or for disability under RCW 41.40.-210, 41.40.230, 41.40.670, or 41.40.825, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section. If you are a Plan 1 member, you may also select an optional supplemental cost of living adjustment (COLA).

**(1) Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

**(2) What are my benefit options?**

**(a) Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

**(b) Option two: Joint and (~~one hundred~~) 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime.

After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

**(c) Option three: Joint and ( ~~fifty~~) 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to ( ~~fifty~~) 50 percent of your gross monthly benefit.

**(d) Option four: Joint and two-thirds survivor benefit.<sup>1</sup>** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

**(3) Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and ( ~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and ( ~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least ( ~~thirty~~) 30 days before your retirement date, spousal consent is not required.

**(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

**(5) What is the supplemental COLA option for Plan 1 members?** If you are a Plan 1 member, in addition to choosing a retirement benefit option described in subsection (2) of this section, you may choose to receive a supplemental annual COLA. If you select this option, your monthly retirement benefit will be actuarially reduced to offset the cost of this benefit.

**(6) What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

**(7) May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following ( ~~three~~) four exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.40.037.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(8) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 1 and 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(9) For more information, see RCW 41.40.188 (Plan 1), RCW 41.40.660 (Plan 2) and RCW 41.40.845 (Plan 3).

<sup>1</sup> Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

**WAC 415-110-610 What are my retirement benefit options?** Upon retirement for service under RCW 41.35.420 or 41.35.680, or for disability under RCW 41.35.440 or 41.35.690, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and (~~one hundred~~) 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and (~~fifty~~) 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to (~~fifty~~) 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the

department will pay you a monthly retirement benefit based on option three (joint and ( ~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and ( ~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least ( ~~thirty~~) 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following ( ~~three~~) four exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.35.060.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-01-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time

within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.35.220.

AMENDATORY SECTION (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

**WAC 415-112-505 What are my TRS Plan 2 or Plan 3 retirement benefit options?** Upon retirement for service under RCW 41.32.765 or 41.32.875, or disability under RCW 41.32.790 or 41.32.880, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b), (c), and (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement ben-



efit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

**(2) What are my benefit options?**

**(a) Option one: Standard benefit for service retirement (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (7) of this section.

**(b) Option two: Joint and (~~one hundred~~) 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

**(c) Option three: Joint and (~~fifty~~) 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to (~~fifty~~) 50 percent of your gross monthly benefit.

**(d) Option four: Joint and two-thirds survivor benefit.<sup>1</sup>** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

**(3) Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

**(a)** If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

**(b)** If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

**(c)** If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

**(d)** If your survivor beneficiary has been designated by a dissolution order under RCW 41.50.790, which was filed with the department at least (~~thirty~~) 30 days before your retirement date, spousal consent is not required.

**(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

**(5) What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

**(6) May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following (~~three~~) four exceptions:

**(a) Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

**(b) Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

**(i)** Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

**(ii)** The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

**(iii)** You provide a copy of your certified marriage certificate to the department;

**(iv)** You provide proof of your current spouse's birth date; and

**(v)** You exercise this option one time only.

**(c) Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

**(d) One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

**(7) Who will receive the balance of my accumulated contributions, if any, after my death?**

**(a) Plan 2:**

**(i)** If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

**(A)** To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

**(B)** If you have not designated a beneficiary, or if your designated beneficiary is no longer living, then to your surviving spouse.

**(C)** If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

**(ii)** If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.32.785 and 41.32.790 (Plan 2) and RCW 41.32.851 (Plan 3).

<sup>1</sup> Available to members retiring on or after January 1, 1996.