

WSR 22-06-094
PERMANENT RULES
COLUMBIA RIVER
GORGE COMMISSION

[Filed March 2, 2022, 8:57 a.m., effective May 1, 2022]

Effective Date of Rule: May 1, 2022.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: 16 U.S.C. § 544f(1) requires the United States Secretary of Agriculture to concur with the standards applicable to the special management areas. On February 28, 2022, the United States Secretary of Agriculture granted concurrence to all provisions, except 350-082-0200 (2)(a). The secretary's concurrence recognizes that rule provision was previously removed from the management plan and by administrative error remains in the land use ordinance. The secretary's concurrence requests the gorge commission remove that provision when it next updates division 082. The secretary's concurrence states that the administrative error does not affect concurrence.

Purpose: This rule adopts a land use ordinance for the Columbia River Gorge National Scenic Area as required by RCW 43.97.015, O.R.S. 196.150, 16 U.S.C. §§ 544e(c) and 544f(1), 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.

Citation of Rules Affected by this Order: New 350-082-0010, 350-082-0020, 350-082-0030, 350-082-0040, 350-082-0050, 350-082-0060, 350-082-0070, 350-082-0080, 350-082-0090, 350-082-0100, 350-082-0110, 350-082-0120, 350-082-0130, 350-082-0140, 350-082-0150, 350-082-0160, 350-082-0170, 350-082-0180, 350-082-0190, 350-082-0200, 350-082-0210, 350-082-0220, 350-082-0230, 350-082-0240, 350-082-0250, 350-082-0260, 350-082-0270, 350-082-0280, 350-082-0290, 350-082-0300, 350-082-0310, 350-082-0320, 350-082-0330, 350-082-0340, 350-082-0350, 350-082-0360, 350-082-0370, 350-082-0380, 350-082-0390, 350-082-0400, 350-082-0410, 350-082-0420, 350-082-0430, 350-082-0440, 350-082-0450, 350-082-0460, 350-082-0470, 350-082-0480, 350-082-0490, 350-082-0500, 350-082-0510, 350-082-0520, 350-082-0530, 350-082-0540, 350-082-0550, 350-082-0560, 350-082-0570, 350-082-0580, 350-082-0590, 350-082-0600, 350-082-0610, 350-082-0620, 350-082-0630, 350-082-0640, 350-082-0650, 350-082-0660, 350-082-0670, 350-082-0680, 350-082-0690, 350-082-0700, 350-082-0710, and 350-082-0720.

Statutory Authority for Adoption: RCW 43.97.015; ORS 196.150; 16 U.S.C. §§ 544e(c) and 544f(1).

Adopted under notice filed as WSR 21-20-120 on October 5, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 72, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 72, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 18, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 14, 2021.

Connie L. Acker
Rules Coordinator

**Columbia River Gorge Commission
Chapter 350
Division 082
Land Use Ordinance**

As Adopted on December 14, 2021
Concurred with on February 28, 2022
Effective Date May 1, 2022

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.

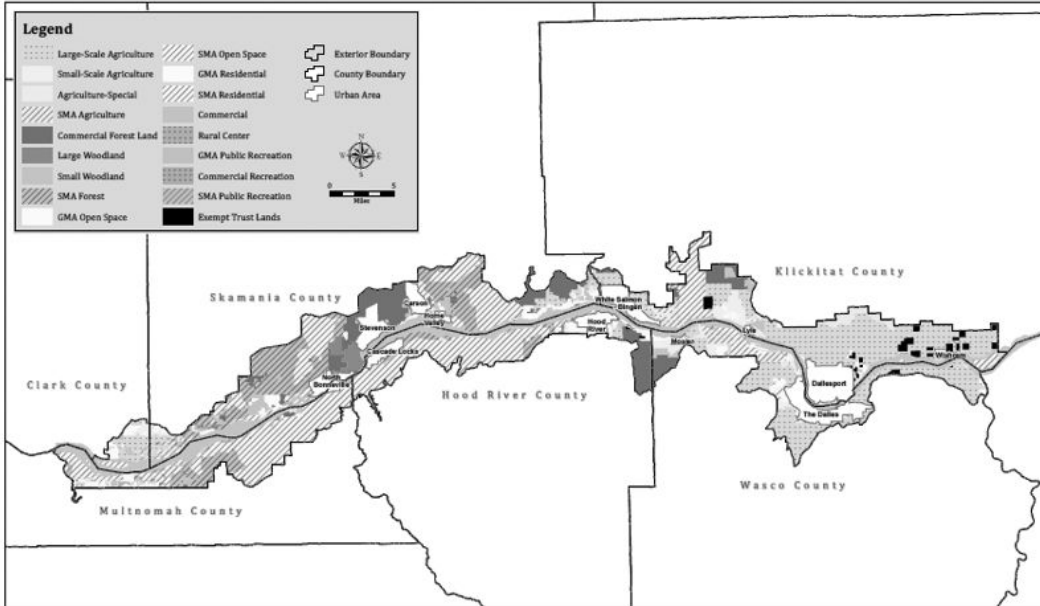
(4) Those portions of Commission Rule 350-082 pertaining to the Special Management Areas (SMAs) shall no longer be effective in a county that has adopted and put into effect a land use ordinance that the Gorge Commission has tentatively found to be consistent with the Management Plan and the Secretary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

NEW SECTION

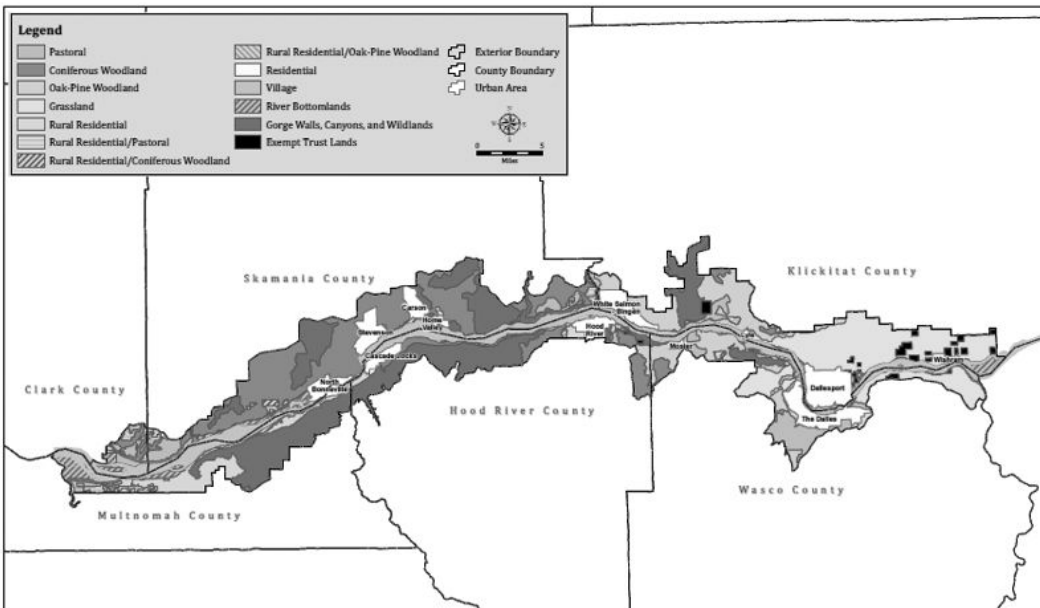
350-082-0030. Maps

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.

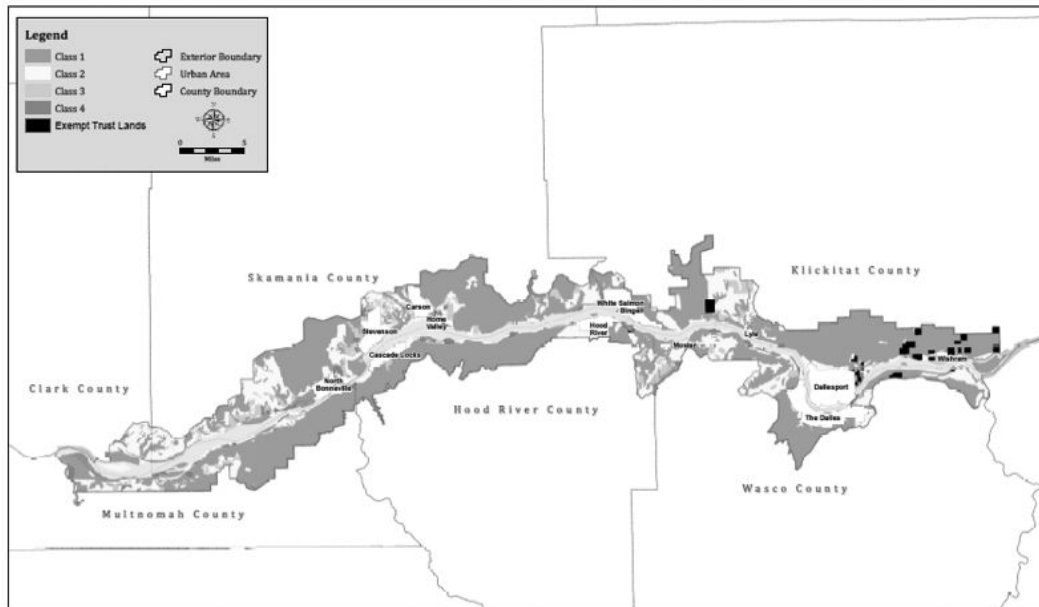
350-082-0030 Appendix 1 - Land Use Designations



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 control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; minimize adverse effects to groundwater and surface-water flow and circulation patterns; and 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 connected to a sewer system (including septic tank), water, and electrical lines, or 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 non-profit 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 re-

sources 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:

(a) 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;

(b) 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

(c) 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 haz-

ardous 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 (decadence); 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 divi-

sion 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 graveled.

(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 keep the area clear of vegetation (e.g., shoulders, utility yards), limit the height and type of vegetation (e.g., utility rights-of-way), or estab-

lish 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 re-tailing 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 land-

scape 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 a complete application form, a complete site plan showing the proposed site (site plans with alternative sites or building envelopes are not sufficient), all applicable information specified in the various sections of this land use ordinance, and 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.

350-082-0110 Table 1 – Notice Requirements	
Use Type	Send notice of application to:
All Expedited Review Uses	Tribes, USFS, County
All Full Review Uses	Tribes, USFS, County, State
<ul style="list-style-type: none"> • Single family dwellings in the GMA Residential Land Use Designation adjacent to GMA Agriculture or Forest Land Use Designations; • Commercial events and special uses in historic buildings adjacent to GMA Agriculture or Forest Land Use Designations; • Non-farm single family dwellings in the GMA Large-Scale Agriculture Land Use Designation; • Within GMA Forest Land Use Designations: utility facilities, railroads, home occupations, fruit & 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 	Landowners and holders of easements and other partial interests within 500 feet
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
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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, infor-

mation 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 proposed uses as provided in these guidelines, in no way shall be interpreted as a waiver by the Indian tribe of a claim that such uses 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 con-

taining the relevant 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 replace-

ment 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 specific 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 the same location and size as the existing structures and 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 the same location and size as the existing structures and 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 that the signs comply with the *Manual for Uniform Traffic Control Devices* (2012 or most recent version) and 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 located inside rights-of-way that have been disturbed in the past and 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 located inside rights-of-way that have been disturbed in the past and 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 increase the width of a road or railroad or 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 increase the width of a road or 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:

(i) No excavation would extend more than 12 inches beyond the depth and extent of the original excavation;

(ii) No ditch for linear facilities would be more than 24 inches wide;

(iii) No excavation for non-linear facilities would exceed ten cubic yards; and

(iv) No recorded archaeological site is located within 500 feet of the development. To comply with this subsection, 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 the same location and size as the existing facilities and 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 high-

way 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 located within five feet of the original poles, no more than five feet taller and six inches wider than the original poles, and 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 ridge line 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 the same location and size as the existing structures and 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, in-lay markers, and pavement markings and striping.

(D) Permanent public regulatory, guide, and warning signs, except those excluded below, provided that the signs comply with the *Manual on Uniform Traffic Control Devices* (2012 or most recent version) and 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 located inside rights-of-way that have been disturbed in the past and 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 located inside rights-of-way that have been disturbed in the past and 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.

(I) Maintenance of existing railroad track and paved roads, provided the activity does not increase the width of a road or railroad, or 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 increase the width of a road, or 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:

(i) No excavation would extend more than 12 inches beyond the depth and extent of the original excavation;

(ii) No ditch for linear facilities would be more than 24 inches wide;

(iii) No excavation for non-linear facilities would exceed ten cubic yards; and

(iv) No recorded archaeological site is located within 500 feet of the development. To comply with this subsection, 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 the same location and size as the existing facilities and 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 located within five feet of the original poles, no more than five feet taller and six inches wider than the original poles, and 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 uncovered, attached and accessory to existing dwellings, and 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 that no ditch

for linear facilities would be more than 36 inches wide and 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:

(A) 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);

(B) The replacement mobile home shall be in the same location as the mobile home to be replaced;

(C) The height of the replacement mobile home shall be no more than 20 percent greater than the mobile home to be replaced; and

(D) 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:

(I) 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.

(II) 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.

(III) 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 the Priority Habitat or sensitive wildlife site is not active, the proposed development would not compromise the integrity of the Priority Habitat or wildlife area, or the proposed development would not occur during the time of the year when wildlife species are sensitive to disturbance.

(IV) 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 ac-

tion, 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 re-

sponding 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 subordination 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:

(I) Removed from the National Scenic Area,

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

(III) (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:

(I) Removed from the National Scenic Area, or

(II) 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 and reports shall be conducted by the Forest Service and comply with the standards in 350-082-0620 (2)(b).

(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 interested 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:

(I) The SHPO concluded that the historic buildings or structures are clearly not eligible, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 C.F.R. 60.4), or

(II) The emergency/disaster response actions did not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. 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:

(I) All reasonable measures have been applied to ensure that the response actions have resulted in the minimum feasible alteration or destruction of the functions, existing contours, vegetation, fish and wildlife resources, and hydrology of wetlands, streams, ponds, lakes or riparian areas; and

(II) 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:

(I) Plans shall include a plan view and cross-sectional drawing at a scale that adequately depicts site rehabilitation efforts. Plans will illustrate final site topographic contours that emulate the surrounding natural landscape.

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

(III) The project applicant shall be responsible for the successful rehabilitation of all areas disturbed by emergency/disaster response activities.

(D) Wildlife Habitat

(i) Emergency/disaster response actions occurring within 1,000 feet of a 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).

(iii) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines the Priority Habitat or sensitive wildlife site was not active, the emergency/disaster response did not compromise the integrity of the Priority Habitat or sensitive wildlife site, or the emergency/disaster response 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:

(I) 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;

(II) 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.

(III) 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 agricul-

tural 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; and

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 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 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 corrals.

(C) Soil, water, and vegetation conservation uses.

(D) Replacement or minor expansion of existing and serviceable structures within a dedicated site. Expansion shall be limited to the dedicated site.

(E) Fish and wildlife management uses, educational activities, and scientific research.

(F) Land divisions that facilitate livestock grazing or protect and enhance natural areas. No resulting parcel may be smaller than 160 acres, unless it would facilitate the protection of scenic, cultural, natural, or recreation resources.

(G) Single-family dwellings that are not in conjunction with agricultural use, if a landowner demonstrates that the dwelling cannot be constructed on a portion of the parcel that is located outside of the natural area and 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-agricultural dwellings may be waived if they would prevent the optimum siting of a dwelling.

(H) Recreation uses, subject to the provisions for Recreation Intensity Classes 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:

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

(II) Preserve native trees and shrubs; and

(III) 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:

(I) 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.

(II) 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.

(III) 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.

(IV) 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 Biodiversity 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 guide-

lines. 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 infla-

tion 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; and

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 (h) or (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 on 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 arrestor 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 non-combustible 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 subsection (l) or (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:

(I) 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;

(II) Other important natural features of the subject parcel such as steep areas, streams, wetlands, rock outcrops, etc.;

(III) Road and structure construction or reconstruction location;

(IV) Location of proposed rock or aggregate sources;

(V) Major skid trails, landings, and yarding corridors

(VI) Commercial firewood cutting areas.; and

(VII) 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:

(I) Describe the range of natural conditions expected in the forest in terms of tree species, structure, and landscape pattern.

(II) Describe what the resulting tree species, structure, and landscape pattern will be after the proposed activities.

(III) Give a clear explanation of how a deviation from the applicable guidelines may better achieve forest health objectives.

(IV) 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:

(I) Submit NRCS soil unit description and map for each soil unit affected by the proposed clearing or treatment.

(II) 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).

(III) Describe in sufficient detail for evaluation the proposed agricultural use, the improvements needed on the parcel, timeline for its establishment, and its marketability.

(IV) 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 the scenic the standard for the applicable landscape setting and land use designation in 350-082-0610 Table 1 - Required SMA Scenic Standards.

(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 Serv-

ice. 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.

(I) 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.

(II) 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 ¹	Forest Structure (Average % total canopy closure (cc) ²)	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			
West Conifer	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
East Conifer (Ponderosa Pine/Douglas fir)	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
Ponderosa Pine/Oregon Oak	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:

(I) Displacement of native and traditionally gathered plants;

(II) Degradation of wildlife habitat and forage;

(III) Degradation or loss of agricultural uses of land, such as cropland or livestock forage; or

(IV) 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 subsection (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 (i) 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:

(I) Retail sales at campgrounds shall be limited to camping supplies for overnight guests in dedicated space within the registration or central office building.

(II) 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.

(III) 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 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, 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 and natural resources (350-082-0620 and 350-082-0640 through 350-082-0690).

(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 350-082-0280, (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 subsection (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 350-082-0260 (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 350-082-0130(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 ex-

panded, 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 enhancement 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 re-

quirement 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 slight 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 slight 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, permanent 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 subsections (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:

(I) Number of events to be held annually.

(II) Maximum size of events, including number of guests and vehicles at proposed parking area.

(III) Provision for temporary structures, including location and type of structures anticipated.

(IV) 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 section (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 that the parcel to be enlarged would not become eligible for a subsequent land division, the amount of land transferred would be the minimum necessary to resolve the issue, and 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 designa-

ted 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 that the parcel to be enlarged would not become 40 acres or greater and 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 guide-

lines, 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 rec-

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 practicably be placed in full compliance with the setback or buffer.

(c) The variance from the specified setback or buffer is the minimum necessary to allow the residence.

(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 de-

termine 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 facilities 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-intensity nature (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:

(I) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(II) 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.

(III) 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 impractic-

cable. 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 subsection (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 their designs emphasize retention or enhancement of native riparian communities, structures and parking areas are visually subordinate, and 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 Subordinance 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
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(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 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 a reconnaissance or historic survey, a determination of significance, an assessment of effect, or 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. Recordings, 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.

(IV) 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).

(V) 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.

(VI) 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:

(I) Physical destruction, damage, or alteration of all or part of the cultural resource.

(II) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

(III) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.

(IV) Neglect of a significant cultural resource resulting in its deterioration or destruction, 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 Exec-

utive 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 determine 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 a reconnaissance or historic survey, a determination of significance, an assessment of effect, or 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, supplemented by maps which graphically illustrate the areas surveyed, not surveyed, and the rationale for each.

(iii) A statement of the presence or absence of cultural resources within the area of the new development or land use.

(iv) When cultural resources are not located, a statement of the likelihood of buried or otherwise concealed cultural resources shall be included. Recommendations and standards for monitoring, if appropriate, shall be included.

(D) The report shall follow the format specified by the Washington 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 to 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), subject 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. 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.

(I) Restoration: 2:1

(II) Creation: 3:1

(III) 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 pre-

pared 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:

(I) The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way;

(II) The wetland is not critical habitat; and

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

(C) 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 the integrity and function of the buffer zones is maintained, the total buffer area on the development proposal is not decreased, the width reduction shall not occur within another buffer, and 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 identifies the precise location of the rare wildlife or plant or water resource, describes the biology of the rare wildlife or plant or hydrologic condition of the water resource, and 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 reconfigure 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* (on-line 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 De-

partment 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 the integrity and function of the buffer zones is maintained, the total buffer area on the development proposal is not decreased, the width reduction shall not occur within another buffer, and 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, identifies the precise location of the rare wildlife or plant or water resource, describes the biology of the rare wildlife or plant or hydrologic condition of the water resource, and 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 guide-

lines 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 the rare wildlife area or site is not active, the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife or plant area or site, or 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.

(I) Restoration: 2:1

(II) Creation: 3:1

(III) 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 con-

sultation 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 bentgrass	<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 kittentails	<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:

(I) Retail sales at campgrounds shall be limited to camping supplies for overnight guests in dedicated space within the registration or central office building.

(II) 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.

(III) 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 characteristics 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 fa-

cility 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 development 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 measures 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 minimum 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 22-08-002

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed March 23, 2022, 1:16 p.m., effective April 23, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending the definition of qualified alien in WAC 182-503-0535 to include certain persons from Iraq and Afghanistan. The agency is amending WAC 182-507-0135 to add certain persons from Iraq and Afghanistan to the individuals eligible for refugee medical assistance.

Citation of Rules Affected by this Order: Amending WAC 182-503-0535 and 182-507-0135.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-05-008 on February 3, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 23, 2022.

Wendy Barcus
Rules Coordinator

OTS-3506.1

AMENDATORY SECTION (Amending WSR 21-19-029, filed 9/9/21, effective 10/10/21)

WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than (~~twenty-one~~) 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than (~~(twenty-one)~~) 21 years of age. In that case, the child retains qualified alien status even after he or she turns (~~(twenty-one)~~) 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmar-ried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional en- trant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal un- der INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b) (1) of the Afghan Allies Protec- tion Act of 2009 or Section 1059(a) of the National Defense Authoriza- tion Act of 2006.

(xii) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after Septem- ber 30, 2022, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

~~((xii))~~ (xiii) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than (~~(twenty-one)~~) 21 years of age.

~~((xiii))~~ (xiv) A person from the Federated States of Microne- sia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen un- der federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least (~~(fifty)~~) 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

- (i) Apple health for adults;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

- (i) Apple health for adults;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(d) A nonqualified alien may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(e) An undocumented person may be eligible for:

- (i) Alien medical programs;
- (ii) State-only funded apple health for kids; or
- (iii) State-only funded apple health for pregnant women.

(3) **The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through ~~((xiii))~~ (xiv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 21-19-029, § 182-503-0535, filed 9/9/21, effective 10/10/21; WSR 15-10-002, § 182-503-0535, filed 4/22/15, effective 5/23/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0535, filed 7/29/14, effective 8/29/14.]

OTS-3507.1

AMENDATORY SECTION (Amending WSR 12-19-001, filed 9/5/12, effective 10/6/12)

WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA). (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

- (a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);
 - (b) Paroled into the United States as a refugee or asylee under section 212 (d) (5) of the INA;
 - (c) Granted conditional entry under section 203 (a) (7) of the INA;
 - (d) Granted asylum under section 208 of the INA;
 - (e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;
 - (f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;
 - (g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);
 - (h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; or
 - (i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:
 - (i) Special immigrant status under section 101 (a) (27) of the INA;
 - (ii) Special immigrant conditional permanent resident; or
 - (iii) Parole under section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or section 1059(a) of the National Defense Authorization Act of 2006.
 - (j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.
- (2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of the statuses described in subsection (1) (a) through ~~((g))~~ (i) of this section.

[Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 15. WSR 12-19-001, § 182-507-0135, filed 9/5/12, effective 10/6/12.]

WSR 22-08-007
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 23, 2022, 3:47 p.m., effective April 23, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To clarify how the department of retirement systems will determine if a Plan 3 member has experienced a loss of investment earnings resulting from their employer's delay in the submittal of contributions, and how such a loss will be calculated.

Citation of Rules Affected by this Order: Amending WAC 415-111-110.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 22-05-063 on February 11, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 23, 2022.

Tracy Guerin
Director

OTS-3520.1

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

WAC 415-111-110 Member and employer responsibility. (1) **What am I responsible for as a Plan 3 member?** As a Plan 3 member your responsibilities include, but are not limited to:

- (a) Adhering to time frames;
- (b) Making investment decisions for your defined contribution account;
- (c) Reviewing account information provided on statements, such as quarterly statements, and notifying the correct organization of any errors;
- (d) Filling out the correct form for a requested action;
- (e) Correctly completing the appropriate form for a requested action and submitting the form to the correct organization as directed on each form; and
- (f) Monitoring to ensure contributions do not exceed Internal Revenue Code limits (see WAC 415-111-111).

(2) **What can happen if I do not fulfill my Plan 3 responsibilities?** If you do not fulfill your responsibilities, the consequences may include, but are not limited to:

- (a) You may not qualify for certain benefits, such as the transfer payment;
- (b) You may have a delay in the correction of errors on your account;
- (c) You may have a delay in the processing of your request for a defined contribution withdrawal; or
- (d) You may have a delay in the investment of your account as directed.

(3) **What responsibilities do employers have?** Employers' responsibilities include, but are not limited to:

- (a) Adhering to Plan 3 administrative requirements, including the respective roles of employers and employees, communicated to employers by the department in written materials and formal training;
- (b) Maintaining a supply of Plan 3 forms;
- (c) Reporting an employee's Plan 3 transfer decision as soon as possible after receipt of the appropriate form from the employee;
- (d) Submitting to DRS the form on which the member made the Plan 3 transfer decision as soon as possible after receipt of the appropriate form;
- (e) Reporting an employee's contribution rate decision as soon as possible after receipt of the appropriate form from the employee;
- (f) Reporting an employee's investment program as soon as possible after receipt of the appropriate form from the employee;
- (g) Monitoring to ensure that a member's contributions do not exceed Internal Revenue Code limits (see WAC 415-111-111); and
- (h) Submitting contributions to the department as soon as reasonable and at least in accordance with RCW 41.50.120, "reasonableness" will be based on the facts and circumstances.

Example

Assume the following:

- An employer has one payroll system;
- Payroll checks are issued semimonthly;
- At the same time checks are cut, the payroll department produces a data tape of employee contributions that has to be checked for accuracy, and checking the tape takes four days;
- Once the accuracy of the data tape is confirmed, a check for the aggregate amount of employee contributions is sent by the employer to DRS; and
- The entire process, from the cutting of payroll checks to the cutting of the aggregate employee contribution check takes eight days. In this situation, eight days is a "reasonable" period of time.

(4) **What can happen if my employer does not fulfill its responsibilities?**

- (a) If your employer does not fulfill its responsibilities, the consequences may include, but are not limited to:
 - (i) Your employer may have to make your member account whole;
 - (ii) Your employer may be subject to penalties assessed by the department; or
 - (iii) Your employer may be subject to penalties assessed by the Internal Revenue Service.
- (b) If the department determines that an employer has erred in its administrative role, such that an employee incurs an investment

loss, the department will determine the amount of loss and bill the employer.

(5) How will the department determine the amount of loss I have incurred?

(a) If your employer has not taken contributions from your pay, the department will determine that you have not incurred a loss because you have had access to the funds.

(b) If your employer has deducted contributions from your pay and not submitted them timely to the department, the loss will be calculated as:

(i) The difference between the number of shares your contributions would have purchased if they had been submitted in alignment with your employer's normal payroll cycle and the number of shares your contributions purchase at the time they are added to your account.

(ii) If the delay results in additional shares for you, those shares will stay in your account.

(iii) In computing the loss, the department will use your current investment allocation.

[Statutory Authority: RCW 41.50.050(5), 41.50.112, 41.50.145, chapter 41.34 RCW. WSR 02-03-120, § 415-111-110, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-111-110, filed 12/12/00, effective 1/12/01.]

WSR 22-08-008
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 23, 2022, 3:48 p.m., effective April 23, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To clarify the process for conducting periodic reviews to confirm continued eligibility for law enforcement officers' and firefighters' (LEOFF) Plan 2 catastrophic disability benefits.

Citation of Rules Affected by this Order: Amending WAC 415-104-480.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 22-05-018 on February 4, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 23, 2022.

Tracy Guerin
Director

OTS-3523.2

AMENDATORY SECTION (Amending WSR 21-01-209, filed 12/23/20, effective 1/23/21)

WAC 415-104-480 Does my disability qualify me for a LEOFF Plan 2 catastrophic duty disability benefit? (1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:

(a) The disability or disabilities that qualified you for a LEOFF Plan 2 duty disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and

(b) Your disability or disabilities have lasted or are expected to last at least (~~twelve~~) 12 months, or are expected to result in your death.

(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.

Examples:

- Totally disabled, but not from duty injury - Not eligible for catastrophic disability benefit.

A LEOFF Plan 2 member suffers a knee injury on duty, leaving the member disabled from LEOFF employment. The knee injury, by itself, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a duty disability, but not for a catastrophic disability because the fully disabling condition, ALS, is not duty related.

- Totally disabled, duty injury totally disabling - Eligible for catastrophic disability benefits.

A LEOFF Plan 2 member suffers a knee injury while fishing. The knee injury, by itself, is neither duty related nor catastrophically disabling. The member also suffers severe burns while fighting a fire, leaving the member fully disabled. The Social Security Administration grants the member a full disability based on the member's total condition. The member qualifies for a LEOFF plan 2 catastrophic disability benefit because the burn injuries, by themselves, render the member totally disabled.

(3) Medical insurance premium reimbursement is an additional benefit for a member who is catastrophically disabled in the line of duty (RCW 41.26.470). However, if you choose to withdraw (~~one hundred fifty~~) 150 percent of your accumulated contributions pursuant to RCW 41.26.470(6) you are not entitled to the medical insurance premium reimbursement.

(4) If you receive catastrophic duty disability benefits, the department will periodically review your income and medical status for continued eligibility. This review is not a reassessment of your initial determination, but an assessment of whether there has been any change in your condition. If it is determined that there has been a change in your condition and you are no longer eligible under subsection (1) of this section, or if you fail to provide required documentation or cooperate with the review, your catastrophic duty disability benefit may be discontinued or converted to a different retirement status. DRS will notify you of your review at least 30 days before the beginning of your review.

(a) Income review: At least annually, you must submit documentation to verify that your income from earnings is below the defined income threshold as defined in subsection (5)(c) of this section. (~~The documentation must include a signed copy of your filed tax return showing income from all sources for the prior year.~~) You must also notify the department within (~~thirty~~) 30 calendar days of any changes in your income that could impact your eligibility including, but not limited to, wages and earnings from self-employment. (See subsection (5)(c), (d) and (f) of this section.) If DRS is not notified on time, you may be responsible for any resulting overpayment.

Documentation you may need to provide includes a federal or state income tax return from the most recent year, a copy of savings, checking or other bank accounts for the most recent two months, or other documentation as requested by the department.

(b) Medical review: The department will conduct a continuing disability review (CDR) at least once every three years if at the time of your last determination your condition is expected to improve, or every six years if your condition is not expected to improve, until you reach age (~~sixty-five~~) 65. The department may increase the frequency

of your CDRs (~~(if your condition is expected to improve,)~~) and reserves the right to require a CDR at any time (~~(at its discretion)~~) if notified of a change in your condition, but not more than once every 12 months. The department may also waive the CDR if your disability is determined to be permanent or terminal.

(i) DRS will first review any updated medical information available from any labor and industries claims related to your line of duty injury to determine if additional medical information is needed from you and your primary care provider.

(ii) If needed, the department will provide you with a Disability Review form, which asks for information about whether your medical condition has improved since your last eligibility determination. You will have at least 30 days to complete and return this form to the department or notify the department that you need additional time. Once received, the department will have 90 days to review this information and either notify you of your continued eligibility or the need for additional information. Before making a change to your disability retirement status, the department will consult with a contracted vendor for the purpose of providing an independent medical review.

(5) Definitions. As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW 41.26.470(9).

(b) **Continuing disability review (CDR)** means an assessment of your current medical condition to determine if it continues to be catastrophically disabling. The department's medical professional will review recent documentation, with supplemental assessment by external medical experts at the department's discretion.

(c) **Defined income threshold** means any substantial gainful activity that produces average earnings, as defined in (d) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(d) **Earnings** are any income or wages received, which are reportable as wages or self-employment income to the IRS.

(e) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

(f) **Substantial gainful activity** describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful, and it may be, but is not required to be, from work or self-employment. Earnings as defined in this section includes compensated work activity that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work activity may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your LEOFF position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

(g) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

[Statutory Authority: RCW 41.50.050. WSR 21-01-209, § 415-104-480, filed 12/23/20, effective 1/23/21; WSR 18-13-078, § 415-104-480, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-104-480, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5) and 41.26.470 (6) and (7). WSR 06-18-007, § 415-104-480, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5) and 41.26.470. WSR 04-22-074, § 415-104-480, filed 11/1/04, effective 12/2/04.]

WSR 22-08-013

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed March 24, 2022, 10:55 a.m., effective April 24, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency revised this rule to remove the restriction that the WISE program only applies to medicaid clients and added language to clarify the program is for those clients eligible for coverage under WAC 182-505-0210.

Citation of Rules Affected by this Order: Amending WAC 182-501-0215.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: *Thurston County Superior Court in A.G.C. v. Washington State Health Care Authority*, no. 21-2-00479-34.

Adopted under notice filed as WSR 22-05-081 on February 15, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 24, 2022.

Wendy Barcus
Rules Coordinator

OTS-3495.1

AMENDATORY SECTION (Amending WSR 20-15-026, filed 7/7/20, effective 8/7/20)

WAC 182-501-0215 Wraparound with intensive services (WISE). (1) Wraparound with intensive services (WISE) is a service delivery model that provides comprehensive behavioral health covered services and support to:

(a) (~~Medicaid-eligible~~) Clients age (~~twenty~~) 20 or younger with complex behavioral health needs who are eligible for coverage under WAC 182-505-0210; and

(b) Their families.

(2) The authority, the managed care organizations, and the WISE provider agencies must use, continue to use, and substantially comply with the WISE quality plan (WISE QP) for the delivery of WISE. The purpose of the WISE QP is to:

(a) Provide a framework for quality management goals, objectives, processes, tools, and resources to measure the implementation and success of the WISE service delivery model; and

(b) Guide production, dissemination, and use of measures used to inform and improve WISE service delivery.

(3) The WISE QP, as may be amended from time to time, is incorporated by reference and is available online at <https://www.hca.wa.gov/billers-providers-partners/behavioral-health-recovery/wraparound-intensive-services-wise>.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-15-026, § 182-501-0215, filed 7/7/20, effective 8/7/20.]

WSR 22-08-014

PERMANENT RULES

DEPARTMENT OF CORRECTIONS

[Filed March 24, 2022, 11:36 a.m., effective April 24, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This proposed rule makes administrative changes, as necessary, to ensure WAC complies with department policy. Also, to create equity for incarcerated individuals assigned to max custody by allowing them to accrue earned time while assigned to max, as long as they were in compliance with their assignment requirements.

Citation of Rules Affected by this Order: Amending WAC 137-30-030 and 137-30-070.

Statutory Authority for Adoption: RCW 72.01.090.

Adopted under notice filed as WSR 22-03-094 on January 18, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 24, 2022.

Cheryl Strange
Secretary

OTS-2979.2

AMENDATORY SECTION (Amending WSR 15-08-066, filed 3/30/15, effective 4/30/15)

WAC 137-30-030 Eligibility. (1) ERT.

(a) (~~Offenders~~) Incarcerated individuals convicted of a serious violent offense or a class A felony sex offense may earn ERT as follows:

(i) Offense committed after June 30, 1990, and before July 1, 2003 - May not exceed fifteen percent of their sentence; and

(ii) Offense committed after June 30, 2003 - May not exceed ten percent of their sentence.

(b) (~~Offenders~~) Incarcerated individuals convicted before July 2, 2010, who are classified as moderate or low risk may earn ERT not to exceed fifty percent of their sentence regardless of the date of offense or sentencing, provided they have not been convicted of or have a prior:

(i) Sex offense;

(ii) Violent offense;

- (iii) Crime against a person, including identity theft in the first or second degree committed on or after June 7, 2006;
- (iv) Felony domestic violence;
- (v) Residential burglary;
- (vi) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture of, delivery of, or possession with intent to manufacture or deliver, methamphetamine;
- (vii) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
- (viii) Gross misdemeanor stalking;
- (ix) Violation of a domestic violence court order, including gross misdemeanors; or
- (x) Any new felony committed while under community supervision.

(c) (~~Offenders~~) Incarcerated individuals may earn ERT not to exceed thirty-three and one-third percent of the sentence in all other cases not identified in this section.

(d) An (~~offender~~) incarcerated individual who has transferred from one sentence within a cause number to the next sentence, or from one cause number to the next cause number, may lose ERT associated with the previous sentence or cause. ERT may be taken on a consecutive sentence that is not yet being served.

(e) (~~Offenders~~) Incarcerated individuals found guilty of infraction 557 or 810 (WAC 137-25-030) will lose fifty percent eligibility and all available ERT and privileges as outlined by department policy. (~~Offenders~~) Incarcerated individuals found guilty of infraction 813 related to employment or programming while in work release will also lose all available ERT and privileges.

(2) (a) **Earned release time - Eligibility.**

(b) All incarcerated individuals will be eligible for earned release time, except:

- (i) Incarcerated individuals sentenced to life without parole.
- (ii) Community supervision violators sanctioned by the department on or after May 2, 2012.
- (iii) Incarcerated individuals who are a community custody prison (CCP) return or community custody inmate (CCI) termination.
- (iv) Incarcerated individuals under board jurisdiction whose minimum term has expired and who have not been paroled or transferred to a consecutive sentence. The ERT will be addressed to the correct sentence after the parole/transfer date is determined.
- (v) Juvenile board incarcerated individuals who have not completed the minimum term of confinement.
- (vi) Incarcerated individuals found guilty of 557 or 810, or 813 violation related to employment or programming while in work/training release.
- (vii) Incarcerated individuals found guilty of a 762 violation will lose all available earned time and programming points for the month the violation occurred.

(3) **Good conduct time.**

- (a) All (~~offenders~~) incarcerated individuals will be eligible for good conduct time, except:
 - (i) (~~Offenders~~) Incarcerated individuals sentenced to death or life without parole;
 - (ii) (~~Offenders~~) Incarcerated individuals serving the mandatory or flat time enhancement portion of their sentences;
 - (iii) Community custody violators sanctioned by the department on or after May 2, 2012;

(iv) ~~((Offenders))~~ Incarcerated individuals sanctioned to community custody prison return or community custody inmate termination; and

(v) Indeterminate ~~((offenders))~~ incarcerated individuals whose minimum term has expired and who have not been paroled or transferred to a consecutive sentence. Any good conduct time earned or denied will be addressed to the correct sentence after the parole/transfer date is determined.

(b) ~~((Offenders))~~ Incarcerated individuals may lose earned and future good conduct time if found guilty of certain serious infractions listed in WAC 137-25-030 and sanctioned per department policy.

(c) The following ~~((offenders))~~ incarcerated individuals may lose their good conduct time if found guilty of a serious infraction:

(i) Indeterminate ~~((offenders))~~ incarcerated individuals whose time has not been adopted by the indeterminate sentence review board (ISRB); and

(ii) Determinate ~~((offenders))~~ incarcerated individuals.

(d) The amount of time lost will be determined by the disciplinary hearing officer/community hearing officer/ISRB.

(e) Good conduct time lost as a result of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release, cannot be restored.

~~((3))~~ **(4) Earned time.**

(a) ~~((Offenders))~~ Incarcerated individuals who participate in approved programs, including work and school, are eligible for earned time for each calendar month as follows:

(i) Earned time eligible under ten percent rule - One and eleven one-hundredths days;

(ii) Earned time eligible under fifteen percent rule - One and seventy-six one-hundredths days;

(iii) Earned time eligible under thirty-three and one-third percent rule - Five days ~~((7~~

~~iv) Earned time eligible under fifty percent rule - Ten days))~~.

(b) ~~((Offenders))~~ Incarcerated individuals are not eligible for earned time if:

(i) ~~((They are serving an indeterminate sentence, and the ISRB has:~~

~~(A) Extended the cause to the maximum term; or~~

~~(B) Previously denied future earned time.~~

~~(ii))~~ Were sentenced under the presentencing Reform Act and the board has extended the cause to the maximum term or previously denied future earned time.

(ii) Refuse any transfer, excluding work/training release.

(iii) Serve twenty consecutive days or more in restrictive housing as defined in DOC 320.255 Restrictive housing for negative behavior or unfounded/unsubstantiated protection concerns. The incarcerated individual who transfer to court from restrictive housing will not be eligible for earned time. The incarcerated individual will be eligible for earned time when authorized to transfer/return to general population. Incarcerated individuals housed in maximum custody will be eligible for earned time, including time out to court, but will not be eligible for programming points. Incarcerated individuals must be in compliance with their current custody facility/case plan and behavior and programming plan.

(iv) Incarcerated individuals will be eligible for earned time if they are pending investigation for negative behavior in administrative segregation and the investigation does not result in serious violation(s) and/or custody demotion.

(v) They are not involved in ~~((mandatory))~~ programming as determined through the classification process and consistent with their case/custody facility plan. This includes refusing ~~((mandatory))~~ programming or being terminated from a ~~((mandatory))~~ program assignment for documented negative or substandard performance. An ~~((offender))~~ incarcerated individual who is on a waiting list and then refuses a program assignment will not earn earned time for the month in which she or he refused.

~~((Offenders previously determined qualified to receive fifty percent earned time will participate in programming or activities targeted in the custody facility plan. The offender will not be penalized if programs and activities are not available.~~

~~(iii) They refuse any transfer, excluding work release. Earned time will not be earned for any calendar month the offender refuses assignment.~~

~~(iv) They serve twenty days or more in one calendar month in administrative segregation or disciplinary segregation for negative behavior or unfounded/unsubstantiated protection concerns. The offender is eligible to begin earning earned time when the superintendent approves transfer or return to general population. Offenders who are approved for transfer to general population and are scheduled for release to the community within sixty days will earn earned time unless found guilty of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release.~~

~~(v) They are serving the mandatory or flat time enhancement portion of their sentence, except for indeterminate offenders sentenced for crimes committed before July 1, 1984.~~

~~(vi) Offenders will receive a written record of all earned time denials.~~

~~(4) Offenders are not eligible for fifty percent earned time if the offender's risk management level is changed to high risk violent or high risk nonviolent; high risk violent or high risk nonviolent offenders may earn up to one-third of the sentence.)~~ (c) The incarcerated individual will not be penalized if programs and activities are not available.

(d) Denials of earned time may be appealed per DOC 300.380 Classification and custody facility plan review.

[Statutory Authority: RCW 72.01.090 and 72.09.130. WSR 15-08-066, § 137-30-030, filed 3/30/15, effective 4/30/15; WSR 14-04-121, § 137-30-030, filed 2/5/14, effective 3/8/14. Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-030, filed 5/9/11, effective 6/9/11.]

AMENDATORY SECTION (Amending WSR 11-11-018, filed 5/9/11, effective 6/9/11)

WAC 137-30-070 Restoration of good conduct time. (1) For indeterminate sentences, once the good conduct time denial is addressed ~~((or))~~ and adopted by the ISRB, it cannot be returned to the ~~((offender))~~ individual without prior approval of the ISRB.

(2) ~~((At a regularly scheduled review, offenders may request restoration of good conduct time from the superintendent/CCS where the offender is housed.~~

~~(3) When the decision is made by the superintendent/CCS where the offender is housed, that decision is final and the offender may not request subsequent reviews for the same infractions.~~

~~(4) The unit team may recommend approval provided:~~

~~(a) The good conduct time has not been adopted by the ISRB, if the case requires an ISRB hearing for release;~~

~~(b) The offender has been free of serious infractions violations for at least one year from the date of the last serious infraction;~~

~~(c) The offender is not within six months of his/her ERD and the restoration will not put the offender less than one hundred twenty days to release;~~

~~(d) During the current incarceration, for the period of ten years prior to the request for restoration the offender has not committed a category A infraction;~~

~~(e) During the current incarceration, for the period of five years prior to the request for restoration, the offender has not committed a category A infraction 601 or 602;~~

~~(f) During the current incarceration, for the period of three years prior to the request for restoration, the offender has not committed a category A infraction 507, 603, 650, or 651.~~

~~(5) Review:~~

~~(a) The director or the deputy director may review and restore good conduct time for category A violations. This decision cannot be delegated below the deputy director level.~~

~~(b) The superintendent/CCS may review and restore good conduct time for category B and C violations.~~

~~(6) Good conduct time lost as the result of infraction 557, 810, 813 (related to employment or programming while in work release) or 857 will not be restored.~~

~~(7) When making the decision whether to restore good conduct time, the director/deputy director, or the superintendent/CCS will consider:~~

~~(a) Length of positive program participation;~~

~~(b) Period of infraction free behavior;~~

~~(c) Nature of infractions;~~

~~(d) Overall behavior during the commitment period; and~~

~~(e) Unit team recommendation.) Good conduct time, and earned time lost in lieu of good conduct time due to persistent prison misbehavior, is the only ERT that can be restored. Time may be restored on a current or consecutive sentence(s) being served during the current confinement term.~~

~~(a) The following violations will be eligible for restoration:~~

~~(i) 501, 502, 511, 521, 550, 604, 611, 613, 635, or 637 violation after ten years;~~

~~(ii) 601, 602, or 704 violation after five years;~~

~~(iii) 507, 603, 650, 651, or 882 violation after three years;~~

~~(iv) Any other serious violation after one year.~~

~~(b) Time will not be restored for the following:~~

~~(i) For individuals within one hundred twenty days of the ERD;~~

~~(ii) For individuals who have been found guilty of a serious violation within the last year;~~

~~(iii) When lost as a result of a 557, 762, 810, or 857 violation;~~

~~(iv) When lost as a result of an 813 violation related to employment or programming while in work/training release;~~

~~(v) Once addressed/adopted by the board for PAR individuals, unless approved in advance by the board.~~

(3) The case manager will establish/review good conduct time restoration plans with eligible individuals during each classification review, regardless of custody level or housing assignment. The restoration plan may be established before the applicable time frame for restoration, and will include:

(a) All eligible violations;

(b) Not place the individual within one hundred twenty days of the ERD;

(c) Be targeted for completion at least ten months before the ERD;

(d) Be documented in the custody facility/case plan and approved by the appointing authority/designee. Plans restoring time lost for a 501, 502, 511, 521, 550, 604, 611, 613, 635, or 637 violation(s) require approval from the appropriate deputy director.

(4) The appointing authority/designee or appropriate deputy director will consider all relevant information when determining whether to approve/deny the restoration plan.

(5) Restoration plans will be calculated based on the original sanction time and restored as follows:

(a) Category A violations - Maximum of fifty percent.

(b) Category B violations - Minimum of fifty percent up to one hundred percent.

(c) Category C violations - Minimum of seventy-five percent up to one hundred percent.

(6) Time lost will be restored if the individual remains serious violation free, follows the requirements as outlined in the plan, and it has been at least six months since the previous classification review.

(7) The restoration decision is final and cannot be appealed. Restoration plans will remain in effect when an individual transfers between facilities.

[Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-070, filed 5/9/11, effective 6/9/11.]

WSR 22-08-020
PERMANENT RULES
POLLUTION LIABILITY
INSURANCE AGENCY

[Filed March 25, 2022, 10:55 a.m., effective April 25, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rules codify existing agency procedures for the reporting and initial investigation of a heating oil tank release.

Citation of Rules Affected by this Order: New chapter 374-45 WAC, Reporting and initial investigations.

Statutory Authority for Adoption: RCW 70A.330.010 and 70A.330.800.

Adopted under notice filed as WSR 22-04-052 on January 27, 2022.

Changes Other than Editing from Proposed to Adopted Version: Minor changes made to clarify procedures and to include an applicable regulation. Changes did not alter the intent or substance of proposed rules.

Date Adopted: March 25, 2022.

Phi V. Ly
Legislative and Policy Manager

OTS-3543.2

Chapter 374-45 WAC
REPORTING AND INITIAL INVESTIGATIONS

NEW SECTION

WAC 374-45-010 Purpose. In order to aid the state in identifying and addressing heating oil contaminated property, this chapter sets forth the requirements for the public to report a release of heating oil from a heating oil tank and the process for the agency to conduct an initial investigation of the release. This chapter is promulgated under the authority of chapter 70A.330 RCW.

(1) Nothing in this chapter precludes the department of ecology from taking or requiring further action based on other law.

(2) This chapter does not apply to releases from underground storage tank systems regulated under chapter 173-360A WAC. Such releases must be investigated and reported to the department of ecology in accordance with that chapter.

(3) Nothing in this chapter eliminates any obligations to comply with reporting requirements in other laws or permits.

[]

NEW SECTION

WAC 374-45-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Agency" means the Washington state pollution liability insurance agency.

(2) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or the generation of electrical energy.

(3) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" includes a decommissioned or abandoned heating oil tank. "Heating oil tank" does not include a tank used solely for industrial process heating purposes or generation of electrical energy.

(4) "MTCA" means the Model Toxics Control Act, chapter 70A.305 RCW and its implementing regulations, chapters 173-340 and 173-204 WAC.

(5) "Operator" means any person in control of, or having responsibility for, the daily operation of a heating oil tank.

(6) "Owner" means the person, or his or her authorized representative, legally responsible for a heating oil tank, its contents, and the premises upon which the heating oil tank is located.

(7) "Release" means any intentional or unintentional entry of any hazardous substance into the environment including, but not limited to, a spill, leak, emission, escape, or leaching into the environment.

(8) "Remedial action" has the same meaning as defined in RCW 70A.305.020.

[]

NEW SECTION

WAC 374-45-030 Reporting a release. (1) Any owner or operator of a heating oil tank, or owner of the property where a heating oil tank is located, who has information or suspects that heating oil has been released to the environment at the property and may be a threat to human health or the environment must report such information to the agency within 90 days of discovery.

(2) To the extent known, the report to the agency must include:

- (a) The identification and address of the release;
- (b) Circumstances of the release and the discovery; and
- (c) Any remedial actions planned, completed, or underway.

(3) The following are examples of situations that a person should generally report under this section:

(a) Discovery of heating oil that has leaked or been dumped on the ground.

(b) Contamination in a water supply well.

(c) Contaminated seeps, sediment, or surface water.

(d) Vapors in a building, utility vault, or other structure that appear to be entering the structure from nearby contaminated soil or ground water.

(e) Free product on the surface of the ground or in the ground water.

(f) Any contaminated soil or unpermitted disposal of heating oil that would be classified as a hazardous waste under federal or state law.

(4) There is no requirement to report a release to the agency under this chapter if:

(a) The circumstances associated with the release have been provided to the agency through a notice of potential claim under chapter 374-70 WAC, a technical assistance program application under chapter 374-80 WAC, or application to the underground storage tank revolving loan and grant program; or

(b) The release has been reported to department of ecology in accordance with another law or regulation.

[]

NEW SECTION

WAC 374-45-040 Initial investigation of a release. (1) An initial investigation is a review of a reported heating oil tank release by the agency and documentation of reported conditions. The purpose of the initial investigation is to determine:

(a) Whether there has been a release from a heating oil tank that may pose a threat to human health or the environment;

(b) Whether further remedial action is necessary to confirm the release or to address the threat posed by the release under MTCA to protect human health and the environment;

(c) Whether emergency remedial action is necessary to confirm the release or to address the threat posed by the release; and

(d) Whether referral to another authority is appropriate.

(2) The agency will complete an initial investigation unless:

(a) The circumstances associated with the suspected or confirmed release are known to the agency and have previously been, or are currently being, evaluated by the agency or other government agency; or

(b) The agency does not have a reasonable basis to believe that there has been a release or threatened release of a hazardous substance that may pose a threat to human health or the environment.

(3) The agency will complete an initial investigation within 90 days of a release being reported to the agency.

(4) The agency may rely on another government agency or a contractor to the agency to conduct an initial investigation on its behalf, provided the agency determines:

(a) The other agency or contractor is not suspected to have contributed to the release of heating oil; and

(b) The other agency or contractor has no conflict of interest.

(5) Within 30 days of completing an initial investigation of a release, the agency will conduct additional investigation or make one of the following determinations:

(a) No release of heating oil occurred.

(b) A release of heating oil occurred but does not pose a threat to human health or the environment requiring remedial action under MTCA.

(c) A release of heating oil occurred that posed a threat to human health or the environment, a remedial action to address the threat has been completed, and no further remedial action is necessary to address the threat.

(d) A release of heating oil occurred that poses a threat to human health or the environment and further remedial action other than emergency remedial action is necessary to address the threat. The agency will notify the owner and operator and the department of ecology of the agency's determination.

(e) A release of heating oil occurred that poses a threat to human health or the environment and an emergency remedial action is necessary to address the threat. The agency will notify the owner and operator and the department of ecology of the agency's determination.

[]

WSR 22-08-035

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed March 29, 2022, 3:20 p.m., effective April 29, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In chapter 182-531A WAC, the agency is revising these rules to remove the age limits and changing the term child or children to client for applied behavioral analysis (ABA) and other housekeeping changes. In WAC 182-501-0060, the agency is updating the "N" (No) to a "Y" (Yes) in the ABA covered services table for ABP 21+, CN 21+, and MN 21+. The agency is also adding a "Y" to the covered services table for Ambulance (ground and air) ABP 21+, which is unrelated to the ABA changes but was erroneously missing.

Citation of Rules Affected by this Order: Amending WAC 182-501-0060, 182-531A-0100, 182-531A-0200, 182-531A-0300, 182-531A-0400, 182-531A-0500, 182-531A-0600, 182-531A-0700, 182-531A-0800, 182-531A-0900, 182-531A-1100, and 182-531A-1200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Thurston County Superior Court in *J.C. and H.S. v. Washington State Health Care Authority*, no. 20-2-01813-34.

Adopted under notice filed as WSR 22-04-102 On February 1, 2022.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-531A-0500 (2)(a)		
Proposed	(a) Documentation showing how the <u>autism spectrum disorder diagnosis</u> was made or confirmed by ((a)) <u>an approved individual COE ((physician or psychologist)) provider</u> that includes:	Added additional language to align with similar proposed change in WAC referencing intellectual/developmental disability and provide consistency in approach.
Adopted	(a) Documentation showing how the <u>autism spectrum disorder or other intellectual/developmental disability (for which there is evidence ABA is effective) diagnosis</u> was made or confirmed by ((a)) <u>an approved individual COE ((physician or psychologist)) provider</u> that includes:	
WAC 182-531A-1100 (5)(a)(ii)		
Proposed	(ii) Absence of meaningful, measurable, functional improvement changes or progress has plateaued without documentation of significant interfering events (e.g., serious physical illness, major family/ <u>caregiver</u> disruption, change of residence), if applicable. For changes to be meaningful they must be:	Added new subsection [(5)(a)(ii)] to clarify that if there is an absence of harmful behaviors, a reduction in hours can be requested by the agency.
Adopted	(ii) Absence of harmful behaviors (e.g., <u>physical aggression to self or others or property destruction</u>), if applicable; or (iii) Absence of meaningful, measurable, functional improvement changes or progress has plateaued without documentation of significant interfering events (e.g., serious physical illness, major family/ <u>caregiver</u> disruption, change of residence), if applicable. For changes to be meaningful they must be:	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 12, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 12, Repealed 0.

Date Adopted: March 29, 2022.

Wendy Barcus
Rules Coordinator

OTS-2886.2

AMENDATORY SECTION (Amending WSR 19-14-020, filed 6/24/19, effective 7/25/19)

WAC 182-501-0060 Health care coverage—Program benefit packages—Scope of service categories. (1) This rule provides a table that lists:

(a) The following Washington apple health programs:
(i) The alternative benefits plan (ABP) medicaid;
(ii) Categorically needy (CN) medicaid;
(iii) Medically needy (MN) medicaid; and
(iv) Medical care services (MCS) programs (includes incapacity-based and aged, blind, and disabled medical care services), as described in WAC 182-508-0005; and

(b) The benefit packages showing what service categories are included for each program.

(2) Within a service category included in a benefit package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefit package:

(a) Are determined in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited prior authorization when allowed by the agency.

(d) Are paid for by the agency or the agency's designee and subject to review both before and after payment is made. The agency or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or the agency's designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency as required under chapter 182-502 WAC;

(c) Are included in an agency or the agency's designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Programs not addressed in the table:

(a) Alien emergency medical (AEM) services (see chapter 182-507 WAC); and

(b) TAKE CHARGE program (see WAC 182-532-700 through 182-532-790);

(c) Postpartum and family planning extension (see WAC 182-523-0130(4) and 182-505-0115(5));

(d) Eligibility for pregnant minors (see WAC 182-505-0117); and

(e) Kidney disease program (see chapter 182-540 WAC).

(6) Scope of service categories. The following table lists the agency's categories of health care services.

(a) Under the ABP, CN, and MN headings, there are two columns. One addresses clients twenty years of age and younger, and the other addresses clients twenty-one years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program rules and agency issuances.

(c) The letter "N" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program rules containing the limitations and restrictions to services.

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS
Ambulance (ground and air)	Y	<u>Y</u>	Y	Y	Y	Y	Y
Applied behavior analysis (ABA)	Y	<u>((N))</u>	Y	<u>((N))</u>	Y	<u>((N))</u>	N
Behavioral health services	Y	Y	Y	Y	Y	Y	Y
Blood/blood products/related services	Y	Y	Y	Y	Y	Y	Y
Dental services	Y	Y	Y	Y	Y	Y	Y
Diagnostic services (lab and X-ray)	Y	Y	Y	Y	Y	Y	Y
Early and periodic screening, diagnosis, and treatment (EPSDT) services	Y	N	Y	N	Y	N	N
Enteral nutrition program	Y	Y	Y	Y	Y	Y	Y
Habilitative services	Y	Y	N	N	N	N	N
Health care professional services	Y	Y	Y	Y	Y	Y	Y
Health homes	Y	Y	Y	Y	N	N	N
Hearing evaluations	Y	Y	Y	Y	Y	Y	Y
Hearing aids	Y	Y	Y	Y	Y	Y	Y
Home health services	Y	Y	Y	Y	Y	Y	Y
Home infusion therapy/parenteral nutrition program	Y	Y	Y	Y	Y	Y	Y
Hospice services	Y	Y	Y	Y	Y	Y	N
Hospital services Inpatient/outpatient	Y	Y	Y	Y	Y	Y	Y
Intermediate care facility/services for persons with intellectual disabilities	Y	Y	Y	Y	Y	Y	Y
Maternity care and delivery services	Y	Y	Y	Y	Y	Y	Y
Medical equipment, supplies, and appliances	Y	Y	Y	Y	Y	Y	Y
Medical nutrition therapy	Y	N	Y	N	Y	N	Y
Nursing facility services	Y	Y	Y	Y	Y	Y	Y
Organ transplants	Y	Y	Y	Y	Y	Y	Y
Orthodontic services	Y	N	Y	N	Y	N	N
Out-of-state services	Y	Y	Y	Y	Y	Y	N
Outpatient rehabilitation services (OT, PT, ST)	Y	Y	Y	Y	Y	N	Y
Personal care services	Y	Y	Y	Y	N	N	N

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS
Prescription drugs	Y	Y	Y	Y	Y	Y	Y
Private duty nursing	Y	Y	Y	Y	Y	Y	N
Prosthetic/orthotic devices	Y	Y	Y	Y	Y	Y	Y
Reproductive health services	Y	Y	Y	Y	Y	Y	Y
Respiratory care (oxygen)	Y	Y	Y	Y	Y	Y	Y
School-based medical services	Y	N	Y	N	Y	N	N
Vision care Exams, refractions, and fittings	Y	Y	Y	Y	Y	Y	Y
Vision hardware Frames and lenses	Y	N	Y	N	Y	N	N

¹ Clients enrolled in the Washington apple health for kids and Washington apple health for kids with premium programs, which includes the children's health insurance program (CHIP), receive CN-scope of health care services.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2018 c 159. WSR 19-14-020, § 182-501-0060, filed 6/24/19, effective 7/25/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-07-083, § 182-501-0060, filed 3/17/15, effective 4/17/15. Statutory Authority: RCW 41.05.021, 2013 2nd sp.s. c 4, and Patient Protection and Affordable Care Act (P.L. 111-148). WSR 14-06-045, § 182-501-0060, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 41.05.021. WSR 13-15-044, § 182-501-0060, filed 7/11/13, effective 8/11/13. WSR 11-14-075, recodified as § 182-501-0060, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-501-0060, filed 11/30/06, effective 1/1/07.]

OTS-2887.7

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0100 Applied behavior analysis (ABA)—Purpose. Applied behavior analysis (ABA) assists (~~((children))~~) clients and their families to improve the core symptoms associated with autism spectrum disorders (~~((or other))~~) and intellectual or developmental disabilities for which there is evidence ABA is effective, per WAC 182-501-0165. ABA services support learning, skill development, and assistance in any of the following areas or domains: Social, behavior, adaptive, motor, vocational, or cognitive.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0100, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0200 Applied behavior analysis (ABA)—Definitions. The following definitions and those found in chapter 182-500 WAC, medical definitions, and chapter 182-531 WAC, physician-related services, apply throughout this chapter.

Applied behavior analysis or **ABA** - Applied behavior analysis (ABA) is an empirically validated approach to improve behavior and

skills related to core impairments associated with autism and a number of other developmental disabilities. ABA involves the systematic application of scientifically validated principles of human behavior to change inappropriate behaviors. ABA uses scientific methods to reliably demonstrate that behavioral improvements are caused by the prescribed interventions. ABA's focus on social significance promotes a family-centered and whole-life approach to intervention. Common methods used include: Assessment of behavior, caregiver interviews, direct observation, and collection of data on targeted behaviors. A single-case design is used to demonstrate the relationship between the environment and behavior as a means to implement client-specific ABA therapy treatment plans with specific goals and promote lasting change. ABA also includes the implementation of a functional behavior assessment to identify environmental variables that maintain challenging behavior and allow for more effective interventions to be developed that reduce challenging behaviors and teach appropriate replacement behaviors.

Autism spectrum disorder (ASD) - A condition, as defined by *Diagnostic and Statistical Manual of Mental Disorders (DSM) or Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood (DC 0-5)* criteria.

Autism spectrum disorder (ASD) diagnostic tool - A validated tool used to establish the presence (or absence) of autism and to make a definitive diagnosis which will be the basis for treatment decisions and assist in the development of a multidisciplinary clinical treatment plan. Examples of autism diagnostic tools include:

- (a) Autism Diagnosis Interview (ADI); and
- (b) Autism Diagnostic Observation Schedule (ADOS).

Autism spectrum disorder (ASD) screening tool - A tool used to detect ASD indicators or risk factors which then require confirmation. Examples of screening tools include, but are not limited to:

- (a) Ages and Stages Questionnaire (ASQ);
- (b) Communication and Symbolic Behavior Scales (CSBS);
- (c) Parent's Evaluation and Developmental Status (PEDS);
- (d) Modified Checklist for Autism in Toddlers (MCHAT); and
- (e) Screening Tools for Autism in Toddlers and young children

(STAT).

Centers of excellence (COE) - A ~~((hospital, medical center, or other health))~~ facility that employs a health care provider ((that establishes)), or alternatively an individual provider who has been trained, as listed in WAC 182-531A-0800, to establish or confirm((s)) the diagnosis of ~~((an))~~ autism spectrum disorder ~~((and develops the multidisciplinary clinical treatment plan))~~ and that has been designated by the agency as a center of excellence.

Client ~~((or child))~~ - For the purposes of this chapter, client ~~((or child))~~ means a person ~~((younger than twenty-one years of age and))~~ enrolled in Washington apple health (WAH).

Family member - A ~~((child's))~~ client's parent, guardian, caregiver, or other support person.

Qualifying diagnosis - A diagnosis of an ASD, as defined by the DSM or DC 0-5, or other intellectual or developmental disability for which there is evidence ABA is effective.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0200, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0300 Applied behavior analysis (ABA)—Threshold requirements. The medicaid agency pays for ABA services when the services are:

- (1) Covered;
- (2) Medically necessary;
- (3) Within the scope of the eligible client's medical care program;
- (4) Provided to clients who meet the criteria in WAC 182-531A-0400;
- (5) Within currently accepted standards of evidence-based (~~medical~~) clinical practice;
- (6) Not (~~replicative~~) duplicative of ABA services paid for by other state agencies using medicaid funds;
- (7) Completed in the stages described in this chapter;
- (8) Provided by qualified health care professionals, as described in this chapter;
- (9) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's *Applied Behavior Analysis Provider Guide*; and
- (10) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's *Applied Behavior Analysis Provider Guide*.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0300, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0400 Applied behavior analysis (ABA)—Client eligibility. To be eligible for applied behavior analysis (ABA) services, a client must:

- (1) (~~Be under twenty-one years of age;~~
- ~~(2))~~ Be covered under Washington apple health (WAH);
- ~~((3))~~ (2) Provide documentation created by a COE clinician that:
 - (a) Establishes the presence of functional impairment; delay in communication, behavior, or social interaction; or repetitive or stereotyped behavior;
 - (b) Establishes that the client's impairment, delay, or behaviors adversely affect development or communication, or both, such that:
 - (i) The client cannot adequately participate in home, school, or community activities because the behavior or skill deficit interferes with these activities; or
 - (ii) The (~~child's~~) client's behavior endangers the (~~child~~) client or another person, or impedes access to home and community activities (~~available to other children of the same age~~); and
 - (c) An agency-recognized center of excellence (COE) clinician has confirmed that:
 - (i) The (~~child~~) client meets all requirements in (a) and (b) of this subsection;

- (ii) The ~~((child))~~ client has a qualifying diagnosis;
 - (A) Autism spectrum disorder; or
 - (B) Developmental/intellectual disability;
- (iii) There is a reasonable ~~((calculation))~~ expectation the requested services will result in measurable improvement in either the client's behavior, skills, or both; and
- (iv) Either:
 - (A) Less intrusive or less intensive behavioral interventions have been tried and have not been successful; or
 - (B) No equally effective and substantially less costly alternative is available for reducing interfering behaviors, increasing pro-social skills and behaviors, or maintaining desired behaviors.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0400, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

- WAC 182-531A-0500 Applied behavior analysis (ABA)—Stage one: COE evaluation and order.** (1) Any person may refer a client suspected of meeting the criteria in WAC 182-531A-0400 to a center of excellence (COE) for an evaluation.
- (2) The individual COE must complete a comprehensive diagnostic evaluation and ~~((create a multidisciplinary clinical treatment plan that includes))~~ provide:
- (a) Documentation showing how the autism spectrum disorder or other intellectual/developmental disability (for which there is evidence ABA is effective) diagnosis was made or confirmed by ~~((a))~~ an approved individual COE ~~((physician or psychologist))~~ provider that includes:
 - (i) Results of formal diagnostic procedures performed by a clinician, including name of measure, dates, and results, as available; or
 - (ii) Clinical findings and observations used to confirm the diagnosis;
 - (b) Documentation showing that the client's behaviors or skills deficits adversely affect ~~((or))~~ development or communication, or demonstrating injurious behavior, such that:
 - (i) The client cannot adequately participate in home, school, or community activities because behavior or skill deficit interferes with these activities; or
 - (ii) The client presents a safety risk to self or others;
 - (c) Documentation showing ~~((that, if applied behavior analysis (ABA) is included in the multidisciplinary clinical treatment plan))~~:
 - (i) Less intrusive or less intensive behavioral interventions have been tried and were not successful; or
 - (ii) There is no equally effective alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors;
 - (d) Recommendations that address all of the ~~((child's))~~ client's health care needs;
 - (e) A statement that the evaluating and prescribing provider believes that there is a reasonable ~~((calculation))~~ expectation that the

requested ABA services will result in measurable improvement in the client's behavior or skills; and

(f) An order for ABA services. If ordered, a copy of the COE's comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan must be forwarded to the ABA provider selected by the ~~((child's))~~ client or the client's guardian under this chapter or provided to the ~~((child's))~~ client or the client's guardian to forward to the selected ABA provider.

(3) The COE must also include the following items ~~((r))~~ if it possesses a copy:

(a) Results of routine developmental screening ~~((performed by the child's primary care provider at well child visits))~~;

(b) Audiology and vision assessment results, or documentation that vision and hearing were determined to be within normal limits during assessment and not a barrier to completing a valid evaluation;

(c) The name of the completed autism ~~((screening questionnaire))~~ spectrum disorder (ASD) screening tool, including date completed and significant results;

(d) Documentation of a formal cognitive or developmental assessment performed by the COE or another qualified clinician, including name of measure, dates, results, and standardized scores providing verbal, nonverbal, and full-scale scores; and

(e) Documentation of a formal adaptive behavior assessment performed by the COE for developmental/intellectual disability or another qualified clinician, including name of measure, dates, results, and standardized scores providing scores of each domain.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0500, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0600 Applied behavior analysis (ABA)—Stage two: Functional assessment and treatment plan development. (1) If the center of excellence's (COE's) evaluating and prescribing provider has ordered applied behavior analysis (ABA) services, the client may begin stage two - ABA assessment, functional analysis, and ABA therapy treatment plan development.

(2) Prior authorization must be obtained from the agency prior to implementing the ABA therapy treatment plan ~~((, the ABA provider must receive prior authorization from the agency. The prior authorization request, including the assessment and ABA therapy treatment plan, must be received by the agency within sixty days of the family scheduling the functional assessment))~~. The prior authorization request must be received no more than 60 days from the date of the assessment and ABA therapy treatment plan. See WAC 182-501-0165 for agency authorization requirements.

(3) The ~~((child's))~~ client or the client's legal guardian selects the ABA provider and the setting in which services will be rendered. ABA services may be rendered in one of the following settings:

(a) Day services program, which mean an agency-approved, outpatient facility or clinic-based program that:

(i) Employs or contracts with a lead behavior analysis therapist (LBAT), therapy assistant, speech therapist, and if clinically indicated, an occupational therapist, physical therapist, psychologist, medical clinician, and dietitian;

(ii) Provides multidisciplinary services in a short-term day treatment program setting;

(iii) Delivers comprehensive intensive services;

(iv) Embeds early, intensive behavioral interventions in a developmentally appropriate context;

(v) Provides an individualized developmentally appropriate ABA therapy treatment plan for each ((child)) client; and

(vi) Includes family support and training.

(b) Community-based program, which means a program that provides services in a natural setting, such as a school, home, workplace, office, or clinic. A community-based program:

(i) May be used after discharge from a day services program (see subsection (3)(a) of this section);

(ii) Provides a developmentally appropriate ABA therapy treatment plan for each ((child)) client;

(iii) Provides ABA services in the home (wherever the ((child)) client resides), office, clinic, or community setting, as required to accomplish the goals in the ABA therapy treatment plan. Examples of community settings are: A park, restaurant, child care, early childhood education, ((or)) school, or place of employment and must be included in the ABA therapy treatment plan with services being provided by the enrolled LBAT or therapy assistant approved to provide services via authorization;

(iv) Requires recertification of medical necessity through continued authorization; and

(v) Includes family or caregiver education, support, and training.

(4) An assessment, as described in this chapter, must be conducted and an ABA therapy treatment plan developed by an LBAT in the setting chosen by the ((child's)) client or the client's legal guardian. The ABA therapy treatment plan must follow the agency's ABA therapy treatment plan report template and:

(a) Be signed by the LBAT responsible for the plan development and oversight;

(b) Be applicable to the services to be rendered over the next six months, based on the LBAT's judgment, and correlate with the COE's current diagnostic evaluation (see WAC 182-531A-0500(2));

(c) Address each behavior, skill deficit, and symptom that prevents the ((child)) client from adequately participating in home, school, employment, community activities, or that presents a safety risk to the ((child)) client or others;

(d) Be individualized;

(e) Be client-centered, family-focused, community-based, culturally competent, and minimally intrusive;

(f) Take into account all school or other community resources available to the client, confirm that the requested services are not redundant or in conflict with, but are in coordination with, other services already being provided or otherwise available, and coordinate services (e.g., from school and special education ((or)), from early intervention programs and early intervention providers or from the developmental disabilities administration) with other interventions and treatments (e.g., speech therapy, occupational therapy, physical therapy, family counseling, and medication management);

- (g) Focus on family engagement and training;
- (h) Identify and describe in detail the targeted behaviors and symptoms;
- (i) Include objective, baseline measurement levels for each target behavior/symptom in terms of frequency, intensity, and duration, including use of curriculum-based measures, single-case studies, or other generally accepted assessment tools;
- (j) Include a comprehensive description of treatment interventions, or type of treatment interventions, and techniques specific to each of the targeted behaviors/symptoms, (e.g., discrete trial training, reinforcement, picture exchange, communication systems) including documentation of the number of service hours, in terms of frequency and duration, for each intervention;
- (k) Establish treatment goals and objective measures of progress for each intervention specified to be accomplished in the (~~three to six-month~~) authorized treatment period;
- (l) Incorporate strategies for (~~generalized~~) promoting the learning of skills that improve targeted behaviors within settings as listed in this chapter;
- (m) Integrate family education, goals, training, support services, and modeling and coaching (~~family/child~~) family/client interaction;
- (n) Incorporate strategies for coordinating treatment with school-based (~~special~~) education and vocational programs, behavioral health treatment, habilitative supports, and community-based early intervention programs, and plan for transition through a continuum of treatments, services, and settings; and
- (o) Include measurable discharge criteria and a discharge plan.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0600, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 15-19-121, filed 9/21/15, effective 10/22/15)

WAC 182-531A-0700 Applied behavior analysis (ABA)—Stage three: Delivery of ABA services. (1) A provider must obtain prior authorization (~~(PA)~~) before delivery of applied behavior analysis (ABA) services. To request (~~(PA)~~) prior authorization, a provider must submit the following documents to the medicaid agency or follow the managed care organization (MCO) process:

- (a) The comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan completed by the center of excellence (COE) described in this chapter;
- (b) The ABA assessment and ABA therapy treatment plan described in this chapter; and
- (c) Any documents required by the agency's ABA provider guide.

(2) After the services are prior authorized, the lead behavior analysis therapist (LBAT) or a (~~therapy assistant (TA)~~) certified behavior technician implements the ABA therapy treatment plan in conjunction with other care team members. The LBAT is responsible for (~~communicating and collaborating~~) ongoing communication and collaboration with other care team members to ensure consistent approaches to achieving treatment goals.

(3) If services are rendered by a (~~TA, he or she~~) certified behavior technician, they must:

(a) Assess the client's response to techniques and report that response to the LBAT;

(b) Provide direct on-site services in the client's natural setting (~~(for example)~~) e.g., in the home, office, place of employment, education setting, clinic, or community, or in the day services program;

(c) Be supervised directly by an LBAT for at least five percent of total direct care per week;

(d) Consult the LBAT if:

(i) Considering modifying a technique;

(ii) A barrier or challenge prevents implementation of the treatment plan; and

(iii) Clinically indicated.

(e) Ensure family involvement through modeling, coaching, and training to support generalization and maintenance of achieved behaviors;

(f) Document each visit with the client or family and include:

(i) Targeted behavior, interventions, response, modifications in techniques;

(ii) A plan for the next visit; and

(iii) Behavior tracking sheets that record and graph data collected for each visit(~~and~~

~~(iv) Confirmation that each visit has occurred, recording the parent's signature and the date).~~

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 15-19-121, § 182-531A-0700, filed 9/21/15, effective 10/22/15; WSR 14-24-083, § 182-531A-0700, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 18-16-071, filed 7/30/18, effective 8/30/18)

WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Center of excellence.

(1) A center of excellence (COE) may (~~be an entity~~) include a facility or an individual.

~~(2)~~ The (~~COE's~~) COE facility evaluating and prescribing providers must function as a multidisciplinary care team.

~~((2))~~ (3) The COE must be or must employ:

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

(i) A developmental pediatrician;

(ii) A neurologist;

(iii) A pediatric neurologist;

(iv) A pediatric psychiatrist;

(v) A psychiatrist; or

(vi) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (~~(3)~~) (4) of this section and who has been designated by the agency as a COE. Behavioral health clinicians do not apply.

~~((3))~~ (4) The COE must be prequalified by the agency ~~((as meeting))~~ or ~~((employing))~~ employ people who meet the following criteria:

- (a) ARNPs, physicians, and psychologists must have demonstrated expertise in diagnosing an autism spectrum disorder by:
 - (i) Using a validated diagnostic tool;
 - (ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or
 - (iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;
- (b) ARNPs, physicians, and psychologists must understand the medically necessary use of applied behavior analysis (ABA); and
- (c) ARNPs, physicians, and psychologists must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

~~((4))~~ (5) To be recognized as a COE by the agency, the provider must submit a signed COE Attestation form, HCA 13-0009, to the agency.

~~((5))~~ (6) The COE must be enrolled with the agency or the client's managed care organization to be reimbursed for services.

~~((6))~~ (7) Examples of providers who can qualify as a designated COE include:

- (a) Multidisciplinary clinics;
- (b) Individual qualified provider offices; and
- (c) Neurodevelopmental centers.

~~((7))~~ (8) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

Lead behavior analysis therapist.

~~((8))~~ (9) The lead behavior analysis therapist (LBAT) must:

- (a) Be licensed by the department of health (DOH) to practice independently as a behavior analyst or an assistant behavior analyst with supervision from a licensed behavior analyst or licensed psychologist (see chapter 18.380 RCW) and be an eligible provider according to chapter 182-502 WAC; or
- (b) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding certification as a board-certified behavior analyst (BCBA) or a board-certified assistant behavior analyst (BCaBA) on file with the agency.

~~((9))~~ (10) The LBAT must enroll as a servicing provider under chapter 182-502 WAC, be authorized to supervise ancillary providers, and be:

- (a) A DOH-licensed behavior analyst (LBA) (see chapter 18.380 RCW); or
- (b) A DOH-licensed assistant behavior analyst (LABA) (see chapter 18.380 RCW).

~~((10))~~ (11) If the LBAT's role is filled by a LABA, the responsibilities below must be fulfilled by both the LABA and the supervising LBA or licensed psychologist, as required by DOH under chapter 246-805 WAC. The LBAT must:

- (a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care

professionals, and that states how all treatment will be coordinated; and

(b) Supervise at least five percent of the total direct care provided by the certified behavior technician per week.

Certified behavior technician.

~~((11))~~ (12) The certified behavior technician (CBT) must:

(a) Be certified by DOH as a CBT under chapter 18.380 RCW in good standing with no license restrictions; ~~((or))~~ and

(b) ~~((Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must))~~ Have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding ABA qualifications on file with the agency.

~~((12))~~ (13) The CBT must enroll as a servicing provider under chapter 182-502 WAC.

~~((13))~~ (14) The CBT must:

(a) Deliver services according to the ABA therapy treatment plan;

(b) Be supervised by a DOH-licensed professional who meets the requirements under WAC 246-805-330; and

(c) Review the client's progress with the supervisor at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the supervisor.

Facility-based day program.

~~((14))~~ (15) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following requirements:

(a) Outpatient hospital facilities must meet the applicable DOH licensure requirements under chapter 246-320 WAC;

(b) Any provider rendering direct ABA services in the facility-based day program must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable;

(c) Any provider serving as a member of the multidisciplinary care team must be licensed or certified under Title 18 RCW; and

(d) Have a signed ABA Day Program Capacity Attestation form, HCA 13-0007, on file with the agency.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-16-071, § 182-531A-0800, filed 7/30/18, effective 8/30/18. Statutory Authority: RCW 41.05.021, 41.05.160, and 2015 c 118. WSR 18-09-036, § 182-531A-0800, filed 4/12/18, effective 5/13/18. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 15-19-121, § 182-531A-0800, filed 9/21/15, effective 10/22/15; WSR 14-24-083, § 182-531A-0800, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 15-19-121, filed 9/21/15, effective 10/22/15)

WAC 182-531A-0900 Applied behavior analysis (ABA)—Covered services. (1) The medicaid agency covers only the following applied behavior analysis (ABA) services, delivered in settings described in WAC 182-531A-0600, for eligible clients:

- (a) The ABA assessments that determine the relationship between environmental events and the client's behaviors;
- (b) The direct provision of ABA services by the therapy assistant (TA) or lead behavior analysis therapist (LBAT);
- (c) Initial ABA assessment and development of a written, initial ABA therapy treatment plan, limited to one per year;
- (d) Up to four additional ABA assessments and revisions of the initial ABA therapy treatment plan per year, if necessary to meet client's needs;
- (e) One lifetime authorization of day treatment services. If a provider's request for covered services exceeds limitations in this section, the agency evaluates the request under WAC 182-501-0169.

- (f) Supervision of the TA;
- ~~((f))~~ (g) Training and evaluation of family members or caregivers to carry out the approved ABA therapy treatment plans;
- ~~((g))~~ (h) Observation of the client's behavior to determine the effectiveness of the approved ABA therapy treatment plan; and
- ~~((h))~~ (i) On-site assistance in the event of a crisis.

(2) The agency covers the following services, which may be provided in conjunction with ABA services under other agency programs:

- (a) Counseling;
- (b) Dietician services;
- (c) Interpreter services;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) Speech and language therapy; and
- (g) Transportation services.

(3) The agency does not authorize payment of ABA services that duplicate services provided in another setting.

(4) If a provider's request for covered services exceeds limitations in this section, the agency evaluates the request under WAC 182-501-0169.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 15-19-121, § 182-531A-0900, filed 9/21/15, effective 10/22/15; WSR 14-24-083, § 182-531A-0900, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-1100 Applied behavior analysis (ABA)—Prior authorization and recertification of ABA services. (1) The medicaid agency requires prior authorization (PA) and recertification of the medical necessity of applied behavior analysis (ABA) services.

(2) Requirements for PA requests are described in WAC 182-531A-0700.

(3) The agency may reduce or deny services requested based on medical necessity (refer to subsection (5) of this section) when completing PA or recertification responsibilities.

(4) The following are requirements for recertification of ABA services:

(a) Continued ABA services require the agency's authorization. Authorization is granted in three-month increments, or longer at the agency's discretion;

(b) The lead behavior analysis therapist (LBAT) must request authorization for continuing services (~~((three weeks))~~) 15 calendar days prior to the expiration date of the current authorization. A reevaluation and revised ABA therapy treatment plan documenting the client's progress and showing measurable changes in the frequency, intensity, and duration of the targeted behavior/symptoms addressed in the previously authorized ABA therapy treatment plan must be submitted with this request. Documentation must include:

- (i) Projection of eventual outcome;
- (ii) Assessment instruments;
- (iii) Developmental markers of readiness; and
- (iv) Evidence of coordination with providers.

(c) When completing recertification responsibilities, the agency may request another evaluation from the COE to obtain that provider's review and recommendation. This COE provider must review the ABA therapy treatment plan, conduct a face-to-face visit with the ~~((child))~~ client, facilitate a multidisciplinary record review of the client's progress, hold a family/caregiver conference, or request a second opinion before recommending continued ABA services. Services will continue pending recertification.

(d) When completing recertification responsibilities, the agency may retroactively authorize dates of service. Services will continue pending recertification.

(5) Basis for denial or reduction of services includes, but is not limited to, the following:

(a) Lack of medical necessity, for example:

(i) Failure to respond to ABA services, even after trying different ABA techniques and approaches, if applicable; ~~((or))~~

(ii) Absence of harmful behaviors (e.g., physical aggression to self or others or property destruction), if applicable; or

(iii) Absence of meaningful, measurable, functional improvement changes or progress has plateaued without documentation of significant interfering events (e.g., serious physical illness, major family/caregiver disruption, change of residence), if applicable. For changes to be meaningful they must be:

(A) Confirmed through data;

(B) Documented in charts and graphs;

(C) Durable over time beyond the end of the actual treatment session; and

(D) Generalizable outside of the treatment setting to the client's residence and the larger community within which the client resides; or

(b) ~~((Noncompliance as demonstrated by a pattern of failure of))~~ A demonstrated lack of engagement as evidenced by the family/caregiver to:

(i) Keep appointments;

(ii) Attend treatment sessions;

(iii) Attend scheduled family training sessions;

(iv) Complete homework assignments; and

(v) Apply training as directed by the therapy assistant or LBAT. Absences that are reasonably justified (e.g., illness) are not considered a pattern.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-1100, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 15-19-121, filed 9/21/15, effective 10/22/15)

WAC 182-531A-1200 Applied behavior analysis (ABA)—Services provided via telemedicine. Telemedicine, as defined in chapter 182-531 WAC, may be used to provide the following authorized services:

- (1) Program supervision when the client is present; (~~and~~)
- (2) Family/caregiver training, which does not require the client's presence; and
- (3) Speech language pathology services when otherwise not available in person.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 15-19-121, § 182-531A-1200, filed 9/21/15, effective 10/22/15; WSR 14-24-083, § 182-531A-1200, filed 12/1/14, effective 1/1/15.]

WSR 22-08-048
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed March 31, 2022, 1:20 p.m., effective May 1, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To update commercial shellfish rules for improved efficiency and utility for managers and enforcement, flexibility for commercial fishing, alignment with comanagement agreements and conservation objectives, implement tools for emerging issues, and to address housekeeping needs. Updates reflect improved understanding of shellfish populations and fisheries managed by the department; evolution of harvest practices and patterns; emergence of newer technologies, ideas, and challenges; and evolution of comanagement agreement. Proposals affect dive fisheries (sea urchin, sea cucumber, scallop); crab; shrimp; crawfish; squid; octopus; and razor clam rules.

Citation of Rules Affected by this Order: New WAC 220-320-140 Commercial shrimp geographical management units—Puget Sound, 220-340-530 Commercial shrimp trawl fishery—Puget Sound and 220-352-355 Puget Sound scallop—Additional reporting requirements; repealing WAC 220-340-740 Sea cucumber license reduction program and 220-340-760 Sea urchin license reduction program; and amending WAC 220-320-010 Shellfish—Classification, 220-320-110 Puget Sound commercial crab regions, 220-320-120 Puget Sound shrimp districts, 220-340-020 Shellfish—Unlawful acts—Commercial, 220-340-030 Shellfish harvest logs, 220-340-060 Commercial shellfish pot gear—Escape mechanism required, 220-340-100 Commercial clam fishery—Gear, 220-340-420 Commercial crab fishery—Unlawful acts, 220-340-430 Commercial crab fishery—Gear requirements, 220-340-455 Commercial crab fishery—Seasons and area—Puget Sound, 220-340-470 Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas, 220-340-520 Commercial shrimp fishery—Puget Sound, 220-340-610 Commercial scallop fishery—Puget Sound, 220-340-700 Commercial crawfish fishery, 220-340-720 Commercial octopus fishery, 220-340-730 Commercial sea cucumber fishery, 220-340-750 Commercial sea urchin fisheries, 220-340-770 Commercial squid fishery, 220-352-340 Puget Sound crab—Additional reporting requirements, and 220-352-355 Puget Sound shrimp—Additional reporting requirements.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04-055 [77.04.055], 77.12.045, and 77.12.047.

Adopted under preproposal filed as WSR 20-22-110 on November 4, 2020; and notice filed as WSR 22-02-065 on January 5, 2022.

Changes Other than Editing from Proposed to Adopted Version: 1. A change from degree decimal minute coordinate format to decimal degree format.

2. Correction of accidentally-transposed maximum depth restrictions between Shrimp Areas 2E and 2W. The CR-102 incorrectly described the maximum depth restriction for nonspot shrimp pots in Area 2E as 150' and in Area 2W as 175'. The change corrects the depth restriction to 175' for Area 2E and 150' for Area 2W; WAC 220-340-520.

3. The extension of an existing requirement to register crab pot buoy colors in the coastal crab fishery to the Puget Sound crab fishery in WAC 220-340-430. This rule is intended to provide managers with a tool to understand potential whale entanglement interactions in Puget Sound fisheries, an emergent issue of increasing interest to man-

agers, as well as providing enforcement with a tool to track potential gear theft issues. The buoy color registration requirement already exists in the coastal crab fishery and there is substantial overlap between coastal and Puget Sound license ownership (i.e. there is substantial overlap in the coastal and Puget Sound crab fisher constituencies). Further, there are already buoy registration requirements for Puget Sound—license holders are required to register their buoy brand number with the department; this simply also adds a buoy color registration requirement to that requirement. This requirement is not overly burdensome. Further, the agency conducted directed outreach to fishers regarding this specific change prior to the public hearing and received no comments nor public testimony regarding this change.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 20, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 18, 2022.

Barbara Baker
Commission Chair

OTS-3516.2

AMENDATORY SECTION (Amending WSR 19-13-013, filed 6/7/19, effective 7/8/19)

WAC 220-320-010 Shellfish—Classification. The following species are classified as shellfish under RCW 77.12.047 and are subject to the provisions of this title:

Mussel

Blue mussel	<i>Mytilus trossulus</i>
California mussel	<i>Mytilus californianus</i>
Mediterranean mussel	<i>Mytilus galloprovincialis</i>

Scallops

Pacific pink scallop	<i>Chlamys rubida</i>
Rock scallop	<i>Crassadoma gigantea</i>
Spiny scallop	<i>Chlamys hastata</i>
Weathervane scallop	<i>Patinopecten caurinus</i>

Clams

All macoma clams	<i>Macoma spp.</i>
Butter clam	<i>Saxidomus ((giganteus)) gigantea</i>

((Common)) Nuttall's/Heart cockle	<i>Clinocardium nuttallii</i>
Geoduck	<i>Panopea ((abrupta)) <u>generosa</u></i>
Horse or Gaper clam	<i>Tresus nuttallii,</i> <i>Tresus capax</i>
Mud or soft shell clam	<i>Mya arenaria</i>
Manila clam	((Venerupis)) <i>Ruditapes</i> <i>(Venerupis) philippinarum</i>
Piddock	<i>Zirfaea pilsbryi</i>
Razor clam	<i>Siliqua patula</i>
Rock or native littleneck clam	<i>Leukoma staminea</i>
Varnish clam	<i>Nuttallia obscurata</i>
All other marine clams existing in Washington in a wild state	
Oysters	
All oysters	(Ostreidae)
Squid	
All squid	(Sepiolida ((or Teuthida)), <u>Loliginidae, or Ommastrephidae</u>)
Octopus	
Octopus	<i>Enteroctopus ((dofleini)) <u>dofleini</u></i>
Barnacles	
Goose barnacle	<i>Pollicipes polymerus</i>
Shrimp	
((Coonstripe)) Dock shrimp	<i>Pandalus danae</i>
Coonstripe shrimp	<i>Pandalus hypsinotus</i>
Ghost or sand shrimp	<i>Neotrypaea spp.</i>
Humpy shrimp	<i>Pandalus goniurus</i>
Mud shrimp	<i>Upogebia pugettensis</i>
Ocean pink shrimp	<i>Pandalus jordani</i>
Pink shrimp	<i>Pandalus eous</i>
Sidestripe shrimp	<i>Pandalus (Pandalopsis) dispar</i>
Spot shrimp	<i>Pandalus platyceros</i>
Crab	
Dungeness ((or Pacific)) crab	<i>Metacarcinus (Cancer) magister</i>
Red rock crab	<i>Cancer productus</i>
Tanner crab	<i>Chionoecetes tanneri</i>
King and box crab	<i>Lopholithodes spp.</i>
Blue king crab	<i>Paralithodes platypus</i>
Red king crab	<i>Paralithodes camtschaticus</i>
Golden king crab	<i>Lithodes aequispinus</i>
Crawfish	
Crawfish	<i>Pacifastacus sp.</i>
Sea cucumber	
California sea cucumber	((Parastichopus)) <i>Apostichopus</i> <i>(Parastichopus) californicus</i>

Sea urchin

Green urchin	<i>Strongylocentrotus droebachiensis</i>
Red urchin	<i>Mesocentrotus</i> <i>(Strongylocentrotus)</i> <i>franciscanus</i>
Purple urchin	<i>Strongylocentrotus purpuratus</i>

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047. WSR 19-13-013 (Order 18-120), § 220-320-010, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-320-010, filed 2/15/17, effective 3/18/17; WSR 17-01-055 (Order 16-326), § 220-12-020, filed 12/14/16, effective 1/14/17. Statutory Authority: RCW 34.05.353 (1)(b), (c), and (d), 77.12.047, 77.50.050, and chapters 77.65 and 77.70 RCW. WSR 12-09-046 (Order 12-61), § 220-12-020, filed 4/13/12, effective 5/14/12. Statutory Authority: RCW 77.12.047. WSR 10-07-105 (Order 10-64), § 220-12-020, filed 3/19/10, effective 5/1/10; WSR 04-07-009 (Order 04-39), § 220-12-020, filed 3/4/04, effective 5/1/04; WSR 03-05-057 (Order 03-24), § 220-12-020, filed 2/14/03, effective 5/1/03. Statutory Authority: RCW 77.12.040 and 75.08.080. WSR 98-06-031, § 220-12-020, filed 2/26/98, effective 5/1/98. Statutory Authority: RCW 75.08.080. WSR 95-04-066 (Order 95-10), § 220-12-020, filed 1/30/95, effective 5/1/95; WSR 91-10-024 (Order 91-22), § 220-12-020, filed 4/23/91, effective 5/24/91; WSR 88-12-025 (Order 88-28), § 220-12-020, filed 5/25/88, effective 8/22/88; WSR 87-23-006 (Order 87-187), § 220-12-020, filed 11/6/87; WSR 86-24-046 (Order 86-190), § 220-12-020, filed 11/26/86; WSR 85-09-017 (Order 85-20), § 220-12-020, filed 4/9/85; WSR 85-01-010 (Order 84-214), § 220-12-020, filed 12/7/84; WSR 83-24-024 (Order 83-200), § 220-12-020, filed 11/30/83, effective 1/1/84; Order 1186, § 220-12-020, filed 1/13/75; Order 990, § 220-12-020, filed 5/11/72; Order 807, § 220-12-020, filed 1/2/69, effective 2/1/69; Order 677, Shellfish classification, filed 3/31/66; Order 256, Shellfish classification, filed 3/1/60; Abalone and octopus from Order 483 and 256, filed 3/1/60.]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-320-120 Puget Sound (~~(shrimp districts)~~) Crustacean (crab and shrimp) Special Management Areas. The following areas shall be defined as Puget Sound (~~(Shrimp Districts)~~) Crustacean (crab and shrimp) Special Management Areas (CSMA):

(1) Discovery Bay:

(a) Crustacean Special Management Area: All waters of Marine Fish-Shellfish Management and Catch Reporting Area 25E - Discovery Bay south of a line from Diamond Point (48.0945°, -122.9152°) to Cape George (48.1034°, -122.8847°).

(b) Shrimp District(—): All waters of Catch Area 25E and those waters of Catch Area 25A south of a line from McCurdy Point (48.1358°, -122.8374°) on the Quimper Peninsula to the northern tip of Protection Island (48.1327°, -122.9285°), then to Rocky Point

(48.0964°, -122.9754°) on the Miller Peninsula (~~(, and including all waters of Discovery Bay)~~).

(2) Dungeness Bay CSMA: All waters of Dungeness Bay west of the -123.1010° (123°06.6') longitude line originating from the New Dungeness Light (48.1818°, -123.1103°) extending southward to the cul-de-sac at the end of 3 Crabs Road on the mainland (48.1509°, -123.1212°).

(3) Everett Flats CSMA: That portion of Catch Area 26A-E (see WAC 220-320-110) east of a line from western edge of Howarth Park (47.9619°, -122.2441°) true north to the southern tip of Gedney (Hat) Island (48.0048°, -122.3060°) and that portion of 24B east of a line from the northern tip of Gedney (Hat) Island (48.0215°, -122.3274°) to Camano Head (48.0570°, -122.3580°) and south of a line drawn from Camano Head to Hermosa Point (48.0620°, -122.2935°) on the Tulalip reservation.

~~((2) Hood Canal Shrimp District - All waters of Hood Canal south of the Hood Canal Floating Bridge.)~~ (4) Port Angeles Harbor CSMA: That portion of Marine Fish-Shellfish Catch Area 23D west of a line from the Ediz Hook Light (48.1400°, -123.4025°) to the site of the ITT Rayonier Dock (48.1169°, -123.4083°).

(5) Port Townsend Bay CSMA: Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island (48.0853°, -122.7303°), thence to Kala Point (48.0575°, -122.7674°) and thence following the shoreline to the point of origin.

(6) Sequim Bay CSMA: All waters of Sequim Bay south of Travis Spit and a line west from the western tip of Travis Spit (Klapot Point) to the dock at the Pacific Northwest National Laboratory (48.0793°, -123.0452°).

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-320-120, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 07-05-051 (Order 07-22), § 220-16-270, filed 2/16/07, effective 3/19/07; WSR 04-07-009 (Order 04-39), § 220-16-270, filed 3/4/04, effective 5/1/04; WSR 03-16-097 (Order 03-180), § 220-16-270, filed 8/6/03, effective 9/6/03; WSR 01-03-016 (Order 00-271), § 220-16-270, filed 1/5/01, effective 2/5/01; Order 817, § 220-16-270, filed 5/29/69. Formerly WAC 220-16-020 (part).]

NEW SECTION

WAC 220-320-140 Commercial shrimp geographical management units —Puget Sound. Puget Sound commercial shrimp harvest management utilizes a hierarchy of geographical management units consisting of region, subregion, Marine Fish-Shellfish Management and Catch Reporting Area (catch area), and subarea. This section defines these units.

(1) **The following areas are defined as Puget Sound Shrimp Management Regions and subregions:**

(a) **Region 1 - Trawl fishery:** All waters of Catch Areas 20A, 20B, 21A, 21B, 22B, and 22A;

Region 1 - Pot fishery: All waters of Catch Areas 20A, 20B, 21A, 21B, 22B, and Catch Area 22A, except the southwesterly portion of Catch Area 22A south of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boun-

dary, then south of the shoreline of San Juan Island from Lime Kiln Point Light to Cattle Point (48.4501°, -122.9636°), then south of a line from Cattle Point to Davis Point (48.4559°, -122.9355°) on Lopez Island, and south of the shoreline of Lopez Island from Davis Point to Point Colville (48.4217°, -122.8131°; see (d) of this subsection—Region 3).

(i) Subregion 1A: All waters of Catch Area 20B west of a line from Point Doughty (48.7117°, -122.9492°) on Orcas Island to the bell buoy (48.7649°, -123.0145°) at the International Boundary and all waters of Catch Area 22A west of a line projected true north and south from the western tip of Crane Island (48.5975°, -123.0078°), west of a line projected from the number 4 marker (48.5223°, -122.9173°) at the entrance to Fisherman Bay to the southern tip of Shaw Island (48.5466°, -122.9487°), and north of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary.

(ii) Subregion 1B: All waters of Catch Area 20B east of a line from Point Doughty (48.7117°, -122.9492°) on Orcas Island to the bell buoy at the International Boundary (48.7649°, -123.0145°), and waters of Catch Area 22A east of a line projected true north and south from the western tip of Crane Island (48.5975°, -123.0078°), east of a line projected from the number 4 marker (48.5223°, -122.9173°) at the entrance to Fisherman Bay to the southern tip of Shaw Island (48.5466°, -122.9487°), and east of a line projected true south from Point Colville (48.4217°, -122.8131°), and all waters of Catch Area 21A north and west of a line from the southern tip of Sinclair Island (48.6097°, -122.6572°) to Carter Point (48.6404°, -122.6088°) at the southern tip of Lummi Island.

(iii) Subregion 1C: All waters of Catch Areas 20A, 21B, 22B, and those waters of Catch Area 21A not included in Subregion 1B.

(b) Region 2-East (2E): All waters of Catch Areas 24A, 24B, 24C, 24D, and Subarea 26A-E (east; subareas defined in subsections (2) and (3) of this section).

(c) Region 2-West (2W): Waters of Catch Areas 25B, 25C, 25D, and Subarea 26A-W (west).

(d) Region 3 - Trawl fishery: All waters of Catch Areas 23A, 23B, 23C, 23D, 25A, 25E, and 29.

Region 3 - Pot fishery: All waters of Catch Areas 23A, 23B, 23C, 23D, 25A, 25E, 29, and the southwesterly portion of Catch Area 22A south of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary, then south of the shoreline of San Juan Island from Lime Kiln Point Light to Cattle Point (48.4501°, -122.9636°), then south of a line from Cattle Point to Davis Point (48.4559°, -122.9355°) on Lopez Island, and south of the shoreline of Lopez Island from Davis Point to Point Colville (48.4217°, -122.8131°).

(e) Region 4: All waters of Catch Area 26C and 26B, which is divided into Subareas 26B-1 and 26B-2 (subareas defined in subsection (2) of this section).

(f) Region 5: All waters of Catch Areas 27A, 27B, and 27C.

(g) Region 6: All waters of Catch Areas 26D, 28A, 28B, 28C, and 28D.

(2) **The following areas are defined as Puget Sound Commercial Shrimp Subareas, shrimp pot harvest:** For purposes of Puget Sound shrimp pot harvest allocation, fishing season, and catch reporting, catch areas (WAC 220-301-040) are modified as follows:

(a) That portion of Catch Area 22A south of a line true west from Lime Kiln Point Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary, then south of the shores of San Juan Island from Lime Kiln Point Light to Cattle Point (48.4501°, -122.9636°), then south of a line from Cattle Point to Davis Point on Lopez Island (48.4559°, -122.9355°), and south of the shoreline of Lopez Island from Davis Point to Point Colville (48.4217°, -122.8131°) shall be considered to be part of Catch Area 23A.

(b) Catch Area 23A is divided into four subareas:

(i) Subarea 23A-E (east): All waters of Catch Area 23A east of -122.9500° (122°57'W) longitude and north of 48.3750° (48°22.5'N) latitude.

(ii) Subarea 23A-W (west): All waters of Catch Area 23A west of -122.9500° (122°57'W) longitude and north of 48.3750° (48°22.5'N) latitude.

(iii) Subarea 23A-C (central): All waters of Catch Area 23 south of 48.3750° (48°22.5'N) latitude and east of a line projected 335° true from the New Dungeness Lighthouse (48.1818°, -123.1103°).

(iv) Subarea 23A-S (south): All waters of Catch Area 23A west of a line projected 335° true from the New Dungeness Lighthouse (48.1818°, -123.1103°).

(c) Catch Area 26A is divided into two subareas:

(i) Subarea 26A-E (east): All waters of Catch Area 26A north and east of a line projected 110° true from the southern tip of Possession Point (47.9061°, -122.3846°) on Whidbey Island to the shipwreck located 0.8 nautical miles north of Picnic Point (47.8931°, -122.3286°) on the opposite shore.

(ii) Subarea 26A-W (west): All waters of Catch Area 26A south and west of a line projected 110° true from the southern tip of Possession Point (47.9061°, -122.3846°) on Whidbey Island to the shipwreck located 0.8 nautical miles north of Picnic Point (47.8931°, -122.3286°) on the opposite shore.

(d) Catch Area 26B is divided into two subareas:

(i) Subarea 26B-1: All waters of Catch Area 26B westerly of a line projected from West Point (47.6619°, -122.4348°) to Alki Point (47.5763°, -122.4199°).

(ii) Subarea 26B-2: All waters easterly of a line projected from West Point (47.6619°, -122.4348°) to Alki Point (47.5763°, -122.4199°).

(3) **The following areas are defined as Puget Sound Shrimp Subareas, shrimp trawl harvest:** For the purpose of Puget Sound shrimp trawl harvest allocation and catch reporting, catch areas (WAC 220-301-040) are modified as follows:

(a) Trawl Subarea 23A East: That portion of Catch Area 23A, east of a line projected true north from the New Dungeness Lighthouse (48.1818°, -123.1103°) to the International Boundary.

(b) Trawl Subarea 23A West: That portion of Catch Area 23A, west of a line projected true north from the New Dungeness Lighthouse (48.1818°, -123.1103°) to the International Boundary.

(4) In shrimp Subregions 1A, 1B, and 1C, all catch must be reported by catch area and subregion combined (for example 22A-1A).

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OTS-3517.2

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-320-110 ((Puget sound crab management regions.)) Commercial crab geographical management units—Puget Sound. ((The following areas are defined as Puget Sound Crab Management Regions:

(1) ~~Crab Management Region 1 — (North Puget Sound). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B.~~

(2) ~~Crab Management Region 2-East — (Eastern Central Puget Sound). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A-E (see WAC 220-340-455).~~

(3) ~~Crab Management Region 2-West — (Western Central Puget Sound). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D, and 26A-W (see WAC 220-340-455).~~

(4) ~~Crab Management Region 3, subarea 3-1 — (Eastern Strait of Juan de Fuca). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B.~~

(5) ~~Crab Management Region 3, subarea 3-2 — (Central Strait of Juan de Fuca). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 25A, and 25E.~~

(6) ~~Crab Management Region 3, subarea 3-3 — (Western Strait of Juan de Fuca). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23C and 29.~~

(7) ~~Crab Management Region 4 — (Southern Central Puget Sound). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26B and 26C.~~

(8) ~~Crab Management Region 5 — (Hood Canal). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25C, 27A, 27B, and 27C.~~

(9) ~~Crab Management Region 6 — (South Puget Sound). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26D, 28A, 28B, 28C, and 28D.)~~

For purposes of crab harvest management, Puget Sound commercial crab uses a hierarchy of geographical management units consisting of region, subregion, Marine Fish-Shellfish Management and Catch Reporting Area (catch area), and subarea. This section defines these units.

(1) The following areas are defined as Puget Sound Crab Management Regions and Subregions:

(a) Region 1 - (North Puget Sound): All waters of Catch Areas (see WAC 220-301-040) 20A, 20B, 21A, 21B, 22A, and 22B.

(b) Region 2-East (2E) - (Eastern Central Puget Sound): All waters of Catch Areas 24A, 24B, 24C, 24D, and Subarea 26A-E (subareas defined in subsection (2) of this section).

(c) Region 2-West (2W) - (Western Central Puget Sound): All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D, and Subarea 26A-W.

(d) Region 3: All waters within Catch Areas 23A, 23B, 23C, 23D, 25A, 25E, and 29.

(i) Subregion 3-1 - (Eastern Strait of Juan de Fuca): All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B.

(ii) Subregion 3-2 - (Southeastern Strait of Juan de Fuca): All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 25A, and 25E.

(iii) Subregion 3-3 - (Central Strait of Juan de Fuca): All waters of Subarea 23C-East.

(iv) Subregion 3-4 - (Western Strait of Juan de Fuca): All waters of Subarea 23C-West and Catch Area 29.

(e) Region 4 - (Southern Central Puget Sound): All waters of Catch Areas 26B and 26C.

(f) Region 5 - (Hood Canal): All waters of Catch Areas 25C, 27A, 27B, and 27C.

(g) Region 6 - (South Puget Sound): All waters of Catch Areas 26D, 28A, 28B, 28C, and 28D.

(2) The following areas are defined as Puget Sound Commercial Crab Subareas: For purposes of Puget Sound Crab harvest allocation, fishing season, and catch reporting, Marine Fish-Shellfish Management and Catch Reporting Areas (catch areas; WAC 220-301-040) are modified as follows:

(a) Catch Area 23C is divided into two subareas:

(i) Crab Subarea 23C-East (23C-E): All waters of Puget Sound westerly of a line true north from Ediz Hook Light (48.1400°, -123.4025°) to the International Boundary; and easterly of a line projected true north from Low Point (48.1608°, -123.8268°).

(ii) Crab Subarea 23C-West (23C-W): All waters of Puget Sound westerly of a line true north from Low Point (48.1608°, -123.8268°) to the International Boundary; and easterly of a line projected true north from the mouth of the Sekiu River (48.2878°, -124.3954°).

(b) Catch Area 26A is divided into two crab subareas:

(i) Crab Subarea 26A-East (26A-E): All waters of Puget Sound south of a line from Sandy Point (on Whidbey Island; 48.0342°, -122.3764°) to Camano Head (48.0570°, -122.3580°) and from Camano Head to the northern tip of Gedney (Hat) Island (48.0215°, -122.3274°), and from the southern tip of Gedney (Hat) Island (48.0048°, -122.3580°) east to the mainland (to near the northern end of the Everett 10th St. Marina, 48.0048°, -122.2219°), and north and east of a line that extends from the southern tip of Possession Point (47.9061°, -122.3846°) to the shipwreck located 0.8 nautical miles north of Picnic Point (47.8931°, -122.3286°) on the opposite shore.

(ii) Crab Subarea 26A-West (26A-W): All waters of Puget Sound south and east of a line from Foulweather Bluff (47.9392°, -122.6139°) to Double Bluff (47.9677°, -122.5460°), and northerly of a line from Apple Cove Point (47.8146°, -122.4834°) to Point Edwards (47.8027°, -122.3943°), and south and west of a line that extends from the southern tip of Possession Point (47.9061°, -122.3846°) to the shipwreck located 0.8 nautical miles north of Picnic Point (47.8931°, -122.3286°).

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-320-110, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 06-01-013 (Order 05-275), § 220-16-260, filed 12/9/05, effective 1/9/06; WSR 01-03-016 (Order 00-271), § 220-16-260, filed 1/5/01, effective 2/5/01; Order 817, § 220-16-260, filed 5/29/69. Formerly WAC 220-16-020 (part).]

OTS-3518.2

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-020 Shellfish—Unlawful acts—Commercial. (1) It is unlawful to take oysters or clams for commercial purposes from tide-lands reserved for public use unless authorized by a permit issued by the director.

(2) ~~((a))~~ It is unlawful to take shellfish for commercial purposes from state oyster reserves without permission of the director ~~((of fisheries))~~.

~~((b))~~ Licensing: An oyster reserve fishery license is the license required to take shellfish for commercial purposes from state oyster reserves.

(3) All geoduck, sea cucumber, sea urchin, scallop, and mechanical clam harvester vessels shall be issued ~~((an identification))~~ a harvester number. ~~((It is unlawful to fail to place))~~ This number must be placed in a visible location on each side of the vessel and on the top of the cabin or deck awning to be visible from the air. A sign board or banner arranged so the numbers can be seen at all times from directly overhead may be substituted if the vessel does not have a fixed roof. The numbers ~~((shall))~~ must be black on a white background ~~((and shall be not less than))~~, at least 18 inches high, and ((of proportionate width)) of a stroke width of 1/6 the height of the characters.

(4) It shall be unlawful for a commercial clam digger to harvest clams from intertidal ground without having on his person a signed authorization from the registered clam farmer for whom he is harvesting. The digger will also be required to have suitable personal identification with him when engaged in clam harvesting. The authorization from the registered clam farmer must be legible, dated and must contain the date on which the authorization expires, provided that in no instance may the authorization go beyond the end of any calendar year. The authorization must additionally contain the name of each bay or area where the registered clam farmer has owned or leased ground from which the named clam digger is authorized to harvest.

(5) ~~((a))~~ It is unlawful to fish for or possess ghost or mud shrimp taken for commercial purposes unless authorized by a permit issued by the director.

~~((b))~~ Licensing: A burrowing shrimp fishery license is the license required to take ghost or mud shrimp for commercial purposes.

(6) It is unlawful to set any shellfish pot gear such that the pot is not covered by water at all tide levels.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-340-020, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 75.08.080. WSR 94-12-009 (Order 94-23), § 220-52-010, filed 5/19/94, effective 6/19/94; WSR 88-12-025 (Order 88-28), § 220-52-010, filed 5/25/88, effective 8/22/88. Statutory Authority: RCW 75.08.080 and 75.58.040. WSR 86-19-043 (Order 86-102), § 220-52-010, filed 9/12/86. Statutory Authority: RCW 75.08.080. WSR 84-08-014 (Order 84-24), § 220-52-010, filed 3/27/84; Order 77-145, § 220-52-010, filed 12/13/77; Order 1258, § 220-52-010, filed 8/25/75; Order 857, §

220-52-010, filed 12/11/69; Order 807, § 220-52-010, filed 1/2/69, effective 2/1/69; subsections 1, 3-5, Orders 414, 256, filed 3/1/60; subsection 2, Orders 443, 256, filed 3/1/60.]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-030 Shellfish harvest logs. (1) **Logbook requirement:** It is unlawful for any vessel operator engaged in the commercial harvest of crawfish, sea cucumber, sea urchin, scallop, shrimp (~~other than ocean pink shrimp~~), or squid to fail to obtain and accurately and completely maintain the appropriate harvest log available from the Washington department of fish and wildlife. It is unlawful for any license holder engaged in commercial sand shrimp fishing or operator of mechanical clam digging device to fail to obtain and accurately and completely maintain the appropriate harvest log available from the Washington department of fish and wildlife.

(2) **Logbook maintenance:** It is unlawful for any harvest vessel operator or license holder engaged in harvest as described in subsection (1) of this section, to fail to maintain the required harvest log: Aboard the vessel; at the harvest site; when crawfish, sea cucumbers, sea urchins, shrimp (~~other than ocean pink shrimp~~), squid, scallops, clams, or sand shrimp are aboard during transit of a harvest vessel (~~+~~), or are in possession of the license holder.

(3) **Logbook submission and retention:** It is unlawful for the vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to submit harvest logs for inspection upon request by department of fish and wildlife officers or authorized employees.

(4) It is unlawful for any vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to comply with the following methods of logbook submittal and time frames related to harvest logbook submittal:

(a) Within (~~ten~~) 10 days following any calendar month in which fishing occurred, required completed harvest logs must be received by the department; however, vessel operators or license holders may submit logs directly to authorized department employees.

(b) Vessel operators or license holders responsible for submitting logs to the department, as described in subsection (1) of this section, must maintain a copy of all submitted logs for a period of three years following the harvest activity. Copies of harvest logs, which are required to be maintained, must be available for inspection upon request by department of fish and wildlife officers and authorized employees.

(c) Original harvest logs must be maintained and submitted in ascending consecutive order of log serial number.

(5) It is unlawful for any vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to send completed harvest logs to the appropriate following mailing address, except as provided for in subsection (4)(a) of this section.

For Puget Sound Shrimp Harvest Logbooks:

ATTN: PUGET SOUND SHRIMP HARVEST MANAGER

Washington Department of Fish and Wildlife

~~((Point Whitney Shellfish Laboratory
1000 Point Whitney Road
Brinnon, WA 98320-9799.))
375 Hudson St.
Port Townsend, WA 98368.~~

For Coastal Shrimp Harvest Logbooks:

ATTN: COASTAL SHRIMP HARVEST MANAGER
Washington Department of Fish and Wildlife
48 Devonshire Rd.
Montesano, WA 98563.

For Crawfish Harvest Logbooks:

ATTN: FISH PROGRAM - CRAWFISH HARVEST MANAGER
Washington Department of Fish and Wildlife
(~~600 Capitol Way North~~)
P.O. Box 43150
Olympia, WA (~~98501-1091~~) 98504-3150.

For Sea Urchin and Sea Cucumber Harvest Logbooks:

ATTN: FISH PROGRAM - SEA URCHIN/SEA CUCUMBER HARVEST MANAGER
Washington Department of Fish and Wildlife
(~~600 Capitol Way North~~)
P.O. Box 43150
Olympia, WA (~~98501-1091~~) 98504-3150.

For Clam (harvest with mechanical digging devices) Harvest Logbooks:

ATTN: FISH PROGRAM - GEODUCK HARVEST MANAGER
Washington Department of Fish and Wildlife
(~~600 Capitol Way North~~)
P.O. Box 43150
Olympia, WA (~~98501-1091~~) 98504-3150.

For Scallop Harvest Logbooks:

ATTN: FISH PROGRAM - SCALLOP HARVEST MANAGER
Washington Department of Fish and Wildlife
(~~600 Capitol Way North~~)
P.O. Box 43150
Olympia, WA (~~98501-1091~~) 98504-3150.

For Squid (Coastal waters) Harvest Logbooks:

ATTN: FISH PROGRAM - COASTAL SQUID HARVEST MANAGER
Washington Department of Fish and Wildlife
(~~600 Capitol Way North~~)
P.O. Box 43150
Olympia, WA (~~98501-1091~~) 98504-3150.

For Squid (Puget Sound waters) Harvest Logbooks:

ATTN: PUGET SOUND SQUID HARVEST MANAGER
Washington Department of Fish and Wildlife
375 Hudson St.
Port Townsend, WA 98368.

For Coastal Sand Shrimp Harvest Logbooks:

ATTN: COASTAL SAND SHRIMP HARVEST MANAGER
Washington Department of Fish and Wildlife
P.O. Box 190
Ocean Park, WA 98640-0190.

For Puget Sound Sand Shrimp Harvest Logbooks:

ATTN: PUGET SOUND SAND SHRIMP HARVEST MANAGER
 Washington Department of Fish and Wildlife
 ((P.O. Box 1100
 LaConner, WA 98257.))
375 Hudson St.
Port Townsend, WA 98368.

(6) It is unlawful for ~~((vessel operators engaged in commercial harvest of shrimp (other than Puget Sound shrimp or sand shrimp) or crawfish with shellfish pot or ring net gear))~~ any harvest vessel operator or license holder engaged in harvest as described in subsection (1) of this section to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Shrimp (other than Puget Sound shrimp or sand shrimp) or crawfish with shellfish pot gear:

~~((i))~~ (i) Before leaving the catch area where harvest occurred, record the vessel Washington department of fish and wildlife boat registration number, number of pots ~~((or ring nets))~~ pulled, date pulled, soak time, and gear location; and

~~((b))~~ (ii) Immediately after delivery of shellfish to an original receiver, record the weight of all shellfish.

~~((7) It is unlawful for vessel operators engaged in commercial harvest of shrimp (other than ocean pink shrimp))~~ (b) Shrimp with beam trawl or shrimp trawl gear ~~((, to fail to permanently and legibly record in ink onto the department-supplied harvest log, the following information within the following time frames))~~:

~~((a))~~ (i) Before commencing a new tow or prior to leaving the site where the catch was taken, record the vessel identity, current date of fishing activity, location fished, trawl width, Marine Fish-Shellfish Management and Catch Reporting Area fished, depth fished, latitude and longitude to the nearest hundredth of a minute at the beginning of each tow, tow speed, duration of tow, and estimated weight of shrimp of each species caught for each tow.

~~((b))~~ (ii) Immediately after delivery of shrimp to an original receiver, or before leaving the last catch site of the day if the operator holds a wholesale fish dealer's license and is the original receiver, record the fish receiving ticket serial number.

~~((8) It is unlawful for vessel operators engaged in commercial harvest of sea urchins or sea cucumbers to fail to permanently and legibly record in ink the following information within the following time frames))~~ (c) Sea urchins and sea cucumbers:

~~((a))~~ (i) Before leaving the harvest site, record the vessel identity, date, Marine Fish-Shellfish Catch Reporting Area fished, location fished, depth fished, latitude and longitude to the nearest tenth of a minute or to the nearest second, and the approximate weight in pounds of sea urchins or sea cucumbers harvested.

~~((b))~~ (ii) Upon landing or delivery to an original receiver, the exact species and weight of sea urchins, as recorded on the shellfish receiving ticket, must be recorded.

~~((e))~~ (iii) Upon landing or delivery to an original receiver, the exact weight of sea cucumbers, as recorded on the shellfish receiving ticket, and whether or not prelanded processing occurred ("whole-live" or "split-drained"), must be recorded.

~~((9) It is unlawful for license holders engaged in commercial harvest of clams with mechanical digging devices to fail to permanently and legibly record in ink the following information within the following time frames))~~ (d) Clams, with mechanical digging devices:

~~((a))~~ (i) Before the end of each day's fishing and departure from the harvest grounds, record the vessel identity if a harvest vessel is used in harvest operation, exact location by latitude and longitude to the nearest thousandths of a minute (recorded in WGS 84 datum), and date of harvest.

~~((b))~~ (ii) Weight by each clam species in pounds upon landing or delivery to an original receiver.

~~((e))~~ (iii) Weight in pounds of each clam species caught and returned to the harvest grounds.

~~((10) It is unlawful for vessel operators engaged in commercial harvest of scallops to fail to permanently and legibly record in ink the following information within the following time frames))~~ (e) **Scallops:**

~~((a))~~ (i) Before leaving the location where the catch was taken, record the vessel identity, date, location, and duration of harvest and estimated weight in pounds and species of scallops caught for each tow or dive hour.

~~((b))~~ (ii) Upon landing or delivery to an original receiver, the exact weight in pounds, as recorded on the shellfish receiving ticket, and species of harvested scallops.

~~((11) It is unlawful for vessel operators engaged in commercial harvest of))~~ (f) **Squid**, except when taken incidental to any other lawful fishery(~~(, to fail to permanently and legibly record in ink the following information within the following time frames))~~):

~~((a))~~ (i) Coastal:

(A) Before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel's Washington department of fish and wildlife boat registration number, gear type, catch area, starting and ending time of fishing, and numbers of other species caught and returned.

~~((b))~~ (B) Weight in pounds of squid upon landing or delivery to an original receiver.

~~((12) It is unlawful for license holders engaged in commercial harvest of))~~ (ii) Puget Sound:

(A) Before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel's Washington department of fish and wildlife boat registration number, gear type, catch area, location (nearest landmark, bay, or GPS coordinates), starting and ending time of fishing, total vessel wattage or lumens of attracting lights, and numbers of other species caught and returned.

(B) Weight in pounds of squid upon landing or delivery to an original receiver.

(g) **Sand shrimp**, except when taken incidental to other lawful fishery(~~(, to fail to permanently and legibly record in ink the following information within the following time frames))~~):

~~((a))~~ (i) Prior to leaving the harvest site, the location or identification number of the harvest tract, date of harvest, number of trenches pumped, average length and width of trenches (yards), total number of sand shrimp retained (dozens).

~~((b))~~ (ii) At the time of delivery to an original receiver, total number of sand shrimp sold (dozens), and the name of the sand shrimp buyer.

~~((13) It is unlawful for vessel operators engaged in commercial harvest of))~~ (h) **Shrimp (other than sand shrimp)**, using shellfish pot gear in Puget Sound(~~(, to fail to permanently and legibly record in ink onto the department-supplied harvest logs, the following information within the following time frames))~~):

~~((a)) (i) Prior to leaving the harvest site, the name of vessel operator, license number, the vessel's Washington department of fish and wildlife boat registration number, buoy brand, date, phone number, pot mesh size, pull date, groundline length, number of pots pulled, ((pot mesh size,)) depth fished, soak time, gear location (including latitude and longitude to the nearest hundredth of a minute), Shrimp Management Unit fished (region, subregion, catch area, subarea), species targeted, ((and)) sorted catch estimates, weight(s) in pounds of catch, and shellfish receiving ticket number. A separate weight for each species caught and retained must be recorded. ((When single pots are fished an entry is required for each pot site. When two or more pots are fished on a common ground line the catch site must be recorded at the location of the last pot on the ground line that is pulled.)) Any time that gear is deployed the location must be recorded. For pots deployed on a ground line both the start and end locations must be provided.~~

~~((b)) (ii) Immediately after delivery of shrimp to an original receiver, or before leaving the last catch site of the day if the operator holds a wholesale fish dealer's license or limited fish seller endorsement and is the original receiver, record the fish receiving ticket serial number.~~

~~((14) It is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by telephone before leaving the last catch site fished each day, in the following manner:~~

~~(a) For harvest in Shrimp Management Areas 1A, 1B, 1C, or 2, reports must be made to the voice recorder at the La Conner district office: 360-446-4345 ext 245.~~

~~(b) For harvest in Shrimp Management Areas 3, 4, or 6, reports must be made to the voice recorder at the Point Whitney shellfish laboratory: 360-796-4601 ext 800.~~

~~(c) All reports must specify the fisher's name, estimated total number of pounds of each shrimp species in possession, number of pots fished, number of pot pulls (pots multiplied by pulls), the Marine Fish-Shellfish Management and Catch Reporting Area where shrimp were harvested, and the port or name of vessel where the catch will be landed or sold.~~

~~(15)) (7) Violation of this section as it relates to failing to report required information or failing to submit log books is punishable under RCW 77.15.280 reporting of fish or wildlife harvest. Violation of this section as it relates to knowingly providing false or misleading information is punishable under RCW 77.15.270, providing false information.~~

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-030, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 07-21-083 (Order 07-256), § 220-52-075, filed 10/17/07, effective 11/17/07; WSR 03-05-064 (Order 03-28), § 220-52-075, filed 2/18/03, effective 3/21/03; WSR 01-02-061 (Order 00-267), § 220-52-075, filed 12/29/00, effective 1/29/01; WSR 01-02-057 (Order 00-262), § 220-52-075, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 75.08.080. WSR 00-05-054 (Order 00-17), § 220-52-075, filed 2/14/00, effective 3/16/00; WSR 97-08-052 (Order 97-55), § 220-52-075, filed 3/31/97, effective 5/1/97; WSR 94-12-009 (Order 94-23), § 220-52-075, filed 5/19/94, effective 6/19/94; WSR 93-15-051, § 220-52-075, filed 7/14/93, effective

8/14/93; WSR 91-10-024 (Order 91-22), § 220-52-075, filed 4/23/91, effective 5/24/91; WSR 87-15-022 (Order 87-69), § 220-52-075, filed 7/8/87; WSR 87-02-013 (Order 86-199), § 220-52-075, filed 12/30/86; WSR 84-08-014 (Order 84-24), § 220-52-075, filed 3/27/84; WSR 83-09-014 (Order 83-24), § 220-52-075, filed 4/12/83; WSR 82-03-045 (Order 82-6), § 220-52-075, filed 1/19/82; WSR 81-11-006 (Order 81-31), § 220-52-075, filed 5/11/81; WSR 80-13-064 (Order 80-123), § 220-52-075, filed 9/17/80; WSR 79-12-039 (Order 79-129), § 220-52-075, filed 11/20/79; WSR 79-02-053 (Order 79-6), § 220-52-075, filed 1/30/79.]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-060 Commercial shellfish pot gear—Escape mechanism required. It is unlawful to fish for or possess crab, shrimp, or crawfish taken for commercial purposes with shellfish pot gear unless the gear allows for escapement using at least one of the following methods:

(1) Attachment of pot lid hooks or tiedown straps with a single strand or loop of untreated cotton twine (~~(or other natural fiber)~~), hemp, jute, or sisal no larger than thread size 120 so that the pot lid will open freely if the twine or fiber is broken. It is permissible to use a single strand of cotton twine or (~~(or other natural fiber)~~) hemp, jute, or sisal tied together at the ends so that it can be looped between the tie down straps and the lid hook to connect them together.

(2) Providing an opening in the pot mesh no less than three inches by five inches and laced or sewn closed with one single strand of untreated cotton twine (~~(or other natural fiber)~~), hemp, jute, or sisal no larger than thread size 120. The single strand of (~~(cotton)~~) twine or fiber may not be wrapped multiple times or doubled in any way when lacing or sewing the wire mesh closed. The opening must be located within the top half of the pot and be unimpeded by the entry tunnels, bait boxes, or any other structures or materials.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-060, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012 and 77.12.047. WSR 11-09-072 (Order 11-72), § 220-52-035, filed 4/19/11, effective 5/20/11. Statutory Authority: RCW 77.12.047. WSR 06-07-044 (Order 06-38), § 220-52-035, filed 3/9/06, effective 4/9/06; WSR 03-16-097 (Order 03-180), § 220-52-035, filed 8/6/03, effective 9/6/03. Statutory Authority: RCW 75.08.080. WSR 87-23-006 (Order 87-187), § 220-52-035, filed 11/6/87.]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-100 Commercial clam fishery—Gear. It is unlawful to take, dig for, or possess clams, geoducks, or mussels taken for commercial purposes from any of the tidelands in the state of Washing-

ton except with a pick, mattock, fork or shovel operated by hand, except:

(1) Permits for the use of mechanical clam digging devices to take clams other than geoducks may be obtained from the director of the department of fish and wildlife (DFW), subject to the following conditions:

(a) All mechanical devices used to take or harvest shellfish must be approved by the director of DFW.

(b) A separate permit is required for each device used to take or harvest shellfish, and the permit must be attached to the specific unit the permit applies to at all times.

(c) All clams taken for commercial use must be of legal size and in season during the proposed operations unless otherwise provided in specially authorized permits for the transplanting of seed to growing areas or for research purposes.

(d) The holder of a permit to take shellfish from tidelands by mechanical means must limit operations to privately owned or leased land.

(e) Taking clams that lie in or on the substrate under navigable water below the level of mean lower low water by any mechanical device is prohibited except as authorized by the director of DFW.

(i) Within the enclosed bays and channels of Puget Sound, Strait of Juan de Fuca, Grays Harbor and Willapa Harbor, the operators of all mechanical devices must confine their operations to substrate-leased from the Washington department of natural resources, subject to the approval of the director of DFW.

(ii) It is unlawful to harvest shellfish that lie in or on the substrate of the Pacific Ocean westward from the western shores of the state in waters less than ((2)) two fathoms deep at mean lower low water. The director of DFW may reserve all or portions of the substrate in waters more than ((2)) two fathoms deep and prevent the taking of shellfish in any quantity from those reserves.

(f) Noncompliance with any part of this section or with special requirements of individual permits results in immediate cancellation and/or subsequent nonrenewal of all permits held by the operator.

(g) Applications for permits to use mechanical clam digging devices must be made on the forms provided by DFW, and permits must be in the operator's possession before digging commences.

(h) All permits to take or harvest shellfish by mechanical means expire on December 31 of the year of issue.

(i) All mechanical clam harvesting machines must have approved instrumentation that provides deck readout of water pressure.

(j) All clam harvest machines operating on intertidal grounds where less than 10 percent of the substrate material is above 500 microns in size must be equipped with a propeller guard suitable for reducing the average propeller wash velocity at the end of the guard to approximately 25 percent of the average propeller wash velocity at the propeller. The propeller guard must also be positioned to provide an upward deflection to propeller wash.

(k) Clam harvest machines operating in fine substrate material where less than 10 percent of the substrate material is above 500 microns in size, must have a maximum harvest head width of ((3)) three feet (overall) and the maximum pump volume as specified by DFW, commensurate with the basic hydraulic relationship of 828 gpm at 30 pounds per square inch, pressure to be measured at the pump discharge.

(l) Clam harvest machines operating in coarser substrate material where more than 10 percent of the substrate material is above 500 mi-

crons in size, must have a maximum harvest head width of ((4)) four feet (overall) and a maximum pump volume as specified by DFW, commensurate with a basic hydraulic relationship of 1,252 gpm at 45 pounds per square inch, pressure to be measured at the pump discharge.

(m) All clam harvest machine operators must submit accurate performance data showing revolutions per minute, gallons per minute, and output pressure for the water pump on their machine. In addition, they must furnish the number and sizes of the hydraulic jets on the machines. If needed, the operator will thereafter modify the machine (install a sealed pressure relief valve) as specified by DFW to conform with values set forth in this section. Thereafter, it is illegal to make unauthorized changes to the clam harvester water pump or the hydraulic jets. Exact description of the pump volume, maximum pressure and number and size of the hydraulic jet for each harvester machine must be included in the DFW's clam harvest permit.

(n) All clam harvest machines must be equipped with a 3/4-inch pipe thread tap and valve that will allow rapid coupling of a pressure gauge for periodic testing by enforcement officers.

(o) Each mechanical clam harvester must have controls arranged and situated near the operator to allow the operator to immediately cut off the flow of water to the jet manifold without affecting the capability of the vessel to maneuver.

(p) Licensing: A hardshell clam mechanical harvester fishery license is required to operate the mechanical harvester gear provided for in this section. For more information on or to apply for a hardshell clam mechanical harvester fishery license, visit department offices, call the WDFW license division at 360-902-2500, or visit the department website at www.wdfw.wa.gov.

(2) Aquatic farmers may harvest geoducks that are private sector cultured aquatic product by means of water pumps and nozzles.

(3) Persons may harvest nonstate tideland wild clam, mussel and oyster trial fishery permit by means of water pumps and nozzles.

(4) It is unlawful to take, dig for and possess razor clams taken for commercial purposes from any of the tidelands in the state of Washington except by hand, shovels, cylindrical cans, tubes or hinged digging devices operated by hand. The opening of tubes or cans must be either circular or elliptical with the circular can/tube having a minimum outside diameter of four inches and the elliptical can/tube having a minimum dimension of four inches long and three inches wide outside diameter. The hinged digging device when opened in a cylindrical position, must have a minimum outside diameter of four inches at the bottom.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-100, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-018, filed 11/9/12, effective 12/10/12. Statutory Authority: RCW 77.12.047. WSR 06-04-015 (Order 06-08), § 220-52-018, filed 1/22/06, effective 2/22/06. Statutory Authority: RCW 75.08.080. WSR 94-12-009 (Order 94-23), § 220-52-018, filed 5/19/94, effective 6/19/94; WSR 84-08-014 (Order 84-24), § 220-52-018, filed 3/27/84; WSR 79-02-053 (Order 79-6), § 220-52-018, filed 1/30/79; Order 76-152, § 220-52-018, filed 12/17/76; Order 1258, § 220-52-018, filed 8/25/75; Order 807, § 220-52-018, filed 1/2/69, effective 2/1/69. Formerly WAC 220-52-010(2).]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-455 Commercial crab fishery—Seasons and areas—Puget Sound. The open times and areas for commercial crab fishing in Puget Sound are as follows:

(1) ~~((All Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas are open for commercial crab fishing beginning 8:00 a.m. October 1st through the following April 15th from 30 minutes))~~ It is unlawful to fish for, take, or possess crab for commercial purposes except during open commercial crab harvest seasons and from open commercial crab management units as set by emergency rule. Commercial crab fishing will be open from one hour before sunrise to ((30 minutes)) one hour after sunset during open seasons, except as provided below.

(2) ~~((For purposes of crab harvest allocation, fishing season, and catch reporting, the Marine Fish-Shellfish Management and Catch Reporting Areas (Catch Areas) are modified as follows:~~

~~(a) Catch Area 26A-E includes those waters of Puget Sound south of a line from Sandy Point (on Whidbey Island) to Camano Head and from Camano Head to the north tip of Gedney Island, and from the southern tip of Gedney Island east to the mainland, and north and east of a line that extends from Possession Point to the shipwreck located 0.8 nautical miles north of Picnic Point.~~

~~(b) Catch Area 26A-W includes those waters of Puget Sound south and east of a line from Foulweather Bluff to Double Bluff, and north-erly of a line from Apple Cove Point to Point Edwards, and south and west of a line that extends from Possession Point to the shipwreck lo-cated 0.8 nautical miles north of Picnic Point.~~

~~(3))~~ The following areas are closed to commercial crab ~~((fishing except for treaty Indian commercial crab fishing where the treaty In-dian crab fisher is following tribal openings that are in accordance with provisions of court orders in United States v. Washington))~~ fish-eries regulated by the department:

(a) ~~((Areas 25C, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.))~~ Crab Management Regions 4, 5, and 6 (WAC 220-320-110).

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Lummi Bay east of a line projected from ~~((the entrance buoy at))~~ Sandy Point Light No. 2 (48.7868°, -122.7124°) to Gooseberry Point (48.7324°, -122.6728°).

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A in Bellingham Bay west of a line projected from the exposed boulder ~~((at))~~ off the southeast portion of Point Francis (48.6973°, -122.6073°) to ~~((the pilings at))~~ Stevie's Point (0.2 miles northwest of the point where the Lehigh Cement pipeline meets the shoreline; 48.7682°, -122.5282°).

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island (48.4131°, -122.5814°) and extending south to the most westerly tip of Hope Island (48.3959°, -122.5788°), thence southeast to Seal Rocks (48.3737°, -122.5634°), thence south-east to the green can buoy (Buoy No. 5; 48.3630°, -122.5510°) at the mouth of Swinomish Channel, thence easterly to the ~~((west side))~~ west-ern tip of Goat Island (48.3630°, -122.5386°).

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24B inside a line projected from Priest Point

(48.0322°, -122.2274°) to the five-meter tower (48.0156°, -122.2707°) between Gedney (Hat) Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point (48.1935°, -122.4625°) to the intersection (48.1353°, -122.3999°) with a line projected true west from Kayak Point (48.1351°, -122.3678°), thence east to shore.

~~(f) Those waters of ((Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line from the new Dungeness Light to the abandoned dock at the Three Crabs Restaurant.~~

~~(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin.~~

~~(4) The following areas are closed to commercial crab fishing during the periods indicated:~~

~~(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point, are closed October 1 through October 31 and March 1 through April 15.~~

~~(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24C inshore of the 400 foot depth contour within an area bounded by parallel lines projected northeasterly from Sandy Point and the entrance to the marina at Langley are closed October 1 through October 15.~~

~~(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W) are closed from October 1 through October 15.~~

~~(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cap Sante Marina to the northern end of the easternmost oil dock are closed October 1 through October 31, and March 1 through April 15, of each year.~~

~~(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass are closed October 1 through October 31 and March 1 through April 15.~~

~~(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-E east of a line that extends true north from the green No. 1 buoy at Possession Point to Possession Point and west of a line from the green No. 1 buoy at Possession Point northward along the 200-foot depth contour to the Glendale Dock, are closed October 1 through October 15.~~

~~(5) The following areas are closed to commercial crab fishing until further notice:~~

~~(a) Those waters of Area 25E south of a line from Contractors Point to Tukey Point.~~

~~(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A within a line projected from Rocky Point northeast to the red number 2 buoy north of Ustalady Point, thence to Brown Point on the northeast corner of Ustalady Bay.~~

~~(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24D south of a line from the point at the southern end~~

of Honeymoon Bay (48°03.047'N, 122°32.306'W) to the point just north of Beverly Beach.

~~(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from the #3 buoy southward to the oil boom pier on the shoreline.~~

~~(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B in Samish Bay south of a line from Point Williams to Fish Point in waters shallower than 60 feet in depth.~~

~~(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.~~

~~(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Birch Bay east of a line projected from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance to the Birch Bay Marina.~~

~~(h) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A inside of Chuckanut Bay east of a line projected north from Governor's Point to the east side of Chuckanut Island, thence to Chuckanut Rock, thence to the most southerly tip of Clark's Point.~~

~~(i) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Blind Bay south of a line projected due west from Point Hudson to its intersection with Shaw Island.~~

~~(j) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Fisherman Bay south of a line projected east-west through the red number 4 entrance buoy.~~

~~(k) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Mud Bay south of a line projected through Crab and Fortress Islands intersecting Lopez Island at either end.~~

~~(l) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Padilla Bay within a line projected easterly from the northern end of the eastern most oil dock at March Point to the red number 2 buoy, thence southeasterly to the red number 8 buoy, thence west to shore and following the shoreline to the point of origin.~~

~~(m) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A in Cornet Bay south of a line projected true east and west from the northernmost tip of Ben Ure Island.~~

~~(n) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 20B, which includes all waters of Prevost Harbor between Stuart Island and Satellite Island southwest of a line from Charles Point on Stuart Island to the northwest tip of Satellite Island and southwest of a line projected 120 degrees true from the southeast end of Satellite Island to Stuart Island.~~

~~(o) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in East Sound north of a line from the southern point of Judd Bay on the west to Giffin Rocks on the east.)) the Dungeness Bay Crustacean Special Management Area (WAC 220-320-120).~~

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-455, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-046, filed 11/9/12, effective 12/10/12. Statutory Authority: RCW 77.12.047. WSR 07-23-090 (Order

07-285), § 220-52-046, filed 11/20/07, effective 12/21/07; WSR 06-08-064 (Order 06-58), § 220-52-046, filed 3/31/06, effective 5/1/06; WSR 06-01-013 (Order 05-275), § 220-52-046, filed 12/9/05, effective 1/9/06; WSR 01-11-009 (Order 01-74), § 220-52-046, filed 5/3/01, effective 6/3/01. Statutory Authority: RCW 75.08.080. WSR 99-10-062 (Order 99-59), § 220-52-046, filed 5/3/99, effective 6/3/99; WSR 98-19-012 (Order 98-185), § 220-52-046, filed 9/4/98, effective 10/5/98; WSR 98-05-043, § 220-52-046, filed 2/11/98, effective 3/14/98; WSR 97-08-052 (Order 97-55), § 220-52-046, filed 3/31/97, effective 5/1/97; WSR 94-12-009 (Order 94-23), § 220-52-046, filed 5/19/94, effective 6/19/94; WSR 93-15-051, § 220-52-046, filed 7/14/93, effective 8/14/93; WSR 91-10-024 (Order 91-22), § 220-52-046, filed 4/23/91, effective 5/24/91; WSR 87-05-038 (Order 87-08), § 220-52-046, filed 2/18/87; WSR 85-01-010 (Order 84-214), § 220-52-046, filed 12/7/84; WSR 84-08-014 (Order 84-24), § 220-52-046, filed 3/27/84; WSR 83-01-026 (Order 82-221), § 220-52-046, filed 12/8/82; WSR 80-13-064 (Order 80-123), § 220-52-046, filed 9/17/80; Order 76-152, § 220-52-046, filed 12/17/76; Order 1179, § 220-52-046, filed 11/19/74; Order 1112, § 220-52-046, filed 4/15/74; Order 1057, § 220-52-046, filed 5/22/73; Order 920, § 220-52-046, filed 5/13/71; Order 807, § 220-52-046, filed 1/2/69, effective 2/1/69. Formerly WAC 220-52-040 (2), (3), (4) and (9).]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-470 Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas. (1) **Puget Sound licensing district commercial shellfish gear limit.** It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district if he or she is using, operating, or controlling any more than an aggregate total of 100 shellfish pots (~~or ring nets~~). This limit applies to each license. This subsection does not preclude a person who holds two or three Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(2) **Marine Fish-Shellfish Management and Catch Reporting Areas gear limits.** It is unlawful for any person to use, maintain, operate, or control crab pots (~~or ring nets~~) in excess of the per-license limits prescribed in each of the following (~~Marine Fish-Shellfish Management and Catch Reporting Areas~~) shellfish management units.

(a) (~~10~~) Twenty pots in Marine Fish-Shellfish Management and Catch Reporting Area 25E(~~7~~).

(b) (~~10~~) Twenty pots in all waters of (~~Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula;~~) the Sequim Bay Crustacean Special Management Area (WAC 220-320-120).

(c) (~~20 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line projected from the new Dungeness Light to the mouth of Cooper Creek, and east of a line projected from the new Dungeness Light to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of~~

~~Dungeness Bay; and)) Twenty pots in all waters of the Port Townsend Bay Crustacean Special Management Area (WAC 220-320-120).~~

~~(d) ((10)) Twenty pots in ((that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the I77 Roynier [Rayonier] Dock.))the Port Angeles Harbor Crustacean Special Management Area (WAC 220-320-120).~~

(3) Violation of subsection (2) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-470, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-048, filed 11/9/12, effective 12/10/12.]

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-340-520 Commercial shrimp pot fishery—Puget Sound.

License

(1) It is unlawful to take, fish for, land, or deliver shrimp taken for commercial purposes with pot gear from Puget Sound waters without a valid Puget Sound shrimp pot license.

A Puget Sound shrimp pot license (~~(or a Puget Sound shrimp trawl license)~~) will only be issued to an individual who is a natural person, and this person shall be the primary operator. Holders of Puget Sound shrimp pot licenses (~~(and Puget Sound shrimp trawl licenses)~~) may designate a single alternate operator per license.

Pot Gear and area

(2) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear except during seasons opened by emergency rule(~~(+)~~).

~~((a))~~ (3) Gear restrictions ((-
~~(i))~~ in all areas, maximum 100 pots per fisher except for dual licensees as provided for in RCW 77.70.410.

~~((ii))~~ (4) Buoy requirements, in all areas:

~~((A))~~ (a) Buoys must be orange in color and consist of durable material that will remain floating on the surface with five pounds attached; bleach or antifreeze bottles or other containers may not be used as floats.

~~((B))~~ (b) Buoys must be marked with the clear identification of the license holder and the vessel designated on the Puget Sound shrimp pot license.

(c) When two or more shrimp pots are attached to a common ground line, the number and type of pots (spot shrimp or nonspot shrimp pot) so attached must be clearly labeled on the required buoy.

(d) The line attaching the pot to the buoy must be weighted sufficiently to prevent the line from floating on the surface.

~~((C) The maximum perimeter of shrimp pots must not exceed ten feet and the maximum height must not exceed two feet.~~

~~((D))~~ (5) Pot requirements, in all areas:

(a) A shrimp pot may not exceed a maximum of 153-inch bottom perimeter and a maximum of 24-inch height.

(b) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(c) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(d) Spot shrimp may only be harvested using pots with a minimum mesh size of one inch. Mesh size of one inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(e) Nonspot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(6) Harvest restrictions, all areas:

(a) It is unlawful to set or pull shrimp pot gear from one hour after official sunset to one hour before official sunrise.

~~((b) Spot shrimp size restriction: It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1 and 3/16 inches. Carapace length is defined as the length between the posterior mid-dorsal margin to the posterior-most part of the eye-stalk orbit.~~

~~(c) Area restrictions:~~

~~(i) Pot gear closed in all Puget Sound Shrimp Districts except the Port Townsend Shrimp District.~~

~~(ii) Pot gear closed in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island from the season opening through July 9th.~~

~~(3) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using trawl gear except during seasons opened by emergency rule and authorized by a permit issued by the director.~~

~~(a) Gear restrictions — Beam trawl gear only. Otter trawl gear may not be used.~~

~~(i) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, and 22A is 25 feet.~~

~~(ii) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 23C, 25A, 25B, and 29 is 60 feet.~~

~~(b) It is unlawful to retain spot shrimp.~~

~~(c) Area restrictions:~~

~~(i) Shrimp trawl fishing closed in all Puget Sound Shrimp Districts.~~

~~(ii) Shrimp trawl fishing closed in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island from the season opening through July 9th.~~

~~(d) It is unlawful to fish for shrimp in Puget Sound with beam trawl gear in waters shallower than 100 feet.~~

~~(e) It is lawful to fish for shrimp in Puget Sound with beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting~~

Area 21A only in those waters north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island.

~~(f) The following restrictions apply to shrimp beam trawl harvest in Marine Fish-Shellfish Management and Catch Reporting Area 20A:~~

~~(i) Closed in waters east of a line from the southwest corner of Point Roberts to Sandy Point.~~

~~(ii) Closed in waters shallower than 20 fathoms.~~

~~(g) It is unlawful to operate shrimp beam trawl gear in Puget Sound from one hour after official sunset to one hour before official sunrise.~~

~~(h) It is unlawful to fish for, retain, land or deliver shrimp taken with trawl gear without a valid Puget Sound shrimp trawl fishery permit.~~

~~(i) It is unlawful to take, retain, land, or deliver any shrimp taken with trawl gear without complying with all provisions of a Puget Sound shrimp trawl fishery permit.~~

~~(j) A violation of this subsection is punishable under RCW 77.15.750.~~

(4)) (b) It is unlawful to deploy spot shrimp pots and nonspot shrimp pots concurrently within the same Catch Reporting Area, with the following exceptions:

(i) Spot and nonspot shrimp pots may be concurrently deployed in Catch Area 23A but not within the same subarea (23A-E, 23A-W, 23A-C, or 23A-S) concurrently.

(ii) Nonspot pots may be deployed within Sequim Bay CSMA (WAC 220-320-120) concurrently with spot shrimp pots deployed in the remaining portion of Catch Area 25A outside of Sequim Bay CSMA.

(iii) All shrimp harvested must be landed and recorded on a shellfish receiving ticket before subsequent harvest may occur.

(c) Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or nonspot), and an estimate of total pounds that are being targeted prior to the deployment of any shrimp gear by email or text message to shrimp.report@dfw.wa.gov, or by using the Puget Sound commercial shrimp reporting website.

(d) It is unlawful to harvest nonspot and spot shrimp in the same day.

(e) It is unlawful to harvest shrimp in more than one catch area per day, except for concurrent pot deployment described in (b) of this subsection.

(f) Nonspot shrimp pot harvest restrictions:

(i) Harvest of nonspot shrimp is not permitted deeper than 175 feet in Shrimp Management Area 2E.

(ii) Harvest of nonspot shrimp is not permitted deeper than 150 feet in Region 2W.

Reporting

(7) All shrimp taken in the Puget Sound commercial shrimp fishery must be landed and recorded on Washington state fish receiving tickets within 24 hours of harvest. No fisher may land shrimp without immediate delivery to a wholesale fish buyer, or if transferred at sea, without transfer to a wholesale fish buyer. A fisher who is a wholesale fish buyer or a limited fish seller may complete and return a fish receiving ticket to satisfy the requirements of this subsection.

~~((5) For purposes of shrimp pot harvest allocation, fishing season, and catch reporting, the Marine Fish-Shellfish Management and Catch Reporting Areas (catch areas) are modified as follows:~~

~~(a) That portion of Catch Area 22A south of a line due east from the international boundary to Lime Kiln Point light on San Juan Island, then south of the shores of San Juan Island, then south of a line from Cattle Point on San Juan Island to Davis Point on Lopez Island, then south of the shores of Lopez Island to Point Colville shall be considered to be part of Catch Area 23A.~~

~~(b) Catch Area 23A is divided into four subareas:~~

~~(i) 23A-E (east) is those waters of Catch Area 23A east of 122°57'W. Long. and north of 48°22.5'N. Lat.~~

~~(ii) 23A-W (west) is those waters of Catch Area 23A west of 122°57'W. Long. and north of 48°22.5'N. Lat.~~

~~(iii) 23A-C (central) is those waters of Catch Area 23 south of 48°22.5'N. Lat. and east of a line projected 335° true from the Dungeness lighthouse.~~

~~(iv) 23A-S (south) is those waters of Catch Area 23A west of a line projected 335° true from the Dungeness lighthouse.~~

~~(c) Catch Area 26A is divided into two subareas:~~

~~(i) 26A-E (east) is those waters of Catch Area 26A north and east of a line projected 110 degrees true from the southern tip of Possession Point on Whidbey Island to the shipwreck on the opposite shore.~~

~~(ii) 26A-W (west) is those waters of Catch Area 26A south and west of a line projected 110 degrees true from the southern tip of Possession Point on Whidbey Island to the shipwreck on the opposite shore.~~

~~(d) Catch Area 26B is divided into two subareas:~~

~~(i) 26B-1 is those waters of Catch Area 26B westerly of a line projected from West Point to Alki Point.~~

~~(ii) 26B-2 is those waters easterly of a line projected from West Point to Alki Point.~~

~~(6) For purpose of shrimp trawl harvest allocation and catch reporting, 23A East is that portion of Catch Area 23A, east of a line projected true north from the Dungeness lighthouse. 23A West is that portion of Catch Area 23A, west of the line described herein.~~

~~(7) The following areas are defined as Puget Sound Shrimp Management Areas:~~

~~(a) Shrimp Management Area 1A: Waters of Catch Area 20B west of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary, and all waters of Catch Area 22A west of a line projected true north and south from the western tip of Crane Island, west of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island.~~

~~(b) Shrimp Management Area 1B: Waters of Catch Area 20B east of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary, and waters of Catch Area 22A east of a line projected true north and south from the western tip of Crane Island, east of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island, and east of a line projected true south from Point Colville, and all waters of Catch Area 21A north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island.~~

~~(c) Shrimp Management Area 1C: Waters of Catch Areas 20A, 21B, 22B, and waters of Catch Area 21A not included in Management Area 1B.~~

~~(d) Shrimp Management Area 2E: Waters of Catch Areas 24A, 24B, 24C, 24D, and 26A-E (east).~~

~~(e) Shrimp Management Area 2W: Waters of Catch Areas 25B, 25C, 25D, and 26A-W (west).~~

~~(f) Shrimp Management Area 3: Waters of Catch Areas 23A, 23B, 23C, 23D, 25A, 25E, and 29.~~

~~(g) Shrimp Management Area 4: Waters of Catch Areas 26B and 26C.~~

~~(h) Shrimp Management Area 5: Waters of Catch Areas 27A, 27B, and 27C.~~

~~(i) Shrimp Management Area 6: Waters of Catch Areas 26D, 28A, 28B, 28C, and 28D.~~

~~(8) In Shrimp Management Areas 1A, 1B and 1C, all catch must be reported by Management Area and Catch Area combined, either 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, 1C-20A, 1C-21A, 1C-21B, or 1C-22B.)~~

[Statutory Authority: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, and 77.65.520. WSR 17-22-100, § 220-340-520, filed 10/30/17, effective 1/1/18. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-340-520, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.020, 77.12.045, 77.12.047 and 50 C.F.R., Parts 223 and 224. WSR 11-07-106 (Order 11-43), § 220-52-051, filed 3/23/11, effective 4/23/11. Statutory Authority: RCW 77.12.047. WSR 06-01-013 (Order 05-275), § 220-52-051, filed 12/9/05, effective 1/9/06; WSR 03-05-064 (Order 03-28), § 220-52-051, filed 2/18/03, effective 3/21/03; WSR 02-01-068, § 220-52-051, filed 12/14/01, effective 1/14/02; WSR 01-03-016 (Order 00-271), § 220-52-051, filed 1/5/01, effective 2/5/01. Statutory Authority: RCW 74.08.080 and 1999 c 239. WSR 00-01-124 (Order 99-217), § 220-52-051, filed 12/17/99, effective 1/17/00. Statutory Authority: RCW 75.28.740 and 75.30.220. WSR 94-07-092 (Order 94-14), § 220-52-051, filed 3/17/94, effective 4/17/94. Statutory Authority: RCW 75.08.080. WSR 93-15-051, § 220-52-051, filed 7/14/93, effective 8/14/93; WSR 91-18-030 (Order 91-73), § 220-52-051, filed 8/28/91, effective 9/28/91; WSR 87-23-006 (Order 87-187), § 220-52-051, filed 11/6/87.]

NEW SECTION

WAC 220-340-530 Commercial shrimp trawl fishery—Puget Sound.

License

(1) It is unlawful to take, fish for, land, or deliver shrimp taken for commercial purposes with trawl gear from Puget Sound waters without a valid Puget Sound shrimp trawl license and a shrimp trawl permit, issued annually by the director, and without complying with all provisions of a Puget Sound shrimp trawl fishery permit.

A Puget Sound shrimp trawl license will only be issued to an individual who is a natural person, and this person shall be the primary operator. Holders of Puget Sound shrimp trawl licenses may designate a single alternate operator per license.

Trawl gear and area

(2) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using trawl gear except during seasons opened by emergency rule and authorized by a permit issued by the director.

It is unlawful to operate shrimp beam trawl gear in Puget Sound from one hour after official sunset to one hour before official sunrise.

(3) It is unlawful to retain spot shrimp with trawl gear.

(4) Gear restrictions - Beam trawl gear is the only lawful trawl gear type permitted for Puget Sound. Use of otter trawl gear or other trawl gear types is unlawful.

(a) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, and 22A is 25 feet.

(b) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 23A (trawl Catch Area 23A; WAC 220-320-140), 23B, 23C, 25A, and 29 is 60 feet.

(5) Area restrictions:

(a) Catch Areas 21B, 22B, and those waters of Catch Area 20A north and east of a line from Point Roberts Light (48.9716°, -123.0838°) to Sandy Point Light, at the Lummi Reservation (48.7868°, -122.7124°) are closed year round.

(b) Catch Area 20A outside of those waters north and east of a line from Point Roberts Light (48.9716°, -123.0838°) to Sandy Point Light at the Lummi Reservation (48.7868°, -122.7124°) are closed through July 31st.

(c) Catch Area 21A is closed year round, except that those waters north and west of a line from the southern tip of Sinclair Island (48.6097°, -122.6572°) to Carter Point (48.6404°, -122.6088°) on Lummi Island are closed through June 30th.

(d) In Catch Area 22A:

(i) Shrimp trawl fishing is closed in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island (48.5064°, -122.8369°) from the season opening through July 9th, except as described in (f) of this subsection.

(ii) Shrimp trawl fishing is closed that portion east of a line projected along -122.7833° longitude (east of Blakely Island) and west of a line projected along -122.7167° longitude (west of Cypress Island) in Rosario Strait from the season opening through June 15th, except as described in (f) of this subsection.

(e) Subregion 1B (Catch Areas 20B and 22A) is closed through June 15th, except as described in (f) of this subsection.

(f) The following areas may open on the described dates and remain open from that date contingent upon the results of department-approved observer sampling to evaluate bycatch. Bycatch parameters must be satisfied for the fishery to remain open earlier than the dates described in (d) and (e) of this subsection.

(i) In Catch Area 22A, in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island (48.5064°, -122.8369°): May 1st.

(ii) That portion of Catch Area 22A east of a line projected along -122.7833° longitude (east of Blakely Island) and west of a line projected along -122.7167° longitude (west of Cypress Island) in Rosario Strait: May 1st.

(iii) Subregion 1B (Catch Areas 20B and 22A): May 16th.

(iv) Trawl fishers seeking to open before the dates described in (d) and (e) of this subsection must coordinate with the department to arrange a department-approved bycatch observation plan prior to commencing fishing.

(g) It is unlawful to fish for shrimp in Puget Sound with beam trawl gear in waters shallower than 100 feet.

(h) It is unlawful to fish for shrimp with beam trawl gear shallower than 120 feet in Catch Area 20A.

(i) A violation of this section is punishable under RCW 77.15.750.

Landing and reporting

(6) All shrimp taken in the Puget Sound commercial shrimp fishery must be landed and recorded on Washington state fish receiving tickets within 24 hours of harvest. No fisher may land shrimp without immediate delivery to a licensed fish buyer, or if transferred at sea, without transfer to a licensed fish buyer. A fisher who is a licensed fish buyer or a limited fish seller may complete and return a fish receiving ticket to satisfy the requirements of this subsection.

(7) Harvesters must also comply with reporting provisions of WAC 220-340-030.

[]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-610 Commercial scallop fishery—Puget Sound. (1)

Licensing and permits:

(a) It is unlawful to fish for, take, or possess scallops with shellfish dive gear without a valid (~~shellfish~~) commercial scallop dive fishery license in possession of the license holder or designated alternate operator, and on board the designated harvest vessel. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(b) It is unlawful to fish for, take, or possess rock or weather-vane scallops for commercial purposes from Puget Sound unless a person first obtains a valid scallop brood stock collection permit issued by the department. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, violation of commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(c) It is unlawful to harvest scallops for brood stock or culture purposes in a manner that violates scallop brood stock collection permit provisions. Scallop brood stock collection permit provisions include, but are not limited to, the location, date and time restrictions on harvest, and the species and quantity of scallops the permit holder may take for brood stock or culture purposes. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

(2) Harvest areas and seasons.

(a) It is unlawful to take or possess pink or spiny scallops for commercial purposes or for the purposes of public health testing, except during open scallop harvest seasons from open shellfish management areas as provided by emergency rule.

(b) It is unlawful to fish for, take, or possess scallops from the (~~closed~~) waters (~~in Sea Urchin Districts 1, 2, 5, and 7~~) permanently closed to sea urchin harvest as defined in WAC 220-340-750, and the waters permanently closed to sea cucumber harvest as defined in WAC 220-340-730.

(c) It is unlawful to fish for or take pink or spiny scallops from official sunset through 5:59 a.m. the following morning.

(3) A violation of subsection (2) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation

of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

(4) **Size limits:** It is unlawful to take or possess pink or spiny scallops less than ((2)) two inches in length, measured from the hinge to the outer margin of the shell. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(5) **Shellfish dive gear and harvest vessel restrictions:**

(a) It is unlawful to fish for, take, or possess pink or spiny scallops by any means other than by hand with shellfish dive gear. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful to operate a vessel engaged in scallop harvest operations unless the ((vessel registration)) harvester number assigned by the department is properly displayed as provided by department rule (WAC 220-340-020). A violation of this subsection is a misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(c) It is unlawful for more than one ((diver)) shellfish dive fishery license holder from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel, except that two shellfish dive fishery license holders may be in the water if the harvest vessel is designated on two shellfish dive fishery licenses. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(d) It is unlawful for a vessel engaged in the harvest of pink or spiny scallops to have through-hull fittings for water discharge hoses to be below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(e) It is unlawful to possess a single hose or combination of hoses capable of measuring longer than ((thirty)) 30 feet or water jet nozzles onboard a vessel engaged in the commercial pink or spiny scallop fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(6) **Possession restrictions:** It is unlawful to possess geoduck clams during pink or spiny scallop harvest operations, or possess geoduck clams on a vessel that has pink or spiny scallops on board. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

(7) For the purposes of weekly trip limits, the scallop fishery week begins Monday and ends Sunday.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-340-610, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 14-02-016 (Order 13-305), § 220-52-069, filed 12/19/13, effective 1/19/14. Statutory Authority: RCW 77.04.020, 77.12.045, 77.12.047 and 50 C.F.R., Parts 223 and 224. WSR 11-07-108 (Order 11-42), § 220-52-069, filed 3/23/11, effective 4/23/11. Statutory Authority: RCW

77.12.047. WSR 00-17-108 (Order 00-153), § 220-52-069, filed 8/16/00, effective 9/16/00. Statutory Authority: RCW 75.08.080. WSR 94-12-009 (Order 94-23), § 220-52-069, filed 5/19/94, effective 6/19/94; WSR 93-15-051, § 220-52-069, filed 7/14/93, effective 8/14/93; WSR 91-10-024 (Order 91-22), § 220-52-069, filed 4/23/91, effective 5/24/91; WSR 87-15-022 (Order 87-69), § 220-52-069, filed 7/8/87; WSR 86-08-056 (Order 86-14), § 220-52-069, filed 3/28/86; WSR 84-08-014 (Order 84-24), § 220-52-069, filed 3/27/84; WSR 82-03-045 (Order 82-6), § 220-52-069, filed 1/19/82; Order 807, § 220-52-069, filed 1/2/69, effective 2/1/69. Formerly WAC 220-52-060(7).]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-700 Commercial crawfish fishery. (1) Licensing: A shellfish pot fishery license is required to operate the gear provided for in this section. An application for a shellfish pot fishery license is available at the offices of the department, by calling the WDFW license division at 360-902-2500, or on the department website at www.wdfw.wa.gov.

(2) Commercial crawfish season: The first Monday in May through October 31, except: In Washington waters of the Columbia River downstream from the mouth of the Walla Walla River, it is permissible to take crawfish from April 1 through October 31.

(3) Commercial crawfish size and sex restrictions:

(a) Crawfish must be (~~(3-1/4)~~) 3 1/4 inches or more in length from the tip of the rostrum (nose) to the tip of the tail.

(b) All undersize crawfish and female crawfish with eggs or young attached to the abdomen must be immediately returned unharmed to the waters from which taken. Fishers must sort and return illegal crawfish to the waters from which taken immediately after the crawfish are removed from the shellfish pot and prior to lifting additional pots from the water.

(4) Commercial crawfish gear, fishing areas, and pot number restrictions:

(a) It is unlawful to take crawfish for commercial purposes with gear other than shellfish pots.

(b) The department determines the maximum number of pots permitted in any given body of water. Once the permitted maximum number of pots for any given body of water is reached, no further permits may be issued for that area. Permits are issued on a first-come, first-served basis consistent with all other regulations concerning issuance of commercial crawfish harvest permits.

(c) It is unlawful for a person to fish more than 400 pots at one time in the commercial crawfish fishery.

(d) Buoys must consist of durable material that will remain floating on the surface with five pounds attached; bleach or anti-freeze bottles or other containers may not be used as floats.

(e) When two or more pots are attached to a common ground line, the number of pots attached must be clearly labeled on the required buoy.

(f) Crawfish gear also subject to provisions of WAC 220-353-020.

(g) It is unlawful to fish for crawfish for commercial purposes in the following waters:

Clallam

((~~Anderson Lake~~))
Crescent Lake

Clark

Battleground Lake

Cowlitz

Merrill Lake

Grant

Deep Lake
Potholes Res.
Coulee Lake
Soap Lakes
Sun Lakes

Grays Harbor

Sylvia Lake

Island

Cranberry Lake

Jefferson

Anderson Lake

King

Cedar Lake
Elbow Lake
Green Lake
Green River
Margaret Lake
Sammamish Lake
Sammamish River
Sammamish Slough
Walsh Lake

Kittitas

Easton Lake

Klickitat

Horsethief Lake
Roland Lake

Lewis

Mineral Lake

Okanogan

Alta Lake
Buffalo Lake
Campbell Lake
Conconully Lake
Conconully Res.
Crawfish Lake
Omak Lake
Osoyoos Lake

Pearrygin Lake

Pacific

Middle Nemah River
North Nemah River
Smith Creek

Pend Oreille

Browns Lake (on Brown Cr)
Calispell Lake
Cooks Lake
Conklin Lake
Davis Lake
Half Moon Lake
Mystic Lake
No Name Lake
Shearer Lake
Vanee Lake

Pierce

Clear Lake
Spanaway Lake
Steilacoom Lake
Wapato Lake

Skagit

Beaver Lake
Caskey Lake
Cranberry Lake
Everett Lake
Minkler Lake
Pass Lake
Sixteen Lake
Whistle Lake

Skamania

Goose Lake
Mosquito Lake
South Prairie Lake
Stump (Tunnel) Lake

Snohomish

Ballinger Lake
Chaplain Lake
Flowing Lake
Goodwin Lake
Ki Lake
Martha Lake
Pass Lake
Roesiger Lake
Serene Lake
Shoecraft Lake
Silver Lake
Stevens Lake
Stickney Lake
Storm Lake

Thurston

- Deep Lake
- Hicks Lake
- Long Lake
- Patterson Lake
- Summit Lake
- Ward Lake

Whatcom

- Budd Lake
- Bug Lake
- Caine Lake
- Fishtrap Creek
- Johnson Creek
- Padden Lake
- Toad or Emerald Lake

((e)) (h) It is unlawful to fish for crawfish within 1/4 mile of the shoreline of developed parks.

((f)) (i) It is permissible for an individual fisherman to fish for crawfish for commercial use in the waters set out below with up to the number of pots shown.

Name of Lake, River, or Slough	County	Max. Pots Allowed
Alder Lake (Res.)	Pierce/Thurston	200
(Aldwell Lake (Res.))	Clallam	400)
Alkali Lake	Grant	100
Bachelor Slough	Clark	100
Baker Lake	Whatcom	200
Banks Lake	Grant	200
Big Lake	Skagit	200
Black Lake	Thurston	200
Blue Lake	Grant	200
Bonaparte Lake	Okanogan	100
Buckmire Slough	Clark	100
Camas Slough	Clark	100
Campbell Lake	Skagit	100
Cassidy Lake	Snohomish	100
Cavanaugh Lake	Skagit	200
Chehalis River	Lewis/Grays Harbor	100
Chelan Lake	Chelan	200
Clear Lake	Skagit	100
Coal Creek Slough	Cowlitz	100
Columbia River	Clark, Cowlitz, etc.	200
Copalis River	Grays Harbor, etc.	100
Cowlitz River	Clark, Cowlitz, etc.	100
Curlew Lake	Ferry	200
Cushman Lake #1	Clark	100
Deep River	Wahkiakum	100
Deschutes River	Thurston	100
Diablo Lake	Whatcom	200
Drano Lake	Skamania	100
Elochoman River	Wahkiakum	100
Erie Lake	Skagit	100
Evergreen Reservoir	Grant	100
Fisher Island Slough	Cowlitz	100

Name of Lake, River, or Slough	County	Max. Pots Allowed
Goose Lake (upper)	Grant	100
Grays River	Pacific	100
Harts Lake	Pierce	100
Hoquiam River	Grays Harbor	100
Humptulips River	Grays Harbor	100
John's River	Grays Harbor	100
Kapowsin Lake	Pierce	200
Kalama River	Cowlitz, etc.	100
Klickitat	Klickitat	100
Lackamas Lake (Res.)	Clark	100
Lake River	Clark	100
Lawrence Lake	Thurston	100
Lenore Lake	Grant	200
Lewis River	Clark/Cowlitz	100
Loomis Lake	Pacific	100
Mayfield Lake	Lewis	200
McIntosh Lake	Thurston	100
McMurray Lake	Skagit	100
Merwin Lake	Clark/Cowlitz	200
Moses Lake	Grant	200
Naselle River	Pacific, etc.	100
Nisqually River	Pierce, etc.	100
Nooksack River	Whatcom	100
North River	Grays Harbor	100
Palmer Lake	Okanogan	100
Patterson Lake (Res.)	Okanogan	100
Portage Bay	King	100
Rattlesnake Lake	King	100
Ross Lake (Res.)	Whatcom	200
Salmon Lake	Okanogan	100
Satsop River	Grays Harbor	100
Shannon Lake (Res.)	Skagit	200
Sidley Lake	Okanogan	100
Silver Lake	Pierce	100
Silver Lake	Cowlitz	200
Skagit River	Skagit/Whatcom	200
Skamokawa River	Wahkiakum	100
Snake River	Franklin/Walla Walla	200
Snohomish River	Snohomish	100
St. Clair Lake	Thurston	100
Swift Lake (Res.)	Skamania	200
Terrell Lake	Whatcom	100
Toutle River	Cowlitz	100
Union Lake	King	200
Vancouver Lake	Clark	200
Warden Lake	Grant	100
Washington Lake	King	200
Washougal River	Clark/Skamania	100
Whitestone Lake	Okanogan	100
Willapa River	Pacific	100
Wiser Lake	Whatcom	100
Wind River	Cowlitz	100
Wishkah River	Grays Harbor	100
Woodland Slough	Clark	100
Wynoochee River	Grays Harbor	100

Name of Lake, River, or Slough	County	Max. Pots Allowed
Yakima River	Kittitas	100
Yale Lake (Res.)	Clark/Cowlitz	200

~~((g))~~ (j) Commercial crawfish harvest permits will be issued to limit the number of crawfish pots permissible per fisherman per body of water in suitable crawfish harvest sites not listed in subsections (4)(d) and (e) of this section as follows:

- (i) Under 20 acres - No commercial harvest.
- (ii) 20 acres to 100 acres - 50 pots.
- (iii) 101 acres to 400 acres - 100 pots.
- (iv) Over 400 acres - 200 pots.

~~((h))~~ (k) Permits may be issued only in waters where fishing will not conflict with high density residential or recreational areas. No permit will be issued where developed parks encompass more than 1/2 of the water shoreline.

(5) It is unlawful to discard any crawfish bait into the waters of the state.

(6) This section does not apply to the commercial culture of crawfish at a registered aquatic farm.

(7) It is unlawful to fish for or possess crawfish taken for commercial purposes in violation of this section. Violation of this section is punishable under RCW 77.15.500, 77.15.520, 77.15.522, or 77.15.540, depending on the circumstances of the violation.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-700, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-060, filed 11/9/12, effective 12/10/12. Statutory Authority: RCW 75.08.080. WSR 94-12-009 (Order 94-23), § 220-52-060, filed 5/19/94, effective 6/19/94; WSR 91-10-024 (Order 91-22), § 220-52-060, filed 4/23/91, effective 5/24/91; WSR 87-23-006 (Order 87-187), § 220-52-060, filed 11/6/87. Statutory Authority: RCW 75.08.080 and 75.58.040. WSR 86-19-043 (Order 86-102), § 220-52-060, filed 9/12/86. Statutory Authority: RCW 75.08.080. WSR 80-13-064 (Order 80-123), § 220-52-060, filed 9/17/80; WSR 79-02-053 (Order 79-6), § 220-52-060, filed 1/30/79; Order 76-26, § 220-52-060, filed 1:45 p.m., 4/20/76; Order 945, § 220-52-060, filed 8/16/71; Order 807, § 220-52-060, filed 1/2/69, effective 2/1/69; subsections 1-7, Orders 414 and 256, filed 3/1/60.]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-720 Commercial octopus fishery. (1) It ~~((shall be))~~ is unlawful to possess octopus for commercial purposes except octopus taken incidentally to any lawful bottom fish or shellfish fishery~~((except that it shall be unlawful for divers to take octopus for commercial purposes except as authorized by permit issued by the director for display or scientific purposes))~~.

(2) It is unlawful to take or possess octopus for display or scientific purposes, except as authorized by permit issued by the director.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-340-720, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 01-02-057 (Order 00-262), § 220-52-063, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 75.08.080. WSR 94-12-009 (Order 94-23), § 220-52-063, filed 5/19/94, effective 6/19/94; WSR 87-15-022 (Order 87-69), § 220-52-063, filed 7/8/87; WSR 84-08-014 (Order 84-24), § 220-52-063, filed 3/27/84; WSR 80-13-064 (Order 80-123), § 220-52-063, filed 9/17/80; Order 807, § 220-52-063, filed 1/2/69, effective 2/1/69. Formerly WAC 220-52-060 (2), (3) and (4).]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-730 Commercial sea cucumber fishery. (1) Licensing:

It is unlawful to fish for, take, or possess sea cucumbers (~~(with shellfish dive gear)~~) without a valid (~~(shellfish)~~) commercial sea cucumber dive fishery license and license holder or designated alternate operator on board the designated harvest vessel. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

(2) Harvest areas and seasons:

(a) It is unlawful to fish for, take, or possess sea cucumbers for commercial purposes, except during open sea cucumber harvest seasons and from open sea cucumber districts as provided by emergency rule. It is unlawful to fish for, take, or possess sea cucumbers for commercial purposes from closed areas defined in this section.

(b) It is unlawful to fish for or take sea cucumbers from official sunset to 5:59 a.m. the following morning.

(c) A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(3) Sea cucumber districts defined:

(a) Sea Cucumber District 1 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B(~~(, and 23B)~~) outside of the following closed areas:

(i) ~~San Juan Channel ((and Upright Channel within the following lines: South of a line projected from Flat Point on Lopez Island true west to Shaw Island; west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island; south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island north of a line from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island))~~ Closed Area: Those waters of San Juan Channel and Upright Channel within the following lines: North and west of a line from the northernmost point of Turn Island off San Juan Island (48.5358°, -122.9713°) to Flat Point on Lopez Island (48.5510°, -122.9197°), and thence projected from Flat Point true west to Shaw Island (48.5510°); north of a line projected from the northernmost point of Turn Island (48.5358°, -122.9713°) true west to San Juan Island (48.5358°); west of a line from Neck Point on Shaw Island (48.5872°, -123.0124°) to Steep Point on Orcas Island

(48.6093°, -123.0231°); and south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island (48.6225°, -123.1075°).

(ii) Haro Strait Closed Area: North of a line projected (~~(due)~~) true west from the southernmost point of Cattle Point on San Juan Island to the International (~~(border)~~) Boundary (closed area includes those waters of Areas 22A and 23A that fall north of this line) and south of a line projected (~~(due)~~) true west from a point (~~(one-quarter)~~) (48.5200°, -123.1527°) 1/4 mile north of Lime Kiln Light (48.5159°, -123.1525°) on San Juan Island to the International (~~(border)~~) Boundary.

(b) Sea Cucumber District ((2)) 2-1 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23C, 23D, (~~(25A, 25B, 25C, 25D, 25E,)~~) and 29 outside of the following closed areas:

(i) Low Point Closed Area: Those waters of the Strait of Juan de Fuca west of a line projected true north from the shoreline at -123.8050° longitude to the International Boundary and east of a line projected true north from the shoreline at -123.8783° longitude to the International Boundary;

(ii) Tatoosh Island Closed Area: Those waters within 1/4 mile of Tatoosh Island;

(iii) Haro Strait Closed Area: Those waters of Haro Strait within Area 23A north of a line projected true west from the southernmost point of Cattle Point (48.4501°, -122.9636°) on San Juan Island to the International Boundary (this closed area also includes those waters of Area 22A described in (a) (ii) of this subsection).

(c) Sea Cucumber District 2-2 is defined as the waters of Marine Fish Shellfish Management and Catch Reporting Areas 23B, 25A, 25B, 25C, 25D, and 25E.

((+e)) (d) Sea Cucumber District 3 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, 26A, 26B, and 26C. The following areas within Sea Cucumber District 3 are closed to the harvest of sea cucumbers:

(i) Eagle Harbor Closed Area: Those waters of Eagle Harbor west of a line projected from Wing Point (47.6207°, -122.4923°) to Eagle Harbor Creosote Light Number 1 (~~(, then)~~) (47.6163°, -122.4965°), thence projected (~~(due)~~) true west to shore on Bainbridge Island (47.6163°).

(ii) Sinclair Inlet Closed Area: Those waters of Sinclair Inlet west of a line projected southerly from the easternmost point of Point Turner (47.5648°, -122.6233°) to landfall directly below the (~~(Veteran's Home)~~) Kitsap Transit foot ferry terminal in Annapolis (47.5478°, -122.6162°).

((+d)) (e) Sea Cucumber District 4 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 27A, 27B, and 27C.

((+e)) (f) Sea Cucumber District 5 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26D, 28A, 28B, 28C, and 28D outside of the following closed area: Hale Passage/Wollochet Bay Closed Area: The waters of Hale Passage and Wollochet Bay within the following lines: West of a line projected true south from the shoreline near Point Fosdick at -122.5833° longitude to 47.2333° latitude, and thence projected true west to the shoreline of Fox Island (47.2333° latitude), and east of a line projected true south from the shoreline near Green Point at -122.6833° longitude to 47.2750° latitude, and thence projected true east to the shoreline of Fox Island (47.2750°).

(4) Shellfish dive gear and harvest vessel restrictions:

(a) It is unlawful to fish for, take, or possess sea cucumbers taken for commercial purposes by any means other than by hand with shellfish dive gear. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful to operate a vessel engaged in commercial sea cucumber harvest operations unless the (~~vessel registration~~) harvester number assigned by the department is properly displayed on the vessel as provided by department rule (WAC 220-340-020). A violation of this subsection is a misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license.

(c) It is unlawful for more than one diver from a harvest vessel to be in the water at any one time during sea cucumber harvest operations or when commercial quantities of sea cucumbers are aboard, except that two divers from a harvest vessel may be in the water at one time if the vessel is designated on two sea cucumber dive fishery licenses. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(d) It is unlawful for a vessel engaged in the harvest of sea cucumbers to have through-hull fittings for water discharge hoses below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(e) It is unlawful to possess a single hose or combination of hoses capable of measuring longer than (~~thirty~~) 30 feet or water jet nozzles onboard a vessel engaged in the commercial sea cucumber fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(5) Possession restrictions: It is unlawful to possess geoduck clams during commercial sea cucumber harvest operations, or possess geoduck clams on a vessel that has sea cucumbers on board. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

(6) For the purposes of weekly trip limits, the sea cucumber fishery week begins Monday and ends Sunday.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-730, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 14-02-016 (Order 13-305), § 220-52-071, filed 12/19/13, effective 1/19/14. Statutory Authority: RCW 77.12.047. WSR 03-16-098 (Order 03-177), § 220-52-071, filed 8/6/03, effective 9/6/03; WSR 02-17-016 (Order 02-186), § 220-52-071, filed 8/9/02, effective 9/9/02; WSR 01-07-021 (Order 01-40), § 220-52-071, filed 3/14/01, effective 4/14/01. Statutory Authority: RCW 75.08.080. WSR 00-03-042 (Order 00-07), § 220-52-071, filed 1/13/00, effective 2/13/00; WSR 99-17-068 (Order 99-126), § 220-52-071, filed 8/13/99, effective 9/13/99; WSR 94-12-009 (Order 94-23), § 220-52-071, filed 5/19/94, effective 6/19/94; WSR 93-15-051, § 220-52-071, filed 7/14/93, effective 8/14/93; WSR 91-18-030 (Order 91-73), § 220-52-071, filed 8/28/91, ef-

fective 9/28/91; WSR 91-10-024 (Order 91-22), § 220-52-071, filed 4/23/91, effective 5/24/91; WSR 87-23-006 (Order 87-187), § 220-52-071, filed 11/6/87; WSR 87-15-022 (Order 87-69), § 220-52-071, filed 7/8/87; WSR 87-02-013 (Order 86-199), § 220-52-071, filed 12/30/86; WSR 81-11-006 (Order 81-31), § 220-52-071, filed 5/11/81; WSR 79-02-053 (Order 79-6), § 220-52-071, filed 1/30/79; Order 77-145, § 220-52-071, filed 12/13/77; Order 77-65, § 220-52-071, filed 8/5/77; Order 1105, § 220-52-071, filed 12/28/73; Order 990, § 220-52-071, filed 5/11/72.]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-750 Commercial sea urchin fisheries. (1) Licensing:

It is unlawful to fish for, take, or possess sea urchins for commercial purposes (~~(with shellfish dive gear)~~) without a valid (~~(shellfish)~~) commercial sea urchin dive fishery license and license holder or designated alternate operator on board the designated harvest vessel. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(2) Harvest areas, seasons, and size restrictions:

(a) It is unlawful to fish for, take, or possess sea urchins for commercial purposes except during open sea urchin harvest seasons(~~(7)~~) and from open sea urchin districts(~~(7, and within the size restrictions)~~) as set by emergency rule. It is unlawful to fish for, take, or possess sea urchins for commercial purposes from closed areas defined in this section.

(b) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2 1/4 inches; or red sea urchins measuring less than 3 1/4 inches or greater than five inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

~~((b))~~ (c) It is unlawful to fish for or take sea urchins from official sunset through 5:59 a.m. the following morning.

~~((e))~~ (d) It is unlawful to harvest or possess sea urchins taken from less than ~~((ten))~~ 10 feet below mean lower low water.

~~((d))~~ (e) It is unlawful to process sea urchins aboard the harvest vessel.

~~((e))~~ (f) It is unlawful to take sea urchins for commercial use for purposes other than human consumption.

(3) A violation of subsection (2) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

(4) Sea urchin districts defined:

(a) Sea Urchin District 1 (~~((Northern))~~ San Juan Islands) is defined as Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, (~~(and those waters of Area 22A north of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and west of a line projected true north from Limestone Point on San Juan Island)~~) 21A, 21B, 22A, and 22B outside the following closed areas:

(i) San Juan Channel Closed Area: Those waters of San Juan Channel and Upright Channel within the following lines: North and west of a line from the northernmost point of Turn Island on San Juan Island (48.5358°, -122.9713°) to Flat Point on Lopez Island (48.5510°, -122.9197°), and thence projected from Flat Point true west to Shaw Island (48.5510°); north of a line projected from the northernmost point of Turn Island (48.5358°, -122.9713°) true west to San Juan Island (48.5358°); west of a line from Neck Point on Shaw Island (48.5872°, -123.0124°) to Steep Point on Orcas Island (48.6093°, -123.0231°); and south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island (48.6225°, -123.1075°).

(ii) Haro Strait Closed Area: North of a line projected true west from the southernmost point of Cattle Point (48.4501°, -122.9636°) on San Juan Island to the International Boundary (closed area includes those waters of 22A and 23A that fall north of this line) and south of a line projected true west from a point (48.5200°, -123.1527°) 1/4 mile north of Lime Kiln Light (48.5159°, -123.1525°) on San Juan Island to the International Boundary.

~~(b) Sea Urchin District 2 ((Southern San Juan Islands and Port Townsend)) (Admiralty Inlet) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas ((22A south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and east of a line projected true north from Limestone Point on San Juan Island and Areas 21A, 21B, 22B, 23A, 23B, 25A and 25B. The following areas within Sea Urchin District 2 are closed to the harvest of sea urchins at all times:~~

~~(i) Those waters of Haro Strait north of a line projected due west from the southernmost point of Cattle Point on San Juan Island to the international border and south of a line projected due west from a point one-quarter mile north of Lime Kiln Light on San Juan Island to the international border.~~

~~(ii) Those waters of San Juan Channel and Upright Channel within the following lines: South of a line projected from Flat Point on Lopez Island true west to Shaw Island; west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island; south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island north of a line from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island)) 23B, 25A, and 25B.~~

~~(c) Sea Urchin District 3 (Port Angeles) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23D, and 23C east of a line projected true north from ((Low Point, along 123°49'30" W. longitude, and Area 23D)) the shoreline near Low Point at -123.8050° longitude to the International Boundary.~~

~~The following area, comprising portions of Sea Urchin Districts 3 and 4, is a closed area: (Low Point Closed Area) Those waters of the Strait of Juan de Fuca in the vicinity of Low Point west of a line projected true north from the shoreline at -123.8050° longitude to the International Boundary, and east of a line projected true north from the shoreline at -123.8783° longitude to the International Boundary.~~

~~(d) Sea Urchin District 4 (Sekiu) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C west of a line projected true north from Low Point, along ((123°49'30" W.)) -123.8783° longitude, and those waters of Area 29 east of a line projected true north from the mouth of ((Rasmussen Creek (3.1 miles southeast of Sail Rock)) the Sekiu River (48.2878°, -124.3954°).~~

(e) Sea Urchin District 5 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 29 west of a line projected true north from the mouth of (~~(Rasmussen Creek (3.1 miles southeast of Sail Rock))~~) the Sekiu River (48.2878°, -124.3954°) and Areas (~~(59A)~~) 59A-1, 59A-2, and 59B. Within Sea Urchin District 5, waters within (~~(one-quarter)~~) 1/4 mile of Tatoosh Island are closed to the harvest of sea urchins at all times (Tatoosh Island Closed Area).

(f) Sea Urchin District 6 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A.

(g) Sea Urchin District 7 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26B, 26C, 26D and 28A. The following areas within Sea Urchin District 7 are closed to the harvest of sea urchins at all times (~~(-)~~):

(i) Eagle Harbor Closed Area: Those waters of Eagle Harbor west of a line projected from Wing Point (47.6207°, -122.4923°) to Eagle Harbor Creosote Light Number 1 (47.6163°, -122.4965°), (~~(then)~~) thence projected (~~(due)~~) true west to the shore on Bainbridge Island (47.6163°).

(ii) (~~(The)~~) Sinclair Inlet Closed Area: Those waters of Sinclair Inlet west of a line projected southerly from the easternmost point of Point Turner (47.5648°, -122.6233°) to landfall directly below the (~~(Veteran's Home)~~) Kitsap Transit foot ferry terminal in Annapolis (47.5478°, -122.6162°).

(iii) Hale Passage/Wollochet Bay Closed Area: The waters of Hale Passage and Wollochet Bay within the following lines: West of a line projected true south from the shoreline near Point Fosdick at -122.5833° longitude to 47.2333 latitude, and thence projected true west to the shoreline of Fox Island (47.2333° latitude), and east of a line projected true south from the shoreline near Green Point at -122.6833° longitude to 47.2750° latitude, and thence projected true east to the shoreline of Fox Island (47.2750° latitude).

(5) Shellfish dive gear and harvest vessel restrictions:

(a) It is unlawful to fish for, take, or possess sea urchins by any means other than with (~~(hand-held)~~) handheld tools that do not penetrate the shell.

(b) It is unlawful for more than one diver from a harvest vessel to be in the water at any one time during sea urchin harvest operations or when commercial quantities of sea urchins are onboard, except that two divers may be in the water if the harvest vessel is designated on two sea urchin dive fishery licenses.

(c) It is unlawful for a vessel engaged in the harvest of sea urchins to have through-hull fittings for water discharge hoses below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(d) It is unlawful to possess a single hose or combination of hoses capable of measuring longer than (~~(thirty)~~) 30 feet or water jet nozzles onboard a vessel engaged in the commercial sea urchin fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(e) It is unlawful to operate a vessel engaged in sea urchin harvest operations unless the (~~(vessel registration)~~) harvester number assigned by the department is properly displayed as provided by department rule (WAC 220-340-020). A violation of this subsection is a

misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(6) **Possession restrictions:** It is unlawful to possess geoduck clams during commercial sea urchin harvest operations, or possess geoduck clams on a vessel that has sea urchins onboard. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

(7) For the purposes of weekly trip limits, the sea urchin fishery week begins Monday and ends Sunday.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-750, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 14-02-016 (Order 13-305), § 220-52-073, filed 12/19/13, effective 1/19/14. Statutory Authority: RCW 77.12.047. WSR 08-15-127 (Order 08-180), § 220-52-073, filed 7/22/08, effective 8/22/08; WSR 04-17-096 (Order 04-210), § 220-52-073, filed 8/17/04, effective 9/17/04; WSR 02-17-016 (Order 02-186), § 220-52-073, filed 8/9/02, effective 9/9/02; WSR 01-07-021 (Order 01-40), § 220-52-073, filed 3/14/01, effective 4/14/01. Statutory Authority: RCW 75.08.080. WSR 00-03-042 (Order 00-07), § 220-52-073, filed 1/13/00, effective 2/13/00; WSR 94-12-009 (Order 94-23), § 220-52-073, filed 5/19/94, effective 6/19/94; WSR 91-22-064 (Order 91-132), § 220-52-073, filed 11/1/91, effective 12/2/91; WSR 91-10-024 (Order 91-22), § 220-52-073, filed 4/23/91, effective 5/24/91; WSR 87-23-006 (Order 87-187), § 220-52-073, filed 11/6/87; WSR 87-15-022 (Order 87-69), § 220-52-073, filed 7/8/87; WSR 86-20-028 (Order 86-123), § 220-52-073, filed 9/23/86; WSR 85-01-010 (Order 84-214), § 220-52-073, filed 12/7/84; WSR 83-04-025 (Order 83-04), § 220-52-073, filed 1/27/83; WSR 80-13-064 (Order 80-123), § 220-52-073, filed 9/17/80; WSR 79-02-053 (Order 79-6), § 220-52-073, filed 1/30/79; Order 77-145, § 220-52-073, filed 12/13/77; Order 76-152, § 220-52-073, filed 12/17/76; Order 1105, § 220-52-073, filed 12/28/73; Order 990, § 220-52-073, filed 5/11/72.]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-770 Commercial squid fishery. (1) It is lawful at any time to take or fish for squid for commercial purposes with (~~drag seine gear not exceeding 350 feet in length and having meshes of not less than 1-1/4 inches stretch measure,~~) dip bag net, brail, and squid jigging gear. Dip bag net and brail may not exceed 10 feet in diameter nor have a mesh less than one inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. Other gear may be used to fish for squid commercially if authorized by a permit issued by the director.

(2) Food fish, other shellfish except octopus, and squid eggs caught while fishing for squid must be returned to the water immediately. It is lawful to retain for commercial purposes squid taken incidental to another commercial fishery.

(3) Each vessel fishing for squid may use a lighting system with a combined power of not more than 10 kilowatts (10,000 watts), or equivalent when measured in lumens. Lights of 200 watts (or equivalent when measured in lumens) or greater must be shielded and may not be directed to any point more than 100 feet from the vessel while fishing for or attracting squid.

(4) It is unlawful to fish for squid for commercial purposes within 1/4 mile of the shoreline (~~(of an incorporated city or town)~~).

(5) Licensing: A squid fishery license is the license required to operate the gear provided for in this section.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-340-770, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 75.08.080. WSR 94-12-009 (Order 94-23), § 220-52-066, filed 5/19/94, effective 6/19/94; WSR 84-08-014 (Order 84-24), § 220-52-066, filed 3/27/84; WSR 80-13-064 (Order 80-123), § 220-52-066, filed 9/17/80; Order 807, § 220-52-066, filed 1/2/69, effective 2/1/69. Formerly WAC 220-52-060 (5) and (6).]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-340-740	Sea cucumber license reduction program.
WAC 220-340-760	Sea urchin license reduction program.

OTS-3552.1

AMENDATORY SECTION (Amending WSR 21-24-031, filed 11/22/21, effective 1/1/22)

WAC 220-340-420 Commercial crab fishery—Unlawful acts. (1)

Crab size and sex restrictions. It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

- (a) Any female Dungeness crab; or
- (b) Any male Dungeness crab measuring less than 6-1/4 inches, caliper measurement, at the widest part of the shell immediately in front of the points (tips).

(2) Violation of subsection (1) of this section is a gross misdemeanor or class C felony depending on the value of fish or shellfish taken, possessed, or delivered, punishable under RCW 77.15.550 (1)(c).

(3) **Incidental catch may not be retained.** It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any commercial crab fishing.

(4) **Net fishing boats must not have crab on board.** It is unlawful for any person to possess any crab on board a vessel geared or equipped with commercial net fishing gear while fishing with the net gear

for commercial purposes or while commercial quantities of food fish or shellfish are on board. Violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550(1), depending on the quantity of crab taken or possessed.

(5) **Area must be open to commercial crabbing.** It is unlawful for any person to set, maintain, or operate any baited or unbaited shellfish pots for taking crab for commercial purposes in any area or time that is not open for commercial crabbing by rule of the department, except when acting lawfully under the authority of a valid gear recovery permit as provided in WAC 220-340-450.

(6) Violation of subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, or a gross misdemeanor punishable under RCW 77.15.522 depending on the circumstances of the violation.

(7) **When it is unlawful to buy or land crab from the ocean without a crab vessel inspection.** It is unlawful for any fisher or wholesale fish buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel that has not been issued a Washington crab vessel inspection certificate during the first 30 days following the opening of a coastal crab season.

(a) Authorized department personnel will perform inspections for Washington crab vessel inspection certificates no earlier than 12 hours prior to the opening of the coastal crab season and during the following 30-day period.

(b) A Washington crab vessel inspection certificate may be issued to vessels made available for inspection at a Washington coastal port that:

- (i) Are properly licensed commercial crab fishing; and
- (ii) Contain no Dungeness crab on board the vessel.

(8) Violation of subsection (7) of this section is a gross misdemeanor, punishable under RCW 77.15.550 (1)(a) Violation of commercial fishing area or time—Penalty.

~~(9) ((Coastal - Barging of crab pots by undesignated vessels. It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license to deploy crab pot gear except under the following conditions:~~

~~(a-)) Barging of crab pots by undesignated vessels. It is unlawful for a vessel not designated on a Dungeness crab coastal or Puget Sound fishery license to deploy crab pot gear except under the following conditions:~~

~~(a) **Coastal**~~

~~(i) The vessel deploys pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date;~~

~~((b)) (ii) The undesignated vessel carries no more than 250 crab pots at any one time; and~~

~~((c)) (iii) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.~~

~~(b) **Puget Sound**~~

~~(i) The vessel deploys pot gear only during the 48-hour period immediately following the initial season opening date and time;~~

~~(ii) The primary or alternate operator designated on the license associated with the barged gear is on board the nondesignated vessel ("barge" vessel) while the gear is being deployed; and~~

(iii) The Puget Sound commercial crab license holder who owns the gear intended for barging has provided notice to the department via email at crab.report@dfw.wa.gov at least 24 hours in advance of the fishery opening date. Notice must include the following information:

(A) Name and license number(s) of the owner of the gear being barged;

(B) Name of the designated primary operator, if different from the licensed owner;

(C) Name of the alternate operator, if used to deploy pots from a nondesignated vessel;

(D) Buoy brand number and number of pots to be deployed from a nondesignated vessel;

(E) Name and identification numbers (WN and/or Coast Guard) of the nondesignated vessel;

(F) Puget Sound Crab Management Region or set location.

(10) Violation of subsection (9) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(11) Storing crab prior to delivery to an original receiver, Puget Sound. It is unlawful for a Puget Sound commercial crab license holder to store crab prior to delivery to an original receiver, except under the following conditions:

(a) It is unlawful to store crab for more than 10 days prior to delivery to an original receiver.

(b) All crab that have been removed from a vessel and are not immediately delivered to an original receiver must be stored in containers labeled with the following:

(i) Date of harvest;

(ii) An estimate of pounds of crab contained;

(iii) Either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region from which the catch originated;

(iv) Containers used for storing crab removed from a vessel and not delivered to an original receiver by 5:00 p.m. of the day following the day of harvest must additionally be labeled with the commercial fish and shellfish transportation ticket number(s).

(c) Storage of crab is subject to the reporting requirements described in WAC 220-352-340.

[Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 21-24-031 (Order 21-259), § 220-340-420, filed 11/22/21, effective 1/1/22. Statutory Authority: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, and 77.65.520. WSR 17-22-100, § 220-340-420, filed 10/30/17, effective 1/1/18. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-340-420, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-040, filed 11/9/12, effective 12/10/12. Statutory Authority: RCW 77.12.047 and 77.04.020. WSR 09-18-075 (Order 09-183), § 220-52-040, filed 8/31/09, effective 10/1/09. Statutory Authority: RCW 77.12.047. WSR 07-23-090 (Order 07-285), § 220-52-040, filed 11/20/07, effective 12/21/07; WSR 05-21-068 (Order 05-246), § 220-52-040, filed 10/14/05, effective 11/14/05; WSR 01-20-066 (Order 01-219), § 220-52-040, filed 9/28/01, effective 10/29/01; WSR 01-18-005 (Order 01-180), § 220-52-040, filed 8/22/01, effective

9/22/01; WSR 01-11-009 (Order 01-74), § 220-52-040, filed 5/3/01, effective 6/3/01; WSR 00-18-005 (Order 00-164), § 220-52-040, filed 8/23/00, effective 9/23/00. Statutory Authority: RCW 75.08.080. WSR 98-19-012 (Order 98-185), § 220-52-040, filed 9/4/98, effective 10/5/98; WSR 98-05-043, § 220-52-040, filed 2/11/98, effective 3/14/98; WSR 97-08-052 (Order 97-55), § 220-52-040, filed 3/31/97, effective 5/1/97; WSR 94-12-009 (Order 94-23), § 220-52-040, filed 5/19/94, effective 6/19/94; WSR 91-10-024 (Order 91-22), § 220-52-040, filed 4/23/91, effective 5/24/91; WSR 85-01-010 (Order 84-214), § 220-52-040, filed 12/7/84; WSR 84-08-014 (Order 84-24), § 220-52-040, filed 3/27/84; WSR 83-01-026 (Order 82-221), § 220-52-040, filed 12/8/82; WSR 80-13-064 (Order 80-123), § 220-52-040, filed 9/17/80; WSR 79-02-053 (Order 79-6), § 220-52-040, filed 1/30/79; Order 77-145, § 220-52-040, filed 12/13/77; Order 76-152, § 220-52-040, filed 12/17/76; Order 76-26, § 220-52-040, filed 1:45 p.m., 4/20/76; Order 1045, § 220-52-040, filed 3/8/73; Order 807, § 220-52-040, filed 1/2/69, effective 2/1/69; subsections 1, 5, 6, from Orders 409 and 256, filed 3/1/60; subsection 2 from Orders 500 and 256, filed 3/1/60; subsection 3 from Order 528, filed 6/1/61; Order 525, filed 5/3/61; Order 507, filed 4/8/60; Orders 409 and 256, filed 3/1/60; subsection 4 from Order 528, filed 6/1/61; Order 525, filed 5/3/61; Orders 409 and 256, filed 3/1/60; subsection 7 from Orders 414 and 256, filed 3/1/60; subsection 8 from Orders 410 and 256, filed 3/1/60; subsection 9 from Order 409, filed 9/14/56.]

AMENDATORY SECTION (Amending WSR 21-24-031, filed 11/22/21, effective 1/1/22)

WAC 220-340-430 Commercial crab fishery—Gear requirements. (1) Buoy tag and pot tag required.

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of this section, except as provided by (b) and (c) of this subsection. A violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC 220-340-440 may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(c) Persons operating under a valid coastal gear transport permit as provided in WAC 220-340-440 may possess crab pots or buoys bearing the tags issued by another state, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(2) **Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. A

violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(3) Commercial crab fishery buoy tag requirements.

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters, except if authorized by permit issued by the director, each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) All remaining, undeployed buoy tags per license per region must be onboard the designated vessel and available for immediate inspection by the department.

(f) Replacement crab buoy tags.

(i) Puget Sound: The department only issues additional tags to replace lost tags to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration, under penalty of perjury, in the presence of an authorized department employee. The declaration must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery in the case of extraordinary loss or on a case-by-case basis. Replacement buoy tags will not be issued in excess of the license holder's permanent pot limit.

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(5) Commercial crab fishery buoy requirements.

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when 5 pounds of weight is attached, unless otherwise authorized by permit issued by the director.

(b) It is unlawful to use bleach, antifreeze or detergent bottles, paint cans, or any other container as a buoy. The line attaching a buoy to shellfish gear must be weighted sufficiently to prevent the excess line from floating on the water's surface.

(c) No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-330-020.

~~((e))~~ (d) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder may register only one unique buoy brand and one buoy color scheme with the department per license. Persons holding more

than one state license must register buoy color(s) for each license that are distinctly different. The buoy color(s) will be shown in a color photograph.

(i) All buoys fished under a single license must be marked in a uniform manner with one buoy brand number registered by the license holder with the department and be of identical color or color combinations, unless otherwise authorized by permit issued from the director.

(ii) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

(6) Coastal commercial crab fishery line requirements.

(a) All crab pots used in the coastal Dungeness crab fishery shall be set up to use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(b) (i) (~~Beginning December 1, 2020,~~) It is unlawful for a coastal Dungeness crab fishery license holder to use line that connects the main buoy to the crab pot that is not marked sufficiently to identify it as gear used in the Washington coastal Dungeness crab fishery.

(ii) For each shellfish pot used in the Washington coastal commercial Dungeness crab fishery and rigged with line, that line must be marked with 12 inches of red in at least two places. At a minimum, 12 inches of line must be marked in red, no more than one fathom from the main buoy and no more than one fathom from the pot.

(7) Violation of subsection (5) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

[Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 21-24-031 (Order 21-259), § 220-340-430, filed 11/22/21, effective 1/1/22; WSR 20-04-066 (Order 20-15), § 220-340-430, filed 1/31/20, effective 3/2/20. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047. WSR 17-17-104 (Order 17-207), § 220-340-430, filed 8/18/17, effective 9/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-340-430, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 15-03-091 (Order 15-01), § 220-52-042, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-042, filed 11/9/12, effective 12/10/12.]

OTS-3519.2

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

WAC 220-352-335 Puget Sound shrimp—Additional reporting requirements.

Harvesters, pot fishery

(1) License registration: Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or nonspot shrimp), and the quantity of pounds that are being targeted prior to the deployment of any shrimp gear. Reports must be submitted via email or text to shrimp.report@dfw.wa.gov or via an electronic reporting system approved by the department.

(2) Quick reports: Daily catch must be reported to the department by 10:00 a.m. the day after the shrimp are harvested. Reports must be submitted via email or text to shrimp.report@dfw.wa.gov or via an electronic reporting system provided by the agency. Daily catch reports must include the following information as it is recorded on the fish receiving ticket:

(a) Fisher name, buyer name, and date of sale;

(b) Quantity of pounds landed per shrimp species;

(c) Catch area and date of harvest; and

(d) The entire alphanumeric fish ticket number, including the alphabetic prefix.

(e) A fisher who is the wholesale fish buyer or limited fish seller (the original receiver) may submit a quick report per provisions of this subsection to satisfy the requirements of this subsection.

Original Receivers

~~((1))~~ (3) Any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested with pot or trawl gear must record on the shellfish receiving ticket the appropriate catch area based on the location of harvest and the boundary definitions specified in WAC ((220-340-520)) 220-320-140.

~~((2))~~ (4) Quick reports: Any person originally receiving or purchasing shrimp, other than ghost shrimp, taken from Puget Sound by trawl gear or pot gear must report to the department the previous day's purchases by 10:00 a.m. the following morning.

(a) Reports must be sent ((by fax to 360-302-3031 or)) by text message or email to ((shrimpreport@dfw.wa.gov)) shrimp.report@dfw.wa.gov, or by an electronic reporting system approved by the department.

(b) Reports must include, for each fish receiving ticket prepared:

(i) The wholesale fish buyer name((~~r~~)) and number;

(ii) Fisher name((~~r~~ and));

(iii) Date of sale;

~~((ii) The fish receiving ticket number, including the first alphanumeric letter; and~~

~~(iii) The total number))~~ (iv) The entire alphanumeric fish ticket number, including the alphabetic prefix;

(v) The quantity of pounds delivered per shrimp species((~~r~~);

~~(3) Alternative reporting requirements may be specified in an electronic fish receiving ticket agreement (WAC 220-352-035(3)).);~~
and

(vi) The Shrimp Region (WAC 220-320-140) and Marine Fish-Shellfish Management and Catch Reporting Area (WAC 220-301-050) from which the shrimp was harvested.

(c) Receivers who complete and submit an electronic fish receiving ticket form, which is also received by the department, per the provisions of WAC 220-352-035 are exempted from the requirements of this subsection.

[Statutory Authority: RCW 77.04.090 and 77.04.130. WSR 18-11-052 (Order 18-92), § 220-352-335, filed 5/10/18, effective 6/10/18.]

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

WAC 220-352-340 Puget Sound crab—Additional reporting requirements. (1) License registration: Puget Sound commercial crab license holders, or their designated alternate operators, must register which Crab Management Region to which gear will be deployed for each license they hold prior to the fishery opening date.

(a) Registrations must be updated when gear moves between areas.

(b) The department must be notified if gear is not going to be deployed for a period of 72 hours or longer.

(c) Registrations must be made by registering via the WDFW Puget Sound commercial crabbing web page or via email or text to crab.report@dfw.wa.gov.

(d) Reports must include the following information:

(i) Vessel operator name;

(ii) Vessel name and vessel registration number;

(iii) Permit number(s) to be fished;

(iv) Crab Management Region to be fished;

(v) Gear deployment date.

(2) **Quick reports:** Any person originally receiving or purchasing Dungeness crab taken from Puget Sound by nontreaty fishers must report to the department the previous day's purchases by 10:00 a.m. the following day.

(a) Reports must be sent ((to the Mill Creek Regional Office by fax to 425-338-1066, or)) by email or text message to ((crabreport@dfw.wa.gov)) crab.report@dfw.wa.gov, or by using the Puget Sound commercial crab reporting website.

(b) For crab originally received or purchased by a licensed fish buyer, reports must include, for each fish receiving ticket ((submitted)) completed by a licensed fish buyer:

(i) The name and department-issued license number of the wholesale fish buyer or limited fish seller;

(ii) The phone number or email address of the wholesale fish buyer or limited fish seller;

(iii) The date of ((delivery)) landing of crab ((to the original receiver)); and

(iv) The ((total number)) quantity of pounds of crab delivered, by Crab Management Region (WAC 220-320-110) or by Marine Fish-Shellfish Management and Catch Reporting Area (WAC 220-301-040).

~~((2) Alternative reporting requirements may be specified in an electronic fish receiving ticket agreement (WAC 220-352-035(3)).)~~ (c) Receivers who complete and submit an electronic fish receiving ticket form, which is also received by the department, per the provisions of WAC 220-352-035 are exempted from the requirements of this subsection.

(3) **Shellfish transportation tickets:** If crab are transported from a vessel prior to completing a fish receiving ticket and not delivered to an original receiver by 5:00 p.m. on the day following the day of harvest, the fisher must complete and submit a commercial fish and shellfish transportation ticket per the provisions of WAC

220-352-230 and submit a transported crab quick report to the department.

(a) "Transported" is intended to include crab stored beyond 5:00 p.m. on the day following the day of harvest and prior to delivery to an original receiver.

(b) Separate commercial fish and shellfish transportation tickets must be filled out for each day's harvest that is not delivered to a licensed fish buyer by 5:00 p.m. on the day following the day of harvest.

(4) **Transported crab quick reports:** Transported crab quick reports must be submitted by the fisher and received by the department by 10:00 a.m. the day following the day crab are offloaded from the vessel for storage. Reports must be made online using the Puget Sound commercial crab reporting website or by email or text to crab.report@dfw.wa.gov. Reports must include:

(a) The name of the fisher who caught the crab;

(b) The date of harvest of the crab;

(c) Puget Sound commercial license number of the fisher who caught the crab;

(d) The vessel ID from which the crab were harvested;

(e) The number of containers used to store the crab;

(f) The approximate weight of the crab retained;

(g) Catch Reporting Area of crab harvested;

(h) The quantity of pounds of crab retained by Crab Management Region or by Marine Fish-Shellfish Management Area; and

(i) Shellfish transportation ticket number(s).

(5) **Delivery of crab previously retained beyond 5:00 p.m. on the day following the day of harvest (transported crab):** Commercial harvesters of crab in Puget Sound must report the delivery to an original receiver of all transported crab by 10:00 a.m. the day following delivery to an original receiver. Reports must be made using the department-provided electronic forms on the Puget Sound commercial crab reporting website, or by email or text to crab.report@dfw.wa.gov. Reports must contain:

(a) Fisher name;

(b) WDFW-issued vessel ID;

(c) Puget Sound commercial license number;

(d) Date of sale;

(e) Dealer name;

(f) Commercial shellfish transportation ticket number(s) associated with the delivered crab; and

(g) Fish receiving ticket number(s) corresponding to landing date of delivery.

[Statutory Authority: RCW 77.04.090 and 77.04.130. WSR 18-11-052 (Order 18-92), § 220-352-340, filed 5/10/18, effective 6/10/18.]

NEW SECTION

WAC 220-352-355 Puget Sound scallop—Additional reporting requirements. (1) Any wholesale dealer acting in the capacity of an original receiver and receiving scallops from nontreaty fishers must report to the department each day's purchases by 10:00 a.m. the following day.

(a) Reports must be made by text message or email to scallopreport@dfw.wa.gov.

(b) Reports must include, for each ticket prepared:

(i) The licensed fish buyer name, fisher name, date of landing, and the name of the port of landings;

(ii) The entire alphanumeric fish ticket number, including the alphabetic prefix;

(iii) The quantity of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area; and

(iv) The number of pounds that will be transported to a Washington department of health approved wet storage facility, the location of the approved wet storage facility, and the name of the operator of the wet storage facility.

(2) Alternative reporting requirements may be specified in an electronic fish receiving ticket agreement (WAC 220-352-035).

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WSR 22-08-065

PERMANENT RULES

GREEN RIVER COLLEGE

[Filed April 4, 2022, 2:39 p.m., effective May 5, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Department of Education (DOE) issued updated Title IX rules on May 22, 2020, which took effect August 14, 2020. These updated rules incorporate the Title IX regulations by amending Green River College's student conduct code requirements in chapter 132J-126 WAC. These rule changes are necessary to maintain compliance with DOE requirements. On August 24, 2021, DOE announced that it will no longer enforce the cross-examination requirement in the 2020 regulations. To comply with training and live hearing requirements in the 2020 federal regulations, the college rule changes also add authority to contract with the Washington office of administrative hearings and other contractors to help with these duties.

Citation of Rules Affected by this Order: Nine new rules added to chapter 132J-126 WAC; and repealing WAC 132J-126-240, 132J-126-250, 132J-126-260, 132J-126-270, and 132J-300-010.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140.

Adopted under notice filed as WSR 22-02-072 on January 5, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 5; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 4, 2022.

George P. Frasier
Vice President
of College Advancement

OTS-3429.1

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132J-126-320 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(d) Statutory rape. Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

(4) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

[]

NEW SECTION

WAC 132J-126-400 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Sec. 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132J-126-010 through 132J-126-300, these supplemental procedures shall take precedence. Green River College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[]

NEW SECTION

WAC 132J-126-420 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity;

and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132J-126-090.

(4) If the Title IX coordinator determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Title IX coordinator will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

[]

NEW SECTION

WAC 132J-126-430 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the judicial officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the judicial officer determines that there are sufficient grounds to proceed under these supplemental procedures, the judicial officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[]

NEW SECTION

WAC 132J-126-440 Prehearing procedure. (1) Upon filing and serving the written disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132J-126-190. In no event will the hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

[]

NEW SECTION

WAC 132J-126-450 Rights of parties. (1) The college's student conduct procedures, chapter 132J-126 WAC and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator or chair of the student conduct committee will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

[]

NEW SECTION

WAC 132J-126-460 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

[]

NEW SECTION

WAC 132J-126-470 Initial order. (1) In addition to complying with WAC 132J-126-210, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
 - (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
 - (c) Makes findings of fact supporting the determination of responsibility;
 - (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
 - (e) Contains a statement of, and rationale for, the student conduct committee determination of responsibility for each allegation;
 - (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
 - (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and
 - (h) Describes the process for appealing the initial order to the college president.
- (2) The chair of the student conduct committee will serve the initial order on the parties simultaneously.

[]

NEW SECTION

WAC 132J-126-480 Appeals. (1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's of-

office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132J-126-240	Supplemental procedures for sexual misconduct cases.
WAC 132J-126-250	Supplemental definitions.
WAC 132J-126-260	Supplemental complaint process.
WAC 132J-126-270	Supplemental appeal rights.

OTS-3557.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132J-300-010	Grievance procedure—Sex discrimination.
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WSR 22-08-067
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Division of Child Support)

[Filed April 4, 2022, 4:26 p.m., effective May 5, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The establishment of a joint and several administrative child support order does not work well when the goal of family reunification and the fluid nature of reunification plans are taken into account. Married parents often choose to separate (or are required to separate) so that the child can return to the home of one of them. The obligation of the parent with physical custody is suspended by WAC 388-14A-3810, leaving the parent out of the home bearing the full brunt of the joint and several administrative order, further impacting reunification efforts. When the parent out of the home seeks to modify the joint and several order, it is sometimes modified only as to that particular parent, leaving the first parent still subject to the joint and several order if the child ever leaves the first parent's custody. This result does not align with the division of child support's (DCS) efforts to establish and enforce right size orders and can result in harm to families. To resolve this, DCS is changing its policy and will no longer be setting up joint obligations for married parents living together where the child is not living in the home.

Citation of Rules Affected by this Order: Amending WAC 388-14A-3140, 388-14A-8100, and 388-14A-8130.

Statutory Authority for Adoption: RCW 26.09.105, 26.18.170, 26.23.050, 26.23.110, 34.05.220, 74.08.090, 74.20A.055.

Adopted under notice filed as WSR 22-03-005 on January 6, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: April 4, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4901.3

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

- WAC 388-14A-3140 What can happen at a hearing on a support establishment notice?** (1) When a party requests a hearing on a notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical responsibility (NFMR), the hearing is limited to:
- (a) Resolving the current and future support obligation and the accrued support debt of the noncustodial parent (NCP); and
 - (b) Establishing the medical support obligations of both the NCP and the custodial parent (CP), if the CP is the legal or biological parent of the ~~((child(ren)))~~ child or children.
- (2) The hearing is not for the purpose of setting a payment schedule on the support debt.
- (3) The NCP and the CP each have the burden of proving any defenses to their own liability. See WAC 388-14A-3370.
- (4) The NCP and/or the CP must show cause why the terms in the NFFR, NFPR, or NFMR are incorrect.
- (5) The administrative law judge (ALJ) has authority to enter a support obligation that may be higher or lower than the amounts set forth in the NFFR, NFPR, or NFMR, including the support debt, current support, and the future support obligation.
- (a) The ALJ may enter an order that differs from the terms stated in the notice, including different debt periods, if the obligation is supported by credible evidence presented by any party at the hearing, without further notice to any non-appearing party, if the ALJ finds that due process requirements have been met.
 - (b) Any support order entered by the ALJ must comply with the requirements of WAC 388-14A-6300.
- (6) The ALJ has no authority to determine custody or visitation issues, or to set a payment schedule for the arrears debt.
- (7) When a party has advised the ALJ that they will participate by telephone, the ALJ attempts to contact that party on the record before beginning the proceeding or rules on a motion. The ALJ may not disclose to the other parties the telephone number or the location of the party appearing by phone.
- (8) In support establishment hearings, both the NCP and CP may participate in the hearing. However, in certain cases, there is no "custodial parent" because the child or children are in foster care.
- (a) If the NCP and CP both fail to appear for hearing, see WAC 388-14A-3131.
 - (b) If only one of the parties appears for the hearing, see WAC 388-14A-3132.
 - (c) If the NCP and CP both appear for hearing, see WAC 388-14A-3133.
- (9) In some cases prior to May 1, 2022, there ~~((ean))~~ could be two NCPs, called "joint NCPs." This ~~((happens))~~ happened when DCS ~~((serves))~~ served a joint support establishment notice on the marital community made up of ~~((a husband and wife))~~ spouses who ~~((reside))~~ resided together, or on the domestic partnership community made up of two registered domestic partners who ~~((reside))~~ resided together, seeking to establish a support obligation for a child in common who ~~((is))~~ was not residing in their home.
- (a) If both of the joint NCPs fail to appear for hearing, see WAC 388-14A-3131;

(b) If both of the joint NCPs appear for hearing, see WAC 388-14A-3133; or

(c) Prior to May 1, 2022, one joint NCP ((may)) could appear and represent the other joint NCP.

(10) When a CP is granted good cause level B (see WAC 388-422-0020), DCS notifies the CP that the CP will receive documents, notices, and orders. The CP may choose to participate at any time. Failure to appear at hearing results in a default order but does not result in a sanction for noncooperation under WAC 388-14A-2041.

(11) If any party appears for the hearing and elects to proceed, the ALJ hears the matter and enters a final order based on the evidence presented, unless the ALJ grants a continuance. The ALJ includes a party's failure to appear in the initial decision and order as an order of default against that party. The direct appeal rights of the party who failed to appear are limited to an appeal on the record made at the hearing.

[Statutory Authority: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055(9), and 74.20A.056(11). WSR 11-12-006, § 388-14A-3140, filed 5/19/11, effective 6/19/11. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.160. WSR 06-09-015, § 388-14A-3140, filed 4/10/06, effective 5/11/06. Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 34.05.220(1), 74.20A.055, 74.20A.056. WSR 03-20-072, § 388-14A-3140, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 00-15-016 and 00-20-022, § 388-14A-3140, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-400 and 388-11-425.]

AMENDATORY SECTION (Amending WSR 06-16-073, filed 7/28/06, effective 8/28/06)

WAC 388-14A-8100 Are there special rules for setting child support for children in foster care? (1) Child support obligations for children in foster care are set according to the Washington state child support schedule (the WSCSS), found in chapter 26.19 RCW.

(2) When a child or children are placed in foster care, DCS may use the administrative process to set a support obligation:

(a) ~~((As a joint obligation for married parents who reside together;~~

~~(b))~~ As ~~((two))~~ a separate ~~((obligations))~~ obligation for ~~((parents who do not reside together))~~ each parent; or

~~((c))~~ (b) For just one parent, if:

(i) There is already a court or administrative order setting the support obligation of the other parent;

(ii) The other parent is dead; or

(iii) The other parent is unknown.

(3) When setting a support obligation for only one parent, DCS follows the procedure set out in WAC 388-14A-8125.

(4) ~~((When setting))~~ Prior to May 1, 2022, DCS used the administrative process to set a joint support obligation for parents who are married or in a registered domestic partnership and residing together. When setting a joint obligation, DCS ((follows)) followed the procedures set out in WAC 388-14A-8130.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 06-16-073, § 388-14A-8100, filed 7/28/06, effective 8/28/06. Statutory Authority: RCW 13.34.160(3), 13.34.270(7), 74.08.090, 74.13.031(11), 74.13.350, 74.20A.030(4), and 74.20A.310. WSR 05-12-135, § 388-14A-8100, filed 6/1/05, effective 7/2/05. Statutory Authority: RCW 74.08.090. WSR 01-03-089, § 388-14A-8100, filed 1/17/01, effective 2/17/01.]

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-8130 How ((does)) did DCS complete the WSCSS worksheets when setting a joint child support obligation for a child in foster care prior to May 1, 2022? (1) ((When)) Prior to May 1, 2022, the division of child support (DCS) ((is preparing)) prepared an administrative support notice to establish a joint support obligation for the parents of a child in foster care, DCS ((follows)) followed the steps set out in this section for completing the worksheets under the Washington state child support schedule (WSCSS).

(2) DCS ((establishes)) established a joint support obligation when, at the time of order establishment, the parents ((reside)) resided together and ((are)) were either married or in a registered domestic partnership, unless a child support order covering current support for that child ((has)) had already been established for one of the parents.

(3) DCS ((calculates)) calculated each parent's income under the rules set out in WAC 388-14A-3205, and then ((calculates)) calculated the income of the marital or domestic partnership community by combining both parents' income in one column of the worksheet and ((does)) did not put any income or other information in the other column.

(4) DCS ((calculates)) calculated the joint support obligation using the limitations contained in RCW 26.19.065:

(a) The joint child support obligation ((may)) could not exceed ((forty five percent)) 45% of the net income of the community except for good cause.

(b) DCS ((follows)) followed WAC 388-14A-3410 when calculating and applying the self-support reserve limitation.

(c) Even though there ((are)) were two parents involved, and despite the application of any limitations, the presumptive minimum obligation of ((fifty dollars)) \$50 per month per child ((applies)) applied when DCS ((sets)) set a joint child support obligation.

(d) If DCS or the administrative law judge (ALJ) ((may find)) found reasons for deviation ((and must support those)), the reasons were supported with appropriate findings of fact in the support order.

(5) As described in subsection (3) of this section, the support obligation in the column of the WSCSS worksheet which contains information regarding both parents is the joint support obligation of the parents.

(6) DCS ((determines)) determined the joint support obligation of the parents without regard to the cost of foster care placement, as provided in WAC 388-14A-8105.

(7) The rules in this section still apply if parties request modification of joint noncustodial parent (NCP) obligations established by administrative orders prior to May 1, 2022.

[Statutory Authority: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055(9), and 74.20A.056(11). WSR 11-12-006, § 388-14A-8130, filed 5/19/11, effective 6/19/11. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 06-16-073, § 388-14A-8130, filed 7/28/06, effective 8/28/06.]

WSR 22-08-087
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed April 5, 2022, 11:56 a.m., effective May 6, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The office of superintendent of public instruction amended WAC 392-191A-030 to align the definitions with recent rule changes made by the professional educator standards board concerning types of certificates available to educators. Changes were needed to clearly identify the certificate types included in the evaluation rules.

Citation of Rules Affected by this Order: Amending WAC 392-191A-030.

Statutory Authority for Adoption: RCW 28A.405.100.

Adopted under notice filed as WSR 22-02-069 on January 5, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 1, 2022.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-3532.1

AMENDATORY SECTION (Amending WSR 19-19-069, filed 9/17/19, effective 10/18/19)

WAC 392-191A-030 Definitions. The following definitions apply to the terms used in this chapter:

"Certificated classroom teacher" and "teacher" mean a certificated employee who provides academically focused instruction to students and holds one or more of the certificates (~~(pursuant to)~~) under WAC 181-79A-140 (1) through (3), ((+6) (a), (b), (d), and (7)) and 181-79A-142 (1), (2) (a), (b), (d), and (3).

"Certificated principal," "principal" and "assistant principal" mean a person who is employed to supervise the operation and management of a school as provided by RCW 28A.400.100 and holds certificates (~~(pursuant to)~~) under WAC 181-79A-140 (4) (a) ((or (6) (h))) and 181-79A-142 (1), (2) (a), (d), and (3).

"Certificated support personnel" and "certificate support person" mean a certificated employee who provides services to students and holds one or more of the educational staff associate certificates

~~((pursuant to))~~ under WAC 181-79A-140(5) and 181-79A-142 (1), (2)(a), (d), and (3).

"Evaluation" shall mean the ongoing process of identifying, gathering and using information to improve professional performance, assess total job effectiveness, and make personnel decisions.

"Evaluation criteria" means minimum evaluation criteria for classroom teachers specified in WAC 392-191A-060, the minimum evaluation criteria for principals specified in WAC 392-191A-150, and the minimum evaluation criteria for certificated support personnel specified in WAC 392-191-020 and 392-191A-210.

"Evidence" means observed practice, products or results of a certificated classroom teacher's or certificated principal's work that demonstrates knowledge and skills of the educator with respect to the four-level rating system.

"Four-level rating system" means the continuum of performance that indicates the extent to which the criteria have been met or exceeded.

"Instructional framework" means one of the approved instructional frameworks adopted by the superintendent of public instruction to support the four-level rating system pursuant to RCW 28A.405.100.

"Leadership framework" means one of the approved leadership frameworks adopted by the superintendent of public instruction to support the four-level rating system pursuant to RCW 28A.405.100.

"Observe" or "observation" means the gathering of evidence made through classroom or worksite visits, or other visits, work samples, or conversations that allow for the gathering of evidence of the performance of assigned duties for the purpose of examining evidence over time against the instructional or leadership framework rubrics pursuant to this section.

"Rubrics" or "rubric row" means the descriptions of practice used to capture evidence and data and classify teaching or leadership performance and student growth using the evaluation criteria and the four-level rating system.

"Scoring band" means the adopted range of scores used to determine the final summative score for a certificated classroom teacher or principal.

"Student growth" means the change in student achievement between two points in time.

"Student growth data" means relevant multiple measures that can include classroom-based, school-based, school district-based, and state-based tools.

"Summative performance ratings" means the four performance levels applied using the four-level rating system: Level 1 - Unsatisfactory; Level 2 - Basic; Level 3 - Proficient; Level 4 - Distinguished.

[Statutory Authority: RCW 28A.405.100. WSR 19-19-069, § 392-191A-030, filed 9/17/19, effective 10/18/19; WSR 16-17-028, § 392-191A-030, filed 8/8/16, effective 8/31/16; WSR 13-05-009, § 392-191A-030, filed 2/7/13, effective 3/10/13.]

WSR 22-08-089
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed April 5, 2022, 1:31 p.m., effective May 6, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: RCW 70.24.290 was amended (HB [ESHB] 1551, 2020) and directed the office of superintendent of public instruction to adopt rules concerning educating and training school employees on the prevention, transmission, and treatment of blood-borne pathogens. Previously, the requirement was for education and training concerning HIV/AIDS but has been amended to include blood-borne pathogens. The rule making amends chapter 392-198 WAC to modernize the rule language and destigmatize HIV/AIDS by updating school employee training and education for blood-borne pathogens. A more generalized approach to training staff concerning blood-borne pathogens is necessary for effective prevention of potential disease transmission.

Citation of Rules Affected by this Order: Repealing WAC 392-198-020 and 392-198-025; and amending WAC 392-198-005, 392-198-010, 392-198-015, and 392-198-030.

Statutory Authority for Adoption: RCW 70.24.290.

Adopted under notice filed as WSR 22-05-071 on February 15, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 2.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 31, 2022.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-3476.1

Chapter 392-198 WAC
TRAINING—SCHOOL EMPLOYEES—((HIV/AIDS)) BLOOD-BORNE PATHOGENS

AMENDATORY SECTION (Amending WSR 91-18-006, filed 8/23/91, effective 9/23/91)

WAC 392-198-005 Authority. The authority for this chapter is RCW 70.24.290 which ((authorizes)) requires the superintendent of pub-

lic instruction to adopt rules (~~(that require)~~) mandating appropriate education and training (~~(of)~~) for public school employees (~~(about)~~) on the transmission, prevention, and treatment of (~~(HIV/AIDS)~~) diseases caused by blood-borne pathogens as defined by RCW 70.24.017(1). The superintendent of public instruction is further required to develop the course content and educational material necessary in consultation with the department of health (~~(under RCW 70.24.250)~~). OSPI is adopting rules from chapter 296-823 WAC unless otherwise provided here.

[Statutory Authority: RCW 70.24.290. WSR 91-18-006 (Order 91-16), § 392-198-005, filed 8/23/91, effective 9/23/91.]

AMENDATORY SECTION (Amending WSR 91-18-006, filed 8/23/91, effective 9/23/91)

WAC 392-198-010 Purpose ((s)). The purpose of this chapter is to provide public school districts with the mandatory (~~(and supplement-
tal)~~) course content requirements for training school district employ-
ees regarding the transmission, prevention, and treatment of (~~(HIV/
AIDS)~~) diseases caused by blood-borne pathogens.

[Statutory Authority: RCW 70.24.290. WSR 91-18-006 (Order 91-16), § 392-198-010, filed 8/23/91, effective 9/23/91.]

AMENDATORY SECTION (Amending WSR 91-18-006, filed 8/23/91, effective 9/23/91)

WAC 392-198-015 Course content requirements for ((HIV/AIDS))
blood-borne pathogen inservice training—Mandatory. (~~(Pursuant to RCW
70.24.250 and)~~) In accordance with RCW 70.24.290, the (~~(HIV/AIDS)~~)
blood-borne pathogen training provided by public school districts
(~~(shall)~~) must include(~~(:~~)

- ~~(1) History and epidemiology of HIV/AIDS;~~
- ~~(2) Methods of transmission of HIV;~~
- ~~(3) Methods of prevention of HIV including universal precautions
for handling of body fluids;~~
- ~~(4) Current treatment for symptoms of HIV and prognosis of dis-
ease progression;~~
- ~~(5) State and federal laws governing discrimination of persons
with HIV/AIDS;~~
- ~~(6) State and federal laws regulating confidentiality of a per-
son's HIV antibody status)~~ the elements outlined in WAC 296-823-12005
with an emphasis on basic, essential skills such as handwashing and
use of personal protective equipment.

[Statutory Authority: RCW 70.24.290. WSR 91-18-006 (Order 91-16), § 392-198-015, filed 8/23/91, effective 9/23/91.]

AMENDATORY SECTION (Amending WSR 91-18-006, filed 8/23/91, effective 9/23/91)

WAC 392-198-030 New employee training. Each school district ~~((shall))~~ must ensure that newly hired school district employees ~~((shall))~~ receive the ~~((HIV/AIDS))~~ blood-borne pathogens training prescribed in WAC 392-198-015 ~~((within six months from the first day of employment in the district))~~ prior to assigning tasks where occupational exposure might occur and at least annually and within one year of the previous training, in alignment with WAC 296-823-12005.

[Statutory Authority: RCW 70.24.290. WSR 91-18-006 (Order 91-16), § 392-198-030, filed 8/23/91, effective 9/23/91.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-198-020	Course content requirements for HIV/AIDS inservice training—Supplemental.
WAC 392-198-025	Continuing inservice.

WSR 22-08-097

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed April 5, 2022, 4:16 p.m., effective May 6, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making amends the Washington alfalfa seed commission marketing order by removing term limits from board member term of office.

Citation of Rules Affected by this Order: Amending WAC 16-529-050.

Statutory Authority for Adoption: RCW 15.65.047.

Adopted under notice filed as WSR 22-04-042 on January 26, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 5, 2022.

Patrick Capper
Deputy Director

OTS-3950.1

AMENDATORY SECTION (Amending WSR 05-08-010, filed 3/25/05, effective 4/25/05)

WAC 16-529-050 Term of office. ~~((+1))~~ The term of office for members of the board shall be three years, and one-third of the membership as nearly as possible shall be appointed or elected each year.

~~((2) Except for the director's representative, no appointed or elected member of the board may serve more than two full consecutive three-year terms.))~~

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-08-010, § 16-529-050, filed 3/25/05, effective 4/25/05; Order 1, Article II, § D, filed 3/13/75, effective 7/1/75.]

WSR 22-08-101
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed April 5, 2022, 4:35 p.m., effective May 6, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposed WAC language adopts the cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260. The WAC language includes integration and implementation of the CCDEI standards for professional learning and educator preparation programs.

Citation of Rules Affected by this Order: New WAC 181-85-204; and Amending WAC 181-85-033, 181-85-202, 181-85-204, 181-79A-244, 181-82A-210, 181-82A-212, 181-78A-232, and 181-78A-236.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 22-05-085 on March 24 [February 15], 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 7, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 24, 2022.

Sophia Keskey
Rules Coordinator

OTS-3613.1

AMENDATORY SECTION (Amending WSR 22-03-075, filed 1/18/22, effective 2/18/22)

WAC 181-78A-232 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval domain standard—Candidate knowledge, skills, and cultural responsiveness. Knowledge, skills, and cultural responsiveness. Providers prepare candidates who demonstrate the knowledge, skills and cultural responsiveness required for the particular certificate and areas of endorsement, which reflect the state's approved standards.

(1) Providers demonstrate effective, culturally responsive pedagogy using multiple instructional methods, formats, and assessments.

(a) Qualified faculty use multiple instructional strategies, pedagogies, and assessments to address candidates' academic language ability levels and cultural and linguistic backgrounds.

(b) Providers create opportunities for faculty members and program personnel to pursue, apply, and practice ongoing professional learning to improve their knowledge, skill, effectiveness, and cultural responsiveness.

(c) Faculty within the program and the unit collaborate among one another, with content specialists, P-12 schools, members of the broader professional community, and diverse members of local communities for continuous program improvement.

(d) Faculty members and program leaders systematically and comprehensively evaluate faculty's effectiveness in teaching and learning, and competence on the cultural competency, diversity, equity, and inclusion standards under WAC 181-85-204.

(2) Providers ensure that completers demonstrate the necessary subject matter knowledge for success as educators in schools.

(a) Candidates demonstrate knowledge and competence relative to the standards related to the role adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate the most recently published InTASC Standards, candidates in principal programs demonstrate the most recently published NELP - Building Level Standards, candidates in superintendent programs demonstrate the most recently published NELP - District Level Standards, candidates in program administrator programs demonstrate the most recently published NELP Building or District Level Standards, candidates in school counselor programs demonstrate the most recently published CACREP standards, candidates in school psychologist programs demonstrate the most recently published NASP standards for graduate preparation of school psychologists, and candidates in career and technical education educator preparation programs demonstrate and document the career and technical education standards approved by the professional educator standards board.

(b) Teacher candidates must take a board approved basic skills assessment prior to program admission. A provider of a teacher preparation program must assure that all candidates entering the program have successfully met the basic skills requirement under chapter 181-01 WAC at the time of admission. The provider must collect and hold evidence of candidates meeting this requirement.

(c) Teacher candidates must take a content knowledge assessment prior to beginning student teaching. The provider must collect and hold evidence of candidates meeting this requirement. Teacher candidates apply content knowledge as reflected in board approved endorsement competencies. Endorsement assessments are not required for teacher candidates in career and technical education business and industry route programs.

(d) Providers ensure that educator candidates complete coursework on issues of abuse and emotional or behavioral distress in students under RCW 28A.410.035 and WAC 181-79A-200.

(e) Under RCW 28A.410.040, a teacher candidate whose only baccalaureate degree is in early childhood education, elementary education, or special education must have completed 30 quarter credits, or the equivalent in semester credits or continuing education credit hours, in one academic field in an endorsement area under WAC 181-82A-202.

(f) Candidates for an initial certificate in a career and technical education residency teacher preparation program must complete a minimum of 45 quarter credits, or the equivalent in semester credits or continuing education credit hours, in the specific career and technical education area for which certification is sought.

(3) Providers ensure that candidates demonstrate pedagogical knowledge and skill relative to the professional standards adopted by the board for the role for which candidates are being prepared.

(a) Candidates demonstrate knowledge and competence relative to the standards related to the role, which were adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate most recently published InTASC Standards, candidates in principal programs demonstrate most recently published NELP - Building Level Standards, candidates in superintendent programs demonstrate most recently published NELP - District Level Standards, candidates in program administrator programs demonstrate the most recently published NELP Building or District Level Standards, candidates in school counselor programs demonstrate the most recently published CACREP standards, candidates in school psychologist programs demonstrate the most recently published NASP standards for graduate preparation of school psychologists, and candidates in career and technical education educator preparation programs demonstrate and document the career and technical education standards approved by the professional educator standards board.

(b) Faculty and mentors provide regular and ongoing feedback to candidates regarding field based performance that is actionable and leads to improvement in candidates' practice.

(c) Providers demonstrate through structured observation, discussion, surveys, and/or artifacts that program completers effectively apply the professional knowledge, skills, and dispositions that the preparation program was designed to achieve.

(d) Providers may use the edTPA teacher performance assessment as a formative tool as long as notification to candidates is included in all program descriptions under chapter 28A.410 RCW.

(e) Providers of career and technical educator preparation programs provide candidates all necessary guidance to document, demonstrate, and submit for approval the required hours of occupational experience.

(f) In order to ensure that teacher and principal candidates can recognize signs of emotional or behavioral distress in students and appropriately refer students for assistance and support, teacher and principal preparation program providers must incorporate the social emotional standards and benchmarks, and must provide guidance to candidates on related competencies described in RCW 28A.410.270.

(4) Providers ensure that candidates are well prepared to exhibit the knowledge and skills of culturally responsive educators as described in the cultural competency, diversity, equity, and inclusion standards under WAC 181-85-204.

(a) Providers ensure that candidates demonstrate knowledge and competence relative to cultural competency, diversity, equity, and inclusion standards under WAC 181-85-204.

(b) Providers offer all candidates meaningful, reflective opportunities to interact with racially and culturally diverse colleagues, faculty, P-12 practitioners, and P-12 students and families.

~~((b))~~ (c) Providers prepare candidates to adapt their practices based on students' prior experiences, cultural knowledge, and frames of reference to make learning encounters more relevant and effective.

~~((e))~~ (d) Providers ensure course work explicitly focuses on cultural responsiveness and integrates components of culturally responsive education within and throughout all courses.

~~((d))~~ (e) Faculty explicitly model equity pedagogy in course work and field experiences in ways that enable candidates to integrate

their own cultural and linguistic backgrounds into classroom activities.

(5) Teacher candidates engage with the since time immemorial curriculum focused on history, culture, and government of American Indian peoples as prescribed in RCW 28B.10.710.

(a) There shall be a one quarter or semester course, or the equivalent in continuing education credit hours, in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teacher preparation programs.

(b) No person shall be completed from any of said programs without completing said course of study, unless otherwise determined by the Washington professional educator standards board.

(c) Any course in Washington state or Pacific Northwest history and government used to fulfill the requirement of this section shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region.

(d) Teacher preparation program providers shall ensure that programs meet the requirements of this section by integrating the curriculum developed and made available free of charge by the office of the superintendent of public instruction into existing programs or courses and may modify that curriculum in order to incorporate elements that have a regionally specific focus.

[Statutory Authority: Chapter 28A.410 RCW. WSR 22-03-075, § 181-78A-232, filed 1/18/22, effective 2/18/22; WSR 21-20-052, § 181-78A-232, filed 9/28/21, effective 10/29/21; WSR 21-15-084, § 181-78A-232, filed 7/16/21, effective 8/16/21; WSR 21-08-023, § 181-78A-232, filed 3/29/21, effective 4/29/21; WSR 19-24-103, § 181-78A-232, filed 12/4/19, effective 1/4/20. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-144, § 181-78A-232, filed 7/24/19, effective 8/24/19.]

OTS-3606.1

AMENDATORY SECTION (Amending WSR 21-20-052, filed 9/28/21, effective 10/29/21)

WAC 181-78A-236 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval domain standard—Field experience and clinical practice. Field experience and clinical practice. Providers offer field-based learning experiences and formalized clinical practice experiences for candidates to develop and demonstrate the knowledge and skills needed for their role.

(1) Providers establish and maintain field placement practices, relationships, and agreements with all school districts in which candidates are placed for field experiences leading to certification or endorsement under WAC 181-78A-125.

(a) The program provider and school partners cooperatively design, implement, and evaluate field experiences and clinical practices conforming to board standards and requirements for the role.

(b) Clinical practice for teacher candidates in programs approved to offer traditional routes to teacher certification must consist of no less than (~~four hundred fifty~~) 450 hours in a classroom setting, with a qualifying mentor teacher. Clinical practice for teacher candidates in programs approved to offer alternative routes to certification must consist of no less than (~~five hundred forty~~) 540 hours in a classroom setting with a qualifying mentor.

(c) Principal candidates complete an internship for a full school year, consisting of at least (~~five hundred forty~~) 540 hours, half of which must be during school hours when students and/or staff are present. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220 and 181-78A-232.

(d) Superintendent candidates must complete an internship of at least (~~three hundred sixty~~) 360 hours. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220 and 181-78A-232.

(e) Candidates in career and technical education teacher preparation programs as described in WAC 181-77-031 must complete a student teaching experience of at least (~~four hundred fifty~~) 450 hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and technical education standards approved by the professional educator standards board.

(f) Candidates in career and technical education administrator and business and industry route programs must complete a practicum of at least (~~sixty~~) 60 hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and technical education standards approved by the professional educator standards board.

(g) Providers articulate in writing clear entry and exit criteria as well as a process for mitigating concerns during clinical practice for candidates, school leader(s), and the mentor.

(2) Providers ensure that candidates integrate knowledge and skills developed through field and industry experiences with the content of programs' course work.

(a) Providers offer field experiences in which teacher and principal candidates plan, practice, discuss, and reflect upon methods of instruction and differentiation, and all educator candidates demonstrate that they have the appropriate, specific relevant skills pursuant to WAC 181-78A-220 and 181-78A-232 to be effective in the role.

(b) Integrate assignments, assessments, and actionable feedback throughout candidates' field experiences.

(c) Provide faculty supervision, including supervisory visits, on an ongoing basis.

(d) Identify and recruit mentors for candidates who are educational leaders collaboratively with the partner school(s) or district(s).

(e) Ensure that candidates' mentors are fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising.

(f) Mentors and school leaders are provided with a set of internship expectations and receive, or provide evidence of having received, training and experience mentoring adult learners and culturally responsive teaching and learning.

(g) Effectiveness of mentor preparation and communication are reviewed annually by program faculty.

(3) Providers offer field experiences in accordance with chapter 181-78A WAC and the board approved candidate assessment requirements.

(a) Ensure that educator candidates are placed in settings where they can be evaluated and given actionable feedback, including on the cultural competency, diversity, equity, and inclusion standards under WAC 181-85-204.

(b) Ensure that educator candidates are fingerprinted and have completed required character clearance prior to placement in field experience settings.

(4) Providers ensure that candidates participate in field experiences in school settings with students and teachers who differ from themselves in race, ethnicity, home language, socio-economic status or local population density.

(a) Field experiences provide opportunities to work in communities or with student populations with backgrounds dissimilar to the background of the candidate.

(b) Course assignments and discussions offer candidates opportunities to reflect upon interactions with diverse populations and communities in order to integrate professional growth in cultural responsiveness as a habit of practice.

(c) Candidates have opportunities to design, implement and receive feedback on cultural responsiveness in lessons, assignments, and activities.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-20-052, § 181-78A-236, filed 9/28/21, effective 10/29/21; WSR 21-08-023, § 181-78A-236, filed 3/29/21, effective 4/29/21; WSR 20-20-091, § 181-78A-236, filed 10/5/20, effective 11/5/20. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-144, § 181-78A-236, filed 7/24/19, effective 8/24/19.]

OTS-3607.1

AMENDATORY SECTION (Amending WSR 21-15-085, filed 7/16/21, effective 8/16/21)

WAC 181-79A-244 Certificate renewal requirements. Certificate renewal requirements include the following:

(1) **Equity-based school practices.** Applications for renewal dated July 1, 2023, and beyond, for the certificate types and roles as indicated in (a) and (b) of this subsection, must demonstrate completion of professional learning focused on equity based school practices aligned with the cultural competency, diversity, equity, and inclusion (CCDEI) standards under ~~((RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the professional learning must be aligned to the cultural competency standards published by the board))~~ WAC 181-85-204.

(a) Completion of at least ~~((fifteen))~~ 15 continuing education credit hours of professional learning in equity-based school practices is required for renewal of residency, professional, initial, and continuing teacher and CTE teacher certificates.

(b) Completion of at least ~~((ten))~~ 10 continuing education credit hours of professional learning in equity-based school practices is re-

quired for renewal of residency, professional, initial, and continuing principal, program administrator, superintendent, and CTE director certificates.

(c) Individuals holding at least one valid, expiration dated administrator certificate under (b) of this subsection are only required to meet the equity-based school practices requirement for administrators when renewing or reinstating a teacher certificate under (a) of this subsection.

(d) Holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS) meet the equity-based school practices requirement by maintaining a valid National Board Certificate.

(e) A professional growth plan with at least one goal aligned to the standards in this subsection meets the equity-based school practices requirement.

(2) **National Professional Standards for Education Leaders.** Applications for renewal dated July 1, 2023, and beyond, for holders of residency, professional, initial, and continuing certificates in the role of principal, program administrator, superintendent and CTE director, must demonstrate completion of (~~ten~~) 10 continuing education credit hours of professional learning focused on the National Policy Board for Educational Administration (NPBEA) Professional Standards for Educational Leaders (PSEL). A professional growth plan with at least one goal aligned to the PSEL standards meets the certificate renewal requirement in this subsection.

(3) **Providers for professional learning in equity-based school practices and National Professional Standards for Education Leaders.** Professional learning under subsections (1) and (2) of this section must be provided by one or more of the following organizations. These organizations may only provide the professional learning for as long as they maintain status as a Washington state approved in-service education agency under chapter 181-85 WAC.

(a) Association of Washington school principals;

(b) Office of the superintendent of public instruction;

(c) Professional educator standards board-approved administrator or teacher preparation program providers;

(d) Washington education association;

(e) Washington state educational service districts; or

(f) Washington state school districts, tribal compact schools, approved charter schools, Washington school for the deaf, Washington school for the blind.

(4) **Government-to-government relationships with federally recognized tribes.**

(a) Applications for renewal dated July 1, 2023, and beyond, for holders of residency, professional, initial, and continuing certificates in the role of principal, program administrator, superintendent and CTE director, must demonstrate completion of five continuing education credit hours of professional learning focused on government-to-government relationships with federally recognized tribes.

(b) Professional learning related to government-to-government relationships with federally recognized tribes must be provided by one or more subject matter experts approved by the governor's office on Indian affairs in collaboration with the tribal leaders congress on education and the office of native education in the office of the superintendent of public instruction.

(c) Completion of a professional growth plan (PGP) may not be used to meet the requirement for professional learning in government-to-government relationships.

(5) **Science, technology, engineering, math (STEM) integration.** Applications for certificate renewal must demonstrate completion of at least (~~fifteen~~) 15 continuing education credit hours, or at least one goal from an annual professional growth plan, emphasizing the integration of science, technology, engineering, and/or mathematics instruction under RCW 28A.410.2212.

(a) This renewal requirement applies to teachers in the following areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics; secondary science; the designated sciences; and career and technical education. Specific endorsements in these endorsement areas are as published by the professional educator standards board.

(b) Holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS) meet this requirement by maintaining a valid National Board Certificate.

(6) **Suicide prevention training requirement.** Renewal of certificates, and issuance of professional certificates, for school counselors, school psychologists, school nurses, and school social workers requires completion of suicide prevention training under RCW 28A.410.226, 43.70.442, and as described in this section.

Approved trainings meeting this suicide prevention training requirement will be as published by the professional educator standards board. The training program must be at least three hours in length. The professional educator standards board will consider these training programs as continuing education credit hours.

(7) **Washington state department of health licenses.**

(a) Holding a valid department of health license as a physical therapist in Washington state is a requirement for renewal of school physical therapist educational staff associate (ESA) certificate.

(b) Holding a valid department of health license as an occupational therapist in Washington state is required for renewal of school occupational therapist ESA certificates.

(c) Holding a valid department of health license as a registered nurse (RN) in Washington state is a requirement for renewal of school nurse ESA certificates.

(8) **National certificates related to educational staff associate roles.**

(a) Holding a valid Board Certified Behavior Analyst (BCBA) certificate from the Behavior Analyst Certification Board (BACB), or other national certificate as approved by the professional educator standards board, is a requirement for renewal of School Behavior Analyst ESA certificates.

(b) Holding a valid Certified Orientation and Mobility Specialist (COMS) Certificate from Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP), or, a valid National Orientation and Mobility Certification (NOMC) from the National Blindness Professional Certification Board (NBPCB), is a requirement for renewal of school Orientation and Mobility Specialist ESA Certificates.

(9) **Continuing education role requirements.** Except as otherwise required in Title 181 WAC, continuing education for the following roles must relate to the described areas.

(a) CTE teacher. Continuing education credit hours for renewal of CTE teacher certificates must relate to career and technical education

methods, including those described in RCW 28A.700.010 and WAC 181-77A-165, or to the subject matter certified to teach.

(b) CTE director. Continuing education credit hours for renewal of CTE director certificates must relate to career and technical education, or supervisory or managerial subjects.

(c) School counselor. Continuing education credit hours for renewal must relate to:

(i) American School Counseling Association (ASCA) Professional Standards and Competencies; or

(ii) School Counselor Standards published by the National Board for Professional Teaching Standards (NBPTS).

(d) School psychologist. Continuing education credit hours for renewal certificates must relate to the National Association of School Psychologists (NASP) Professional Practices.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-15-085, § 181-79A-244, filed 7/16/21, effective 8/16/21.]

OTS-3604.1

AMENDATORY SECTION (Amending WSR 21-20-047, filed 9/28/21, effective 10/29/21)

WAC 181-82A-210 Proposal process for a new specialty endorsement in Washington state. Organizations seeking the creation of a new specialty endorsement in Washington state follow a two-phase process including a preproposal and a proposal.

(1) **Preproposal.** The applicants must submit a preproposal declaring an intent to submit a proposal for the creation of a new specialty endorsement in Washington state. The preproposal will address all requirements published by the board including, but not limited to, the following. The preproposal will:

(a) Provide the name of the specialty endorsement;

(b) Identify at least two organizations submitting the proposal for the new specialty endorsement. These organizations must be eligible to serve as in-service education agencies under WAC 181-85-045;

(c) Identify the proposed essential learnings for the specialty endorsement, or describe the plan to develop the essential learnings;

(d) Describe how the specialty endorsement is aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under ~~((RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the proposers will describe how the specialty endorsement is aligned and responsive to the cultural competency standards published by the board))~~ WAC 181-85-204; and

(e) Describe the need for the specialty endorsement, demonstrating response to educator, student, and community needs.

(2) **Proposal.** If the preproposal receives approval from the professional educator standards board, the proposers shall submit a proposal. The proposal will address all requirements published by the board including, but not limited to, the following:

(a) Identify any changes to the preproposal information since the preproposal was submitted;

(b) Letter of commitment from at least two organizations interested in seeking approval to offer the specialty endorsement. If the organizations submitting letters of commitment are the same organizations who are submitting the proposal, the proposal must include at least one letter of support from an additional organization;

(c) Pilot. The proposal will include a description of the pilot of essential learnings for the specialty endorsement including, but not limited to:

(i) Report on the diversity of pilot participants;

(ii) Description of how the pilot was aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under ((RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the proposers will describe how the pilot was aligned and responsive to the cultural competency standards published by the board)) WAC 181-85-204;

(iii) Approved specialty endorsement providers may consider work completed by an individual in a specialty endorsement pilot towards meeting the requirements for recommendation for a specialty endorsement.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-20-047, § 181-82A-210, filed 9/28/21, effective 10/29/21.]

AMENDATORY SECTION (Amending WSR 21-20-047, filed 9/28/21, effective 10/29/21)

WAC 181-82A-212 Proposal process for an organization to be approved to offer a specialty endorsement. Organizations seeking approval to offer a specialty endorsement follow a one-phase proposal process.

(1) Organizational eligibility:

(a) Organizations eligible to apply for approval as a specialty endorsement program provider include those eligible to serve as an in-service education agency under WAC 181-85-045.

(b) In order to offer a specialty endorsement, providers must maintain status as an approved in-service education agency or professional educator standards board approved educator preparation program provider.

(2) Proposal process. The prospective provider will submit a proposal that addresses all requirements published by the board including, but not limited to, the following:

(a) Description of how the organization will determine that a participant has met the requirements for the specialty endorsement, including the essential learnings;

(b) Statement of need for the provider offering the specialty endorsement, demonstrating response to educator, student, and community needs;

(c) Description of strategies and practices the organization will use to recruit and retain participants from historically excluded groups, including participants of color;

(d) Description of how the provider will implement the specialty endorsement offering in a manner aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under ((RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the proposer will describe how the provider will implement the

~~specialty endorsement offering in a manner aligned and responsive to the cultural competency standards published by the board)~~ WAC 181-85-204;

(e) At least two letters of support from education or community-related organizations; and

(f) Organizational capacity to support participants in completing a specialty endorsement.

(3) Reapproval, rescindment, and disapproval.

(a) Specialty endorsement program providers approved under this section must complete a reapproval process every five years per a schedule posted by the professional educator standards board.

(b) The board, upon receipt of a serious complaint from any source, or upon its own initiative prompted by indications of the need for response, may require a provider to complete the reapproval process.

(c) Approved providers that voluntarily rescind their approval shall be permitted to continue to prepare and recommend for a specialty endorsement. Candidates who have been previously admitted to the program, provided that no recommendations for credentials will be accepted later than (~~twelve~~) 12 months following receipt of the formal letter to rescind provider approval. The provider will notify all currently enrolled candidates of the provider's change in status and notify candidates of the (~~twelve-month~~) 12-month timeline to complete requirements for recommendation.

(d) Disapproved specialty endorsement programs may reapply for approval by following the specialty endorsement approval process.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-20-047, § 181-82A-212, filed 9/28/21, effective 10/29/21.]

OTS-3605.1

AMENDATORY SECTION (Amending WSR 21-15-085, filed 7/16/21, effective 8/16/21)

WAC 181-85-033 Activity-based continuing education credit hours.

(1) **Eligibility period.** Individuals are eligible for the continuing education credit hours described in this section for up to seven years following the completion date of the indicated activity.

(2) Professional growth team.

(a) A professional growth team for the purpose of certificate renewal means a team comprised of the individual renewing the certificate and a minimum of one colleague, who holds a valid Washington state educator certificate under Title 181 WAC, or paraeducator certificate under Title 179 WAC, chosen by the individual.

(b) For consultation and collaboration, members of a professional growth team, excluding the candidate, are eligible for the equivalent of three continuing education credit hours. The team member may not receive more than the equivalent of six continuing education credit hours, as defined by this section, during the period beginning July 1st of one year and ending June 30th of the following year.

(3) **School accreditation site visit team.** A person holding a valid educational certificate under RCW 28A.410.010 is eligible for the

equivalent of (~~ten~~) 10 continuing education credit hours for serving on a school accreditation site visit team. The person may not receive more than the equivalent of (~~twenty~~) 20 continuing education credit hours during a calendar year period.

(4) **Mentors and field experience supervisors.** Individuals officially designated as a mentor or field experience supervisor by a PESB approved educator preparation program, college or university, school district, educational service district, approved private school, tribal compact school, approved charter school, a state agency providing educational services to students, or the superintendent of public instruction, who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of (~~thirty~~) 30 continuing education credit hours for service. The service must be as a mentor or field experience supervisor for teachers, administrators, educational staff associates, paraeducators, or interns or candidates in these roles. The individual may not receive more than the equivalent of (~~thirty~~) 30 continuing education credit hours under this subsection during a school year period.

(5) **National board certification from the National Board for Professional Teaching Standards (NBPTS):**

(a) Individuals who submitted at least one component of an initial NBPTS national board certification process in 2017 or earlier, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of (~~forty-five~~) 45 continuing education credit hours for submission of a complete portfolio of four components of the National Board for Professional Teaching Standards certification process. Completion of a national board certification process shall be defined as published by the professional educator standards board. Upon achieving national board certification, the individual is eligible for the equivalent of an additional (~~forty-five~~) 45 continuing education credit hours for a total of (~~ninety~~) 90 continuing education credit hours per national board certificate. Beginning January 1, 2022, all individuals submitting complete components as part of an initial NBPTS national board certification process are eligible for continuing education credit hours as described in (b) of this subsection.

(b) Individuals who first submitted a component of an initial NBPTS national board certification process in 2018 or later, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of (~~fifty~~) 50 continuing education credit hours per submission of a complete national board component, for a total of (~~two-hundred~~) 200 continuing education credit hours per submission of a complete national board certification portfolio. Completion of a national board component shall be defined as published by the professional educator standards board.

(c) Individuals who submit a complete NBPTS national board renewal portfolio in 2018 or later, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of (~~two-hundred~~) 200 continuing education credit hours. Completion of a national board renewal portfolio shall be defined as published by the professional educator standards board.

(d) Individuals who submit a complete NBPTS national board maintenance of certification portfolio, for a national board certificate with a five-year validity period, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of (~~one-hundred~~) 100 continuing education credit hours. Completion of a

national board maintenance of certification portfolio shall be defined as published by the professional educator standards board.

(6) **External assessment for professional certification.** Teachers who achieve the professional certification through the external assessment under WAC 181-79A-206 are eligible for the equivalent of (~~one hundred fifty~~) 150 continuing education credit hours.

(7) **First peoples' language, culture, and oral tribal traditions.** In-service training or continuing education in first peoples' language, culture, and oral tribal traditions provided by a sovereign tribal government participating in the Washington state first peoples' language, culture, and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section.

(8) **Scorers for the Washington teacher performance assessment.** Individuals who serve as scorers for the Washington teacher performance assessment are eligible for the equivalent of (~~ten~~) 10 continuing education credit hours for each four assessments scored. However, an individual may not receive more than the equivalent of (~~twenty~~) 20 continuing education credit hours during a calendar year period. Additionally, individuals who receive initial training as scorers for the Washington teacher performance assessment are eligible for the equivalent of (~~ten~~) 10 continuing education credit hours.

(9) **Scorers for the Washington ProTeach Portfolio assessment.** Individuals who serve as scorers for the Washington ProTeach Portfolio assessment are eligible for the equivalent of (~~ten~~) 10 continuing education credit hours for completing one full scoring session during a calendar year. An individual may not receive more than the equivalent of (~~twenty~~) 20 continuing education credit hours during a calendar year period. Individuals who receive initial training as scorers for the Washington ProTeach Portfolio assessment are eligible for the equivalent of (~~ten~~) 10 additional continuing education credit hours. Continuing education credit hours under this subsection are available through December 31, 2027.

(10) **Professional growth plans.**

(a) Educator individualized professional growth plan means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet one or more of the following:

(i) Professional role standards under WAC 181-85-203, or paraeducator standards of practice under chapter 179-07 WAC;

(ii) Cultural competency, diversity, equity, and inclusion (CCDEI) standards under (~~RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the professional growth plan must be aligned to the cultural competency standards published by the board~~) WAC 181-85-204; or

(iii) Social emotional learning standards, benchmarks, and indicators under RCW 28A.410.270.

(b) Only one professional growth plan may be completed each year. Professional growth plans will be completed during the period beginning July 1st of one year and ending June 30th of the following year. Completion of the professional growth plan will include review by the professional growth team, as defined in subsection (2) of this section.

(c) Individuals may apply their focused evaluation professional growth activities from the evaluation system towards the professional growth plan for certificate renewal under RCW 28A.405.100 (12) (c) (vi).

(d) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan are eligible for (~~thirty~~) 30 continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan are eligible for (~~twenty-five~~) 25 continuing education credit hours.

(e) For educators holding multiple certificates as described in Title 179 or 181 WAC, a professional growth plan for teacher, administrator, education staff associate, or paraeducator shall meet the requirements of a professional growth plan for all certificates held by an individual.

(11) Paraeducator certificates.

(a) Individuals who complete the paraeducator fundamental course of study as described in chapter 179-09 WAC are eligible for the number of continuing education credit hours completed up to (~~twenty-eight~~) 28 continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

(b) Individuals who complete the course work for the English language learner subject matter certificate as described in chapter 179-13 WAC are eligible for the number of continuing education credit hours completed up to (~~twenty~~) 20 continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

(c) Individuals who complete the course work for the special education subject matter certificate as described in chapter 179-15 WAC are eligible for the number of continuing education credit hours completed up to (~~twenty~~) 20 continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

(12) Government-to-government relationships with federally recognized tribes. Individuals who complete the professional learning on government-to-government relationships with federally recognized tribes as described under WAC 181-79A-244 are eligible for the number of continuing education credit hours completed up to five continuing education credit hours every five years unless they are issued these continuing education credit hours by a state approved in-service education agency.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-15-085, § 181-85-033, filed 7/16/21, effective 8/16/21; WSR 20-19-023, § 181-85-033, filed 9/4/20, effective 10/5/20. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-111, § 181-85-033, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-17-015, § 181-85-033, filed 8/2/18, effective 9/2/18. Statutory Authority: Chapter 28A.410 RCW. WSR 16-24-024, § 181-85-033, filed 11/29/16, effective 12/30/16. Statutory Authority: RCW 28A.410.210. WSR 12-17-039, § 181-85-033, filed 8/7/12, effective 9/7/12; WSR 12-04-031, § 181-85-033, filed 1/26/12, effective 2/26/12; WSR 11-04-048, § 181-85-033, filed 1/25/11, effective 2/25/11; WSR 10-20-079, § 181-85-033, filed 9/29/10, effective 10/30/10; WSR 08-03-101, § 181-85-033, filed 1/20/08, effective 2/20/08; WSR 06-14-010, § 181-85-033, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-85-033, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-19-104, §

180-85-033, filed 9/20/05, effective 10/21/05; WSR 04-20-094, §
180-85-033, filed 10/5/04, effective 11/5/04; WSR 02-18-050, §
180-85-033, filed 8/28/02, effective 9/28/02.]

AMENDATORY SECTION (Amending WSR 21-15-085, filed 7/16/21, effective 8/16/21)

WAC 181-85-202 Content standards for continuing education credit hours. The content and objectives of in-service continuing education credit hours must relate to one or more of the following:

- (1) Professional role standards under WAC 181-85-203;
- (2) Paraeducator standards of practice under chapter 179-07 WAC;
- (3) Cultural competency, diversity, equity, and inclusion (CCDEI) standards under ((RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the content must relate to the cultural competency standards published by the board)) WAC 181-85-204; or
- (4) Social emotional learning standards, benchmarks, and indicators under RCW 28A.410.270.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-15-085, § 181-85-202, filed 7/16/21, effective 8/16/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-143, § 181-85-202, filed 7/24/19, effective 8/24/19.]

NEW SECTION

WAC 181-85-204 Cultural competency, diversity, equity, and inclusion standards. The cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260 are as adopted and published by the professional educator standards board.

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WSR 22-08-104

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed April 6, 2022, 8:32 a.m., effective May 7, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending WAC 182-513-1105 to remove stated dollar amounts for certain personal needs allowances and replace them with a reference to the current Washington apple health income and resource standards chart located at www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

Citation of Rules Affected by this Order: Amending WAC 182-513-1105.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-06-046 on February 24, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 6, 2022.

Wendy Barcus
Rules Coordinator

OTS-3553.1

AMENDATORY SECTION (Amending WSR 21-02-086, filed 1/6/21, effective 2/6/21)

WAC 182-513-1105 Personal needs allowance (PNA) and room and board standards in a medical institution and alternate living facility (ALF). (1) This section describes the personal needs allowance (PNA), which is an amount set aside from a client's income that is intended for personal needs, and the room and board standard.

(2) The PNA in a state veteran's nursing facility:

(a) Is (~~(\$71.12, effective January 1, 2021)~~) indicated on the chart described in subsection (8) of this section as "All other PNA Med Inst.", for a veteran without a spouse or dependent children receiving a needs-based veteran's pension in excess of \$90;

(b) Is (~~(\$71.12, effective January 1, 2021)~~) indicated on the chart described in subsection (8) of this section as "All other PNA Med Inst.", for a veteran's surviving spouse with no dependent children receiving a needs-based veteran's pension in excess of \$90; or

(c) Is \$160 for a client who does not receive a needs-based veteran's pension.

(3) The PNA in a medical institution for clients receiving aged, blind, or disabled (ABD) cash assistance or temporary assistance for needy families (TANF) cash assistance is the client's personal and incidental (CPI) cash payment, as described in WAC 388-478-0006, based on residing in a medical institution, which is \$41.62.

(4) The PNA in an alternate living facility (ALF) for clients receiving ABD cash assistance or TANF cash assistance is the CPI, as described in WAC 388-478-0006, based on residing in an ALF that is not an adult family home, which is \$38.84.

(5) The PNA for clients not described in subsections (2), (3), and (4) of this section, who reside in a medical institution or in an ALF, is (~~(\$71.12, effective January 1, 2021.)~~) indicated on the chart described in subsection (8) of this section as "All other PNA Med Inst." and "HCS & DDA Waivers, CFC & MPC PNA in ALF."

(6) Effective January 1, 2018, and each year thereafter, the amount of the PNA in subsection (5) of this section may be adjusted by the percentage of the cost-of-living adjustment (COLA) for old-age, survivors, and disability social security benefits as published by the federal Social Security Administration. This adjustment is subject to state legislative funding.

(7) The room and board standard in an ALF used by home and community services (HCS) and the developmental disabilities administration (DDA) is based on the federal benefit rate (FBR) minus the current PNA as described under subsection (5) (~~((b))~~) of this section.

(8) The current PNA and room and board standards used in long-term services and supports are published under the institutional standards on the Washington apple health (medicaid) income and resource standards chart located at www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 74.09.340. WSR 21-02-086, § 182-513-1105, filed 1/6/21, effective 2/6/21. Statutory Authority: RCW 41.05.021, 41.05.160, 2018 c 137, 2018 c 299 §§ 204 (2) (p) and 207(13), and 2018 c 299. WSR 18-20-047, § 182-513-1105, filed 9/26/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-513-1105, filed 11/8/17, effective 1/1/18.]

WSR 22-08-114A

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed March 31, 2022, 9:41 a.m., effective May 1, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 458-20-195 to incorporate 2021 legislation, E2SHB 1477. This legislation established a tax to finance the national 988 system to enhance and expand behavioral health crisis and suicide prevention services. The rule addresses the deductibility of the tax.

Citation of Rules Affected by this Order: Amending WAC 458-20-195 Taxes, deductibility.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 22-03-065 on January 14, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 31, 2022.

Atif Aziz
Rules Coordinator

OTS-3567.1

AMENDATORY SECTION (Amending WSR 20-22-093, filed 11/3/20, effective 12/4/20)

WAC 458-20-195 Taxes, deductibility. (1) **Introduction.** This rule explains the circumstances under which taxes may be deducted from the gross amount reported as the measure of tax under the business and occupation tax, retail sales tax, and public utility tax. It also lists deductible and nondeductible taxes.

(2) **Deductibility of taxes.** In computing tax liability, the amount of certain taxes may be excluded or deducted from the gross amount reported as the measure of tax under the business and occupation (B&O) tax, the retail sales tax, and the public utility tax. These taxes may be deducted provided they have been included in the gross amount reported under the classification with respect to which the deduction is sought, and have not been otherwise deducted through inclusion in the amount of another allowable deduction, such as credit losses.

The amount of taxes which are not allowable as deductions or exclusions must in every case be included in the gross amount reported.

License and regulatory fees are not deductible. Questions regarding the deductibility or exclusion of a tax that is not specifically identified in this rule should be submitted to the department of revenue for determination.

(3) **Motor vehicle fuel taxes.** RCW 82.04.4285 provides a B&O tax deduction for certain state and federal motor vehicle fuel taxes when the taxes are included in the sales price. These taxes include:

Fuel tax.....	chapter 82.38 RCW;
Federal tax on diesel and special motor fuels (including leaking underground storage tank taxes), except train and aviation fuels.....	26 U.S.C.A. Sec. 4041;
Federal tax on inland waterway commercial fuel..	26 U.S.C.A. Sec. 4042;
Federal tax on gasoline and diesel fuel for use in highway vehicles and motorboats....	26 U.S.C.A. Sec. 4081.

(4) **Taxes collected as an agent of municipalities, the state, or the federal government.** The amount of taxes collected by a taxpayer, as agent for municipalities, the state of Washington or its political subdivisions, or the federal government, may be deducted from the gross amount reported. These taxes are deductible under each tax classification of the Revenue Act under which the gross amount from such sales or services must be reported.

This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to a municipality, the state, its political subdivisions, or to the federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods sold, or to the charge for services rendered, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction. Examples of deductible taxes include:

FEDERAL—	
Tax on communications services (telephone and teletype-writer exchange services).....	26 U.S.C.A. Sec. 4251;
Tax on transportation of persons.....	26 U.S.C.A. Sec. 4261;
Tax on transportation of property.....	26 U.S.C.A. Sec. 4271;
STATE—	
<u>988 crisis hotline tax collected from subscribers.....</u>	<u>chapter 82.86 RCW;</u>
Aviation fuel tax collected from buyers by a distributor as defined by RCW 82.42.010.....	chapter 82.42 RCW;
Leasehold excise tax collected from lessees.....	chapter 82.29A RCW;
Oil spill response tax collected from taxpayers by marine terminal operators..	chapter 82.23B RCW;

Retail sales tax collected from buyers.	chapter 82.08 RCW;
Solid waste collection tax collected from buyers.	chapter 82.18 RCW;
State enhanced 911 tax collected from subscribers. . .	chapter 82.14B RCW;
Use tax collected from buyers.	chapter 82.12 RCW;
MUNICIPAL—	
City admission tax.	RCW 35.21.280;
County admissions and recreations tax.	chapter 36.38 RCW;
County enhanced 911 tax collected from subscribers. . .	chapter 82.14B RCW;
Local retail sales and use taxes collected from buyers.	chapter 82.14 RCW.

(5) **Specific taxes which are not deductible.** Examples of specific taxes which may be neither deducted nor excluded from the measure of the tax include the following:

FEDERAL—	
Agricultural Adjustment Act (A.A.A.) compensating tax.	7 U.S.C.A. Sec. 615(e);
A.A.A. processing tax.	7 U.S.C.A. Sec. 609;
Aviation fuel.	26 U.S.C.A. Sec. 4091;
Distilled spirits, wine and beer taxes.	26 U.S.C.A. chapter 51;
Diesel and special motor fuel tax for fuel used for purposes other than motor vehicles and motor-boats.	26 U.S.C.A. Sec. 4041;
Employment taxes.	26 U.S.C.A. chapters 21-25;
Estate taxes.	26 U.S.C.A. chapter 11;
Firearms, shells and cartridges.	26 U.S.C.A. Sec. 4181;
Gift taxes.	26 U.S.C.A. chapter 12;
Importers, manufacturers and dealers in firearms.	26 U.S.C.A. Sec. 5801;
Income taxes.	26 U.S.C.A. Subtitle A;
Insurance policies issued by foreign insurers.	26 U.S.C.A. Sec. 4371;
Sale and transfer of firearms tax.	26 U.S.C.A. Sec. 5811;
Sporting goods.	26 U.S.C.A. Sec. 4161;
Superfund tax.	26 U.S.C.A. Sec. 4611;
Tires.	26 U.S.C.A. Sec. 4071;
Tobacco excise taxes.	26 U.S.C.A. chapter 52;
Wagering taxes.	26 U.S.C.A. chapter 35;
STATE —	

Ad valorem property taxes.	Title 84 RCW;
Alcoholic beverages licenses and stamp taxes (Breweries, distillers, distributors and wineries).	chapter 66.24 RCW;
Aviation fuel tax when not collected as agent for the state.	chapter 82.42 RCW;
Boxing, sparring and wrestling tax.	chapter 67.08 RCW;
Business and occupation tax.	chapter 82.04 RCW;
Cigarette tax.	chapter 82.24 RCW;
Estate tax.	Title 83 RCW;
Insurance premiums tax	chapter 48.14 RCW;
Hazardous substance tax.	chapter 82.21 RCW;
Litter tax.	chapter 82.19 RCW;
Pollution liability insurance fee.	RCW 70A.149.080;
Parimutuel tax.	RCW 67.16.100;
Petroleum products - underground storage tank tax.	chapter 82.23A RCW;
Public utility tax.	chapter 82.16 RCW;
Real estate excise tax. .	chapter 82.45 RCW;
Tobacco products tax. .	chapter 82.26 RCW;
Use tax when not collected as agent for state.	chapter 82.12 RCW;
MUNICIPAL—	
Local use tax when not collected as agent for cities or counties.	chapter 82.14 RCW;
Municipal utility taxes.	chapter 54.28 RCW;
Municipal and county real estate excise taxes.	chapter 82.46 RCW.

[Statutory Authority: RCW 82.32.300 and 82.01.060. WSR 20-22-093, § 458-20-195, filed 11/3/20, effective 12/4/20. Statutory Authority: RCW 82.32.300. WSR 00-16-015, § 458-20-195, filed 7/21/00, effective 8/21/00; WSR 99-13-053, § 458-20-195, filed 6/9/99, effective 7/10/99; WSR 83-08-026 (Order ET 83-1), § 458-20-195, filed 3/30/83; Order ET 70-3, § 458-20-195 (Rule 195), filed 5/29/70, effective 7/1/70.]