



Hood River County Community Development

Planning, Building Codes, Code Compliance, Economic Development & GIS

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To: County Planning Commission

From: Eric Walker, Director 

RE: **Public Hearing – National Scenic Area Code Revisions (Gorge 2020)**

I. Background

As detailed during a work session on September 8, 2021, the Columbia River Gorge Commission completed a four-year planning process called (“Gorge 2020”) by adopting various revisions to the Columbia River Gorge National Scenic Area (NSA) Management Plan in October of 2020^(*). The revised Management Plan was subsequently elevated to the U.S. Secretary of Agricultural, who deemed it consistent with the National Scenic Area Act last February^(*).

With concurrence received, the Gorge Commission then formally transmitted the revised Management Plan to Hood River County on March 16, 2021, requesting that it be incorporated into the County Zoning Ordinance^(*). In compliance with Sections 7(b) and 8(h) of the National Scenic Area Act, the County Board of Commissioners gave the Gorge Commission notice that it intended to adopt the Management Plan revisions within the required 270-day timeframe in May^(*).

The purpose of this review process is to ensure consistency between the County Zoning Ordinance and Management Plan. Adopting the proposed amendments is mandatory. However, the County does have the option to add other provisions and/or adopt more restrictive guidelines, but it cannot refuse to adopt some or all of the revisions or modify them in a way that would make them less restrictive or in conflict with the Management Plan.

Like any other legislative review process, the proposed amendments will be initially considered by the Planning Commission during a work session and then public hearing. At the conclusion of the public hearing, the Planning Commission will then make a recommendation to the County Board of Commissioners to either adopt the proposed revisions or adopt them with additional changes. The County has until December 10, 2021, to complete its review process and tentatively adopt the proposed revisions. Once that occurs, the County’s amended ordinance will then be forwarded back to the Gorge Commission, and then given to the U.S. Secretary of Agriculture for final concurrence. Once that happens, the amendments will go into effect.

^(*) = Related documents are included at the end of the attached packet after the draft ordinance (i.e. amended HRCZO Article 75).

II. Primary Revisions

Attached is a draft copy of amended Article 75 (National Scenic Area Ordinance) of the Hood River County Zoning Ordinance (HRCZO), which contains most of the implementing guidelines affecting property within the NSA of Hood River County. With assistance from Kristen Ketchel-Bain, Paralegal with Beery Elsner & Hammond, all of the Management Plan revisions have been incorporated into amended Article 75.

Although not complete, the following list includes some of the more significant changes proposed as part of the Gorge 2020 process. Staff comments are also included to summarize the proposed changes and/or to highlight the potential affects that the proposed amendments may have on future development projects occurring in the NSA:

- Changes the definition of “existing use or structure” to require not only that the use or structure be lawfully established, but also in continuous use to qualify. [Section 040(79) – Page 20]

Staff comment: The additional language requiring that an existing use or structure not be discontinued was likely adopted to be consistent with existing provisions from Section 075(5), which state that “any use or structure that is discontinued for one (1) year or more shall not be considered an existing use or structure.”

- Allows fruit and produce stands to sell a broader range of agricultural products, including up to 25 percent of incidental farm products, such as jams and jellies. [Section 040(94) – Pages 21 and 22]

Staff comment: The revised Management Plan includes a new definition for “fruit and produce stands,” which clarifies that such facilities can sell incidental agricultural products, in addition to produce or animal products grown on their farm or ranch, as long as the sale of these items do not account for more than 25 percent of the total sales. This definition is consistent with similar definitions used outside of the NSA.

- Prohibits certain variances from setbacks and buffers within the General Management Area (GMA) for building additions unless it is entirely within the setback or buffer and the addition does not encroach any further into the required setback. [Section 150(2)(b)(D) – Page 76]

Staff comment: It should be noted that this standard does not apply to road or property line setback requirements from each zone, which are not regulated by the Management Plan, but have been separately added by the County. The standard involved has been modified by staff to clarify this distinction, but also to point out that such additions are still subject to the variance requirements from Article 66 of the County Zoning Ordinance.

- Adds additional notice requirements to Tribal government. [Section 150(3)(a) – Pages 78 and 79]

Staff comment: As part of any NSA application, tribal governments are notified. A second notification is provided if the project results in the USFS completing a cultural reconnaissance survey. The new revisions will require that, in addition to current notice requirements, the County also make at least two calls or send at least two electronic communications offering to meet or consult with the tribal government chair, chief administrative officers, and natural and cultural resource staff prior to making a decision.

- Allows a tiny home, RV, and other similar structure (and not just a manufactured dwelling) to be used as a temporary hardship dwelling. [[Section 152\(B\)\(1\) – Page 85](#)]

Staff comment: Staff supports this amendment as it will provide opportunities for using other types of temporary structures besides manufactured dwellings, including those that may require even less development and ground disturbing activities. Since hardship dwellings are only allowed temporarily and the amount of time each dwelling is needed tends to be uncertain, it makes perfect sense to allow alternative housing types, especially when such housing can be provided more easily and cost effective, and with the potential for fewer property impacts.

- Merges cottage industries into the existing home occupation allowance. [[Section 152\(E\)\(1\)\(a\) – Page 86](#)]

Staff comment: Staff has no concerns regarding this change because it does not result in a loss of use but just a merging of the two types of uses under the title of home occupation.

- Adds new guidelines for owner-occupied “overnight accommodations” limited to 90 room nights per year in the Rural Residential (G-RR5 and G-RR10) zone. [[Section 152\(F\) – Pages 87 through 91](#)]

Staff comment: These new guidelines are essentially short-term rental (STR) regulations for the NSA, but only for the G-RR5 and G-RR10 zones. For consistency purposes, staff is recommending additional provisions be added to Section 152(F)(1)(h) requiring that proposed overnight accommodations also be subject the County’s STR regulations from Article 53, specifically those that are applicable and do not conflict with the Management Plan.

- Clarifies that a future Columbia River bridge replacement is exempt from most scenic review standards, except for those specifically identified for the bridge. [[Section 152\(L\)\(1\) – Page 106](#)]

Staff comment: This proposed amendment is supported by staff. In 2019, Hood River County and other jurisdictions met to discuss the proposed Hood River-White Salmon Bridge Replacement project. As part of this process, the Port of Hood River and their consultant BergerABAM were attempting to develop a preliminary plan and conduct an environmental assessment in compliance with the National Environmental Policy Act (NEPA). In developing its plan, the Port of Hood River and its consulting team were attempting to understand the NSA guidelines that would apply. It was difficult for staff from the Gorge Commission and Hood River County to clearly define the scenic requirements that would apply to the new bridge. The major question that arose involved whether the visual quality objectives under the Columbia River Bridge Replacement section of the Management Plan were to be applied alone or together with other scenic guidelines found elsewhere in the Management Plan. This proposed change clearly answers that question and will eliminate further confusion.

- Adds size limitations for signs depending on the Recreation Intensity Class the property is located. [[Section 160\(1\)\(b\) – Page 132](#)]

Staff comment: No concerns. This change will provide clear and objective requirements for signs, which is consistent with land use regulations outside of the NSA. It is also noted that these new sign requirements only apply to those in conjunction with an allowed recreational use and, therefore, should have limited affect.

- Adds new standards for approving renewable energy systems, such as solar, thermal, and wind, that are accessory to an allowable primary use. [[Section 163 – Page 142](#)]

Staff comment: Staff is in favor of these amendments as they will support renewable energy systems and provide clear guidelines to consider such proposals.

- Eliminates cluster developments from all zones. [Section 165(B) – pages 143 and 144]

Staff comment: This modification will have no effect in Hood River County since there are no known properties that are currently able to meet the minimum cluster development requirements anyway.

- Requires proof of sufficient water availability in agricultural zones prior to allowing new cultivation. [Section 190(1)(a) – Page 148]

Staff comment: The purpose of this new provision is to prevent unnecessary ground disturbing activities.

- Changes the requirement for establish a primary farm operator dwelling in the Large-Scale Agricultural and SMA Agricultural zones by including an \$80,000 annual income requirement that is indexed for inflation on an annual basis. [Sections 190(1)(h)(C) and 190(2)(c)(C) – Pages 150 and 154, respectively]

Staff comment: When Hood River County previously amended its NSA Ordinance in 2005, it chose to be more restrictive and impose the \$80,000 income requirement to be consistent with other agricultural zoned property outside of the NSA. The only difference with the new language is that it includes an annual inflation adjustment standard, which will cause the income requirement to increase over time. Once again, staff is recommending that the County's existing, and more restrictive, language be retained. The new inflation requirement has been added to be consistent with the new Management Plan requirement. Overall, the County's language is still more restrictive than the Gorge Commission's new language since it requires actual proof of income and not just a determination of income based on a formula, plus it requires proof for at least two consecutive years (or 3 out of 5 years) instead of just one year.

It should be noted that the same, more restrictive County language is not proposed as part of Section 190(2)(c)(C), which applies to the SMA – Agricultural zone, because there are only four parcels in the County with this designation (3N 10E 32 #100, #200, #300, and #600) and none would likely qualify for a farm dwelling since they either already have a residence, are in public ownership, or are not large enough or would not otherwise be suitable for commercial farming due to poor soils and/or land conditions.

- Establishes new standards for roads not in conjunction with farm and forest use/practices in the agricultural and forest zones. [Section 190(1)(l), Section 200(1)(a), Section 270(1)(r), and 280(1) – Pages 151, 157, 164, and 176, respectively]

Staff comment: The revised Management Plan has changed the requirements for the construction or reconstruction of roads not in conjunction with farm or forest use. Instead of being a "review use," this type of development is now considered a "review use subject to additional standards." Specifically, applicants will be required to demonstrate that the new or modified road will not interfere seriously with accepted farm and forest practices, be sited to minimize the loss of farm and forest land, and will not significantly increase fire hazard. These standards seem appropriate given the intent of existing farm and forest land use policies to protect such land for ongoing farm and forest use.

- Expands winery and wine tasting room provisions to allow for cideries and cider tasting rooms. [Section 200(1)(d) & (e), Section 280(4) & (5), and Section 380(11) & (12) on Pages 157, 176, and 190, respectively]

Staff comment: Staff supports this new provision, as it is consistent with similar language adopted by the Oregon Legislature a few years ago and which the County subsequently added to its main ordinance for the Exclusive Farm Use zone. It is worth noting that the Gorge Commission also considered amending the ordinance to allow other similar alcohol producers, such as breweries and distilleries, but chose to limit it to cideries only.

- Eliminates an allowance for establishing a dwelling in the Large Woodland (G-F-2) Zone. [Section 270(1)(a) – Pages 161 and 162]

Staff comment: This provision will eliminate any opportunity to establish a single-family dwelling in the G-F-2 zone, which is significant. However, there is not an extensive amount of land in Hood River County zoned G-F-2. According to County GIS, the only area zoned G-F-2 is located west of the Hood River urban area near Post Canyon, Phelps Creek and Westwood Drives. The area encompasses approximately 178 acres, which is owned by 9 property owners. Of the 9 tracts that make up the area, 4 are already improved with a residence and 5 are vacant. The overall impact, therefore, will be limited to these 5 property owners. However, it should be noted that the test for establishing a dwelling in the G-F-2 zone is not guaranteed. The test requires that an applicant demonstrate how a dwelling will “contribute substantially to the growing, propagation and harvesting of forest tree species.” It also requires the applicant to show how a dwelling is necessary to “enable the resident to conduct efficient and effective forest management.” Both of these standards require a high burden of proof, especially given that, as noted in the ordinance, “a dwelling may not always be required for forest management.” It is worth noting that the County has never approved a new single-family dwelling in the G-F-2 using the provisions of Section 270(1)(a).

- Requires that temporary hardship dwellings on property located on Commercial Forest Land (F-1) and F-2 be connected with a dwelling that has not been discontinued. [Section 270(1)(1) – Pages 163 and 164]

Staff comment: As noted above, the purpose of this change is likely to ensure consistency with existing provisions from Section 075(5), which state that “any use or structure that is discontinued for one (1) year or more shall not be considered an existing use or structure.” It is also an extension of the Gorge Commission’s desire to limit dwellings on land designated as Commercial Forest and Large-Woodlands.

- Removes life estates from the F-1 and F-2 zones. [Section 270(1)(u) and Section 320 – Pages 165 and 179, respectively]

Staff comment: It is assumed that this change is intended to further the Gorge Commission’s desire to limit future housing on Commercial and Large Woodland designated lands, which tend to be more isolated and prone to fire hazards. The County has never processed an application for a life estate in the NSA.

- Exempts buildings that are 1,500 square feet or less from the “compatibility” guideline for scenic resource protection. [Section 520(1)(b), Section 530(2)(o), and Section 530(4)(b) on Pages 200, 222-223, and 225, respectively]

Staff comment: Existing NSA guidelines require that the size of new development be compatible with the size of other existing development in the surrounding area. To address inconsistencies in how this requirement has been applied over the years, the Gorge Commission adopted new review guidelines that requires staff to evaluate the overall scale of at least 10 other buildings and consider other factors. The new criteria are fairly extensive and will require additional staff evaluation. However, this exemption will allow staff to avoid having to apply these compatibility guidelines to new buildings that are 1,500 square

feet or less, which is appropriate given that the standard is intended to address larger buildings. Although staff recommended as part of the Gorge 2020 process that the Gorge Commission adopt a larger size building exemption (i.e. 2,500 square feet), we support at least some relief in having to apply this standard in every instance.

- Requires that the expansion of existing development in the GMA be compatible with the scale of other nearby buildings. [Section 520(1)(b) – Page 200]

Staff comment: The current standard technically only requires that “new buildings” be compatible with the scale of other nearby buildings, not necessarily additions to existing buildings. This revision seems reasonable to ensure the intent of the standard is met and to prevent an unintended loophole. Staff does not see any significant change in how we apply the standard since we already apply it to both new and existing buildings.

- Adds additional guidelines for determining whether new or expanded development is compatible with the general scale of other existing nearby development within the GMA. [Section 520(1)(b) – Page 200]

Staff comment: The new compatibility guidelines were developed to better ensure greater consistency in how the standard is applied but, as noted, will require additional staff time and analysis.

- Prohibits variances for new and modified buildings in the GMA that would or already protrude above the skyline as seen from visible key viewing areas. [Sections 520(2)(g) and former (i) – Page 204]

Staff comment: Staff expressed concerns about removing existing variance language involving new or existing buildings as part of the Gorge 2020 process. Although staff’s comments were dismissed by the Gorge Commission, staff remains concerned that these changes could result in a potential regulatory taking’s claim if a parcel has no viable alternatives. Nevertheless, these standards were adopted into the revised Management Plan and, therefore, the County does not have the option of not adopting them.

- Requires additional vegetative screening after five years if approved vegetation is insufficient. [Section 520(2)(h)(B) – Pages 204 and 205]

Staff comment: This new requirement seems appropriate given the challenges of anticipating the amount, size, location, and survival of vegetation necessary to properly screen new development as part of an initial review.

- Requires a cultural reconnaissance survey for proposed uses within 100 feet of a high probability area. [Section 540(1)(B)(i) – Page 225]

Staff comment: The current standard requires that a cultural reconnaissance survey be completed for all uses within 500 feet of a known cultural resource. The revised language expands the requirement to include those areas within 100 feet of a high probability area. The impact of this change is not expected to be significant, although it may lead to additional cultural surveys being required. However, it should be noted that most reconnaissance surveys are performed by the USFS at no cost to the applicant.

- Requires applicants to pay for required “evaluations of significance” and “mitigation plans” for cultural resources that are discovered during construction. [Section 540(1)(c)(E) – Page 229]

Staff comment: This change will have the potential to significantly increase the cost of developing property, but only in those cases where a cultural resource would be impacted by a new use. In Hood River County, this has been somewhat of a rare occurrence.

- Merges the wetland and water resources section into one. [Sections 560 and 570 – Pages 249 – 267]

Staff comment: No comments or concerns regarding this formatting change.

- Expands the stream buffer from 100 to 200 feet along the Hood River. [Section 560(9)(c) – Page 258]

Staff comment: In 2019, the Environmental Protection Agency identified the Hood River and six other streams within the NSA as priority cold water refuge fish habitat. With this classification, the Gorge Commission decided to expand the buffer to provide greater protections to these streams and adjacent riparian corridors.

- Precludes the removal of Oregon white oak trees unless no practicable alternatives exist. [Section 580(5)(b) – Page 270]

Staff comment: Staff has no comments or concerns regarding this new requirement.

- Requires mass transit facilities for Recreation Intensity Class 3 day-use sites. [Section 610(3)(c) – Page 297]

Staff comment: This amendment is supported by staff, although it should only affect public entities, such as the Oregon Department of Transportation and Oregon State Parks and Recreation who operate larger scale recreation facilities. As witnessed recently, the capacity of many existing recreation facilities in the Gorge are being exceeded. Parking lots are full resulting in visitors parking unsafely along roadways and in undesignated areas. Requiring mass transportation facilities, such as bus access and parking spaces in conjunction with new parking areas in certain, high use, recreational areas is one viable alternative to this issue.

III. Additional Regulations

As noted previously, the Management Plan revisions adopted as part of the Gorge 2020 process are mandatory for the County to adopt. However, the County does have the option of adopting other standards that are either more restrictive or that regulate development not otherwise regulated by the Management Plan. For the most part, staff is recommending that the Planning Commission and Board adopt the Management Plan revisions as is. However, there are a few places where staff is recommending that the County either (1) adopt new additional language or standards that are more restrictive or beyond what the Management Plan requires or (2) maintain prior amendments already part of Article 75 that are also more restrictive. Below are some examples of both types, which are also highlighted in yellow:

(1) Section 020 – Plan and Zoning Designations

As part of the original NSA Zoning Ordinance (Article 75), the County chose to maintain certain overlay zones within the National Scenic Area, including its Geologic Hazard, Environmental Protection, Floodplain, and Airport Height Combining zones. For certain properties, these overlay zones result in additional land use regulations being applied that are outside of the requirements of the Management Plan,

but consistent with the County Comprehensive Plan. These additional regulations are already part of the existing ordinance and, therefore, no change is required to maintain and continue implementing them. These existing regulations can be found on Page 9 of the draft ordinance.

(2) Section 100 (Acceptance of an Application), Section 110 (Notice of Development Review), Section 130 (Decision of the Director), Section 145 (Appeal Process), Section 156(C)(2) (Acceptance of an Expedited Review Application) – Administrative Review Procedures

Article 75 includes various administrative procedures that are neither required by the Management Plan nor consistent with the typical review process and timelines used by the Planning Department (and required by the State) to review land use applications. Several new changes are proposed that involve such things as completeness reviews, notice requirements, review processes and timelines, and appeals. Most of the timelines included in the existing ordinance are shorter than those required by the State and cannot be reasonably met given current staffing levels and other constraints. The new timelines and procedures proposed as part of the draft ordinance follow the requirements Oregon Revised Statutes (ORS), Chapter 197 and 215 and are consistent with what is used outside of the NSA. The proposed changes can be found on Pages 65, 67, 70, 74, and 115.

(3) Section 152(F) – Overnight Accommodations.

As noted above, the Gorge Commission has amendment the Management Plan to allow for “overnight accommodations” in the Rural Residential 5- and 10-acre zones within the NSA. Overnight accommodations are essentially short-term rentals (STR), which are also regulated in the County outside of the NSA per Article 56 of the HRCZO. To ensure consistency, staff is recommending that most of the existing STR regulations currently being applied outside of the NSA be adopted for the NSA as well; specifically, those that would not conflict with the adopted Management Plan. The new provisions are highlighted in the draft ordinance under Section 152(F) – Pages 87 through 91.

(4) Section 152(K) – Commercial Events

The last time the County amended Article 75 of the HRCZO to incorporate Management Plan updates was in 2008. As part of these revisions, the County chose to include additional regulations from HRCZO Article 73 (Home Occupation to Host Weddings & Related Events) into the Commercial Events’ section of Article 75 (see Section 152(K) – Pages 97 through 105). These existing regulations are proposed to be retained as part of the existing amendments.

(5) Section 225 (Agricultural Zones), Section 325 (Forest Zones), Section 345 (Open Space Zone), Section 395 (Rural Residential Zone), and Section 505 (Public Recreation Zone) – Dimensional Requirements

In most instances, the Management Plan does not regulate such things as property line or street setbacks, maximum building heights, vision clearance requirements, lot dimensions, and parking. These “dimensional requirements” (also known as site development standards) are, however, typically applied elsewhere in the County Zoning Ordinance. When Article 75 was first developed, the County chose to add site development standards to each of NSA zone designation to be consistent with the rest of the

ordinance. These existing site development standards are recommended to be retained, although not technically required by the Management Plan. No new changes to these existing standards are proposed. These changes can be found on Pages 159-160, 180-181, 185-186, 192-193, and 198-199.

IV. Recommendation

Based on the above information, staff suggests that the Planning Commission recommend to the County Board of Commissioners approval of the proposed amendments to Article 75 (National Scenic Area Ordinance) of the Hood River County Zoning Ordinance.

