

1 IN THE COUNTY COURT OF THE STATE OF OREGON

FILED WASCO COUNTY

2 IN AND FOR THE COUNTY OF WASCO

MAY 19 3 49 PM '93

3 IN THE MATTER OF RECONSIDERING THE)
4 PROPOSED ADOPTION OF LEGISLATIVE)
5 AMENDMENTS TO THE WASCO COUNTY)
6 COMPREHENSIVE PLAN, PLAN MAP AND LAND)
7 USE AND DEVELOPMENT ORDINANCE IN)
8 COMPLIANCE WITH PUBLIC LAW 99-663, THE)
9 COLUMBIA RIVER GORGE NATIONAL SCENIC)
10 AREA ACT.

KAREN R. LEWIS
COUNTY CLERK

ORDINANCE
AMENDMENT

11 NOW ON THIS DAY, the above-entitled matter having come on regularly for
12 consideration, said day being one duly set in term for the transaction of public business and
13 a majority of the Court being present; and

14 IT APPEARING TO THE COURT: That on January 6, 9, 16, 23, 30 and February
15 6, 10, 1992, the Wasco County Planning Commission and the Wasco County Citizens
16 Advisory Group have met jointly to hold public workshops and hearings on the proposed
17 legislative amendments to the Wasco County Comprehensive Plan, Plan Map and Land Use
18 and Development Ordinance; and

19 IT FURTHER APPEARING TO THE COURT: That on February 6, 1992, the
20 Wasco County Planning Commission met jointly with the Wasco County Citizen's Advisory
21 Group, at which time a recommendation was made by the Citizens Advisory Group to the
22 Wasco County Planning Commission to adopt the proposed amendments with certain
23 changes; and

P930171 (19)

1 IT FURTHER APPEARING TO THE COURT: That on February 6, 1992, the
2 Wasco County Planning Commission considered the recommendation made by Wasco
3 County Citizen Advisory Group, and made a recommendation for the Wasco County Court
4 to adopt with changes the proposed legislative amendments to the Wasco County
5 Comprehensive Plan, Plan Map, and Land Use and Development Ordinance; and

6 IT FURTHER APPEARING TO THE COURT: That on February 10, 1992, in a
7 joint meeting of the Wasco County Citizen Advisory Group and the Wasco County Planning
8 Commission the above recommendations were reduced to writing, signed and finalized; and

9 IT FURTHER APPEARING TO THE COURT: That on February 19, March 4,
10 March 18, April 8 and May 6, 1992 this court held hearings and received public testimony
11 on the matter of adopting the proposed legislative amendments with certain changes; and

12 IT FURTHER APPEARING TO THE COURT: That on May 6, 1992 this court
13 closed these hearings for further deliberation; and

14 IT FURTHER APPEARING TO THE COURT: That these hearings were
15 reopened on March 3, 1993, at which time the motion was made and passed two to one to
16 table the adoption of the proposed legislative amendments; and

17 IT FURTHER APPEARING TO THE COURT: That the Executive Director and
18 Chairman of the Columbia River Gorge Commission have requested that this court

1 reconsider the tabling of these proposed legislative amendments to consider solutions that
2 would alleviate County concerns raised in the March 3, 1993 hearing; and

3 IT FURTHER APPEARING TO THE COURT: That on May 5, 1993 the hearing
4 was opened to consider possible solutions to County concerns allowing adoption of the
5 proposed legislative amendments; and

6 IT FURTHER APPEARING TO THE COURT: That these proceedings were
7 continued to May 19, 1993; and

8 IT FURTHER APPEARING TO THE COURT: That under the Wasco County
9 National Scenic Area Land Use and Development Ordinance, the Open Space designation
10 shall be suspended at any time if three years are allowed to elapse after a landowner has
11 made a bona fide offer to sell or otherwise convey interests in the affected parcel or parcels,
12 unless the land owner agrees to a three year extension as provided for in the attached
13 recommended National Scenic Area Land Use and Development Ordinance
14 amendment; and

15 IT FURTHER APPEARING TO THE COURT: That lands for which an ordinance
16 is suspended for reasons stated above, shall be subject to the relevant General Management
17 Area resource designation of Forest or Agriculture as determined by the Gorge
18 Commission; and

1 IT FURTHER APPEARING TO THE COURT: That the County will aid and
2 facilitate, to the best of its ability, the Gorge Commission in their efforts to acquire or
3 otherwise develop remedies providing adequate protection of lands designated Open Space
4 in the General Management Area; and

5 IT FURTHER APPEARING TO THE COURT: That adoption of the above
6 recommended legislative changes is subject to a sunset clause which states:
7 Wasco County's ordinance shall terminate and be of no force and effect from and after the
8 30th day of June, 1994, unless the following conditions have occurred:

- 9 1) The comprehensive plan of the Columbia River Gorge Commission shall have been
10 amended to provide that variances may be granted by the county legislative authority
11 or its designated agency in accordance with state laws generally applicable to the
12 granting of variances,
- 13 2) Jurisdiction for litigating "Takings" claims brought by property owners has been
14 established by statute or court ruling to be either the state courts where such land
15 is located or the federal district courts,
- 16 3) Federal and/or state legislation is enacted to provide that in actions brought by
17 property owners claiming damages as a result of "takings, or other claims arising out
18 of land use regulations created pursuant to the Columbia River Gorge Commission's
19 Master Plan, the real and necessary parties defendants in such cases must be the

1 Columbia River Gorge Commission or the United States and the State of Oregon,
2 and not this County; or in the alternative, that this County shall be indemnified
3 against all damage awards resulting from any such lawsuits and the costs of defending
4 such claims by the United States or the State of Oregon,

5 4) Funds authorized for an Interpretive Center in Wasco County, State of Oregon, shall
6 have been appropriated and disbursed in accordance with the commitments
7 previously made by the Columbia River Gorge Commission,

8 5) Some funds authorized for other economic developments have been appropriated,
9 and

10 6) Some funds authorized for recreational development have been appropriated, and

11 7) Criteria and priorities for acquisition of key General Management Area lands have
12 been created, and

13 8) Significant progress has been made to secure funding for acquisition of key General
14 Management Area lands.

15 NOW, THEREFORE IT IS HEREBY ORDAINED: That the amendments to the
16 Wasco County Comprehensive Plan, Plan Map and Land Use and Development Ordinance
17 as amended by the Citizen Advisory Group, the Planning Commission and the County

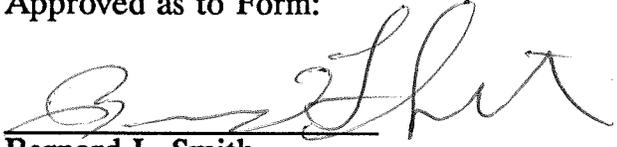
1 Court, including the Draft #7 amendments (Attachment A), be approved subject to the
2 above sunset clause; and

3 IT IS HEREBY FURTHER ORDAINED: That this recommendation is based upon
4 fulfilling the requirements of Public Law 99-663, The Columbia River Gorge National
5 Scenic Area Act.

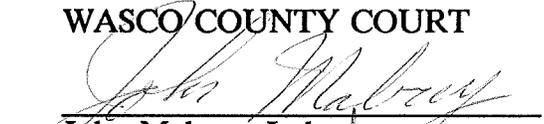
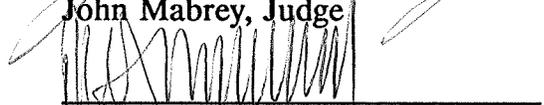
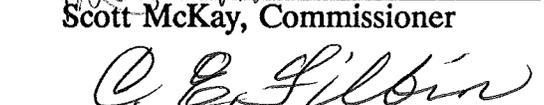
6 SIGNED this 19th day of May, 1993.

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Approved as to Form:


Bernard L. Smith
Wasco County District Attorney

WASCO COUNTY COURT


John Mabrey, Judge

Scott McKay, Commissioner

C.E. Filbin, Commissioner

P93 0171 (19)

ATTACHMENT "A"

REVISION TO NATIONAL SCENIC AREA LAND USE ORDINANCE DRAFT #7, May 5, 1993

Key: Added Text is shaded
Deleted Text is struck-out

PAGE 3 - 111 / Section 3.200 OS OPEN SPACE

A. Purpose

Protect those most significant and sensitive scenic, cultural, natural and recreation resources on unimproved lands from conflicting uses and enhance them where appropriate.

Special Rule: Under this ordinance, the Open Space designation shall be suspended, at any time, if three years are allowed to elapse without a purchase after a private landowner has made a bona fide offer, to the Gorge Commission or a recognized private non profit land trust or conservancy, to sell out right or otherwise convey interests in the affected parcel(s), unless the affected land owner agrees to a three year extension. Lands for which an ordinance is suspended pursuant to this special rule shall be subject to the relevant General Management Area resource designation of Forest or Agriculture as determined by the Gorge Commission in accordance with the administrative procedures outlined for the Special Management Area under Special Rules, SMA Policies (2) on page II - 86 of the Management Plan.

A bona fide offer to sell outright or otherwise convey interests in the parcel(s) affected by the Open Space designation includes any offer that is made for consideration equal to or less than the fair market value as appraised in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions. A refusal of the appraised purchase price, as defined above, does not constitute a bona fide offer.

Rationale: This change is proposed in response to specific concerns cited by the Wasco County Citizen Advisory Group and the Wasco County Planning Commission in their recommendations, presented to the Court for consideration in hearings held February 19, March 4 and 8, April 8 and May 6, 1992. Based on early Gorge Commission designations all potential open space properties, candidate open spaces, were given an underlying zone of small or large scale agriculture, commercial forest or public recreation. After further evaluation by the Forest Service and Gorge Commission it was decided that key parcels demonstrated qualities unique, important and fragile enough to not be effectively protected by the underlying zone and that these lands should therefore be designated open space out right and zoned to allow only those uses compatible with their protection. It is the County's position that

though these resources warrant protection, the Open Space Designation places restrictions on the property owners that are more consistent with the Special Management Area Provisions than other designations in the General Management Area.

These restrictions are being placed on the affected property owners without the potential relief offered to those owners in the Special Management Area. Wasco County is not willing to assume the legal responsibility for carrying this portion of the Management Plan out with out some potential relief for owners affected by the General Management Area Open Space Designation.

Relief for affected property owners in the Special Management Area is provided in Public Law 99-663 in Section 8 (o) Special Rules. This clause has been reworded to apply to the General Management Area Open Space Designation in the Wasco County National Scenic Area Land Use and Development Ordinance to provide similar relief for a similar restriction.

PAGE 1 - 2 / Section 1.050 Effective Date

This ordinance shall become effective when ~~the final draft, approved by the Gorge Commission and the Secretary of Agriculture is reviewed and approved by the Wasco County Court and~~ filed with the Wasco County Clerk. Amendments hereto, unless otherwise specified, shall become effective when filed with the County Clerk.

Rationale: Establishing an effective date subsequent to County Court action on an approved document will allow us to begin implementation of the ordinance in as clean and clear a fashion possible. It will also ensure that the County bears no responsibility for implementing an ordinance that has not yet been found consistent with the Management Plan and is therefore subject to imminent change during the Gorge Commission Review Process.

PAGE 3 - 5 Through 3 - 109 Section 3.110 - 3.190 Zones A-1 - CR

I. Unilaterally edit the zones to read as follows:

B. Permitted Uses

The following uses and activities shall be allowed in areas designated "A-1" (OR ANY OTHER ZONE) subject to subsection H. Property Development Standards.

1. Agricultural use, ~~as defined in section 1.090, except new cultivation; for cultivation activities, see subsection C(2) and C(3)(OR OTHER REFERENCE MADE IN A SPECIFIC ZONE) of this section.~~

II. Delete from all zones under subsection C. Permitted uses Subject to a Scenic Area Review the listed uses "New Cultivation" and "Re-cultivation"

C. Permitted Uses Subject to a Scenic Area Review

The following uses and activities shall be allowed in areas designated "A-1" (OR ANY OTHER ZONE) subject to a Scenic Area Review, and Subsections H. Property Development Standards, and I. Fire Protection Standards. (etc...)

2. ~~New cultivation: any operation that would cultivate land that has not been cultivated.~~
3. ~~Re-cultivation:~~
 - a. ~~Any operation that would cultivate land that has been previously cultivated...~~
 - ... d. ~~Any operation that would cultivate land that has been cultivated or has not lain idle for more than five (5) years, shall be exempt from a Scenic Area Review except as otherwise specified in 3 (e) above.~~

and renumber remaining listed uses accordingly.

Rationale: The County lacks the means to educate the public of and implement a full scale agricultural review program. Recognizing this, it would not be appropriate to include cultivation and fencing as uses permitted subject to Scenic Area Review. This would imply that the County would be able to and responsible for review of all cultivation and fencing to determine the potential affect of the proposed disturbance.

PAGE 3 - 127 through 3 - 139/ Section 3.370, 3.400 & 3.410 Division 4, 7 & 8

Replace EPD division 4,7 & 8 text to read as follows:

SECTION 3.370 Division 4 - Cultural, Historic and Archaeological Overlay

A. Purpose

The purpose of this overlay district is to reasonably assure that cultural, historic and archaeological areas identified by the Columbia River Gorge National Scenic Area Management Plan as moderate or high probability resource areas, all resources listed in the Wasco County Comprehensive Plan, designated County Historic Sites and sites listed in the Statewide Inventory of Historic Sites and Buildings, and any revisions thereto are conserved and protected, while providing an expedient process for reviewing land use actions that may affect identified sites.

B. Scenic Area Review Requirements

Prior to approval of any development permit or other land use action affecting any of the cultural resource areas or sites mentioned in subsection A, the applicant shall request a Scenic Area Review pursuant to Section 2.060 of this Ordinance. The Director shall be provided with information sufficient to establish full compliance with the standards of this Ordinance.

C. Additional Information

In addition to the information required in Chapter 14, Scenic Area Review, the site plan shall clearly indicate the following:

1. The location, dimensions and approximate depth of all new cultivation. New cultivation includes: any operation that would cultivate land that has not been cultivated, and any agricultural activities that disturb the ground to a greater depth and extent than pre-existing ground disturbances.
2. The location, dimensions and approximate intensity of use of all new pasture lands intended for grazing.
3. The location, type and design of all proposed fencing.

D. Determination of Cultural Historic and Archaeological Impact

Prior to approval of any building permit or other land use action located in a moderate or high probability resource area, as identified by the Columbia River Gorge National Scenic Area Management Plan, the Gorge Commission shall make an initial impact determination for all proposed new ground disturbances.

If the requested use is excluded from further review under section 14.310 B.1.(a) or the Gorge Commission determines it to involve only minor ground disturbance the cultural resource review process will terminate.

If the requested use is determined to be more than a minor disturbance or is to be located within 500 feet of a known cultural resource, regardless of the intensity of the impact, further review is required. This further review will follow the notice procedures outlined to include comments and guidance from the tribal state and county agencies listed in Section 14.310 of this ordinance.

E. Standards and Criteria for Development

Approval of uses permitted in the underlying zone shall be based on findings which show that the proposed use complies with or can be conditioned to meet the applicable standards and criteria listed in section 14.310.

SECTION 3.400 Division 7 - Natural Areas Overlay

A. Purpose

The purpose of this overlay district is to reasonably assure that Natural areas identified by The Columbia River Gorge National Scenic Area Management Plan, the Wasco County Comprehensive Plan and the Wasco County portions of the Deschutes and John Day Rivers Scenic Areas defined in ORS 390.805 and 390.825 and any revisions thereto are conserved and protected, while providing an expedient process for reviewing land use actions that may affect identified areas.

B. Site Plan Requirements

Prior to approval of any development permit or other land use action in a natural resource area as described in sub section A, the applicant shall request a Scenic Area Review pursuant to Section 2.060 of this Ordinance. The Director shall be provided with information sufficient to establish full compliance with the standards of this Ordinance.

C. Additional Information

In addition to the information required in Chapter 14, Scenic Area Review, the site plan shall clearly indicate the following:

1. The location and dimensions of all new cultivation. New cultivation includes any agricultural activities that disturb ground that has not been cultivated or has lain idle for more than five years.
2. The location and dimensions of ditching, tilling, dredging, or grading proposed to be conducted for the purpose of repairing and maintaining existing irrigation and drainage systems or extending new drainage systems necessary for new cultivation (as defined in C(1) above).
3. The location and dimensions of all new pasture lands intended for grazing.
4. The location, type and design of all proposed fencing.

D. Determination of Impact on Natural Areas

Prior to approval of any building permit or other land use action on lands located:

1. within 1,000 feet of a plant species endemic to the Columbia River Gorge and vicinity, listed as endangered or threatened pursuant to federal or state endangered species acts, or listed as endangered, threatened or sensitive by the Oregon Natural Heritage Program or otherwise identified as significant by the Wasco County Comprehensive Plan,
2. recognizably within a wetland or wetland buffer, or
3. recognizably within a stream, pond or lake or stream, pond or lake buffer

the Wasco County planning department working in conjunction with appropriate local federal state and tribal resource agencies, shall determine the level of impact the proposed development will have on the affected natural resource.

If further review is required it will follow the notice procedures outlined to include comments and guidance from appropriate agencies in accordance with Section 14.410 (A), (B) and (D).

E. Standards and Criteria for Development

Approval of uses permitted in the underlying zone shall be based on findings which show that the proposed use complies with or can be conditioned to meet the applicable standards and criteria listed in section 14.410 (A), (B) and (D) of this ordinance.

SECTION 3.410 Division 8 - Sensitive Wildlife Habitat Overlay

A. Purpose

The purpose of this overlay district is to reasonably assure that all sensitive wildlife areas and sites identified by the Columbia River Gorge National Scenic Area Management Plan or listed in the Wasco County Comprehensive Plan and any

revisions thereto are conserved and protected, while providing an expedient process for reviewing land use actions that may affect identified sites or areas.

B. Scenic Area Review Requirements

Prior to approval of any development permit or other land use action located within 1,000 feet of a sensitive wildlife area or site as described in sub section A, the applicant shall request a Scenic Area Review pursuant to Section 2.060 of this Ordinance. The Director shall be provided with information sufficient to establish full compliance with the standards of this Ordinance.

C. Additional Information

In addition to the information required in Chapter 14, Scenic Area Review, the site plan shall clearly indicate the following:

1. The location and dimensions of all new cultivation. New cultivation includes any agricultural activities that disturb ground that has not been cultivated or has lain idle for more than five years.
2. The location and dimensions of ditching, tilling, dredging, or grading proposed to be conducted for the purpose of repairing and maintaining existing irrigation and drainage systems or extending new drainage systems necessary for new cultivation (as defined in C(1) above).
3. The location and dimensions of all new pasture lands intended for grazing.
4. The location, type and design of all proposed fencing.

D. Determination of Impact to Sensitive Wildlife Area or Site

Prior to approval of any building permit or other land use action located within 1,000 feet of sensitive wildlife areas and sites, as defined in Section 4.410 C 1.(a) and (b), the planning department, working in conjunction with state wildlife biologists and the Gorge Commission, shall determine the level of impact the proposed development will have on the affected sensitive wildlife area or site.

If further review is required it will follow the notice procedures outlined to include comments and guidance from the state in accordance with Section 14.410 C of this ordinance.

E. Standards and Criteria for Fencing in the Deer and Elk Winter Range

No fences shall be constructed that may inhibit the movement and migration of wildlife in the Big Game Winter Range. Where fencing is necessary, however, compliance with Oregon Department of Fish and Wildlife fencing specifications is required. These specifications include:

- a. New fences in the Big Game Winter Range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.
- b. move (New and replacement fences...) from Section 14 C 2.(b)
- c. move (Woven wire fences...) from Section 14 C 2.(c)
- d. To gain approval for new fencing the applicant shall make a written request to the Oregon Department of Fish and Wildlife for fence construction and if permission is granted, notification of approval shall be forwarded by the applicant to the Wasco County Planning and Development Office prior to construction of the approved fencing.

F. Standards and Criteria for Development

Approval of uses permitted in the underlying zone shall be based on findings which show that the proposed use complies with or can be conditioned to meet the applicable standards and criteria listed in section 14.410 C of this ordinance.

Rational: It is feasible for the County to review fencing and cultivation in conjunction with other review uses. This can best be done through the existing Environmental Protection District overlays. By establishing the requirement for a Scenic Area Review only in conjunction with a "development permit or other land use action," the County does not imply that it will be able to review and enforce all cultivation and fencing in the National Scenic Area.

Should the funding be made available to design and implement a broad based outreach and education program, fund additional staff time for review and fund additional legal council for enforcement, the County would be interested in

facilitating the implementation of a full scale agricultural review program either through the planning office or the extension service.

PAGE 14 - 38/ Section 14.210 (K) Developed Special Settings

1. Three landscape settings are considered developed settings:...
 - a. Murray's Addition subdivision, The Dalles (Residential)
 - b. two small areas south of The Dalles in Sections 9 and 10, Township 1N, Range 13E (Residential)
2. The Gorge Discovery Center site at Crates Point is designated River Bottom lands. The scope of development planned for the site may not make visual subordination possible. The Discovery Center Site shall be designed and developed to be visually subordinate from key viewing areas and compatible with its landscape setting to the maximum extent possible.

Rationale: Recognizing the extreme care with which nationally respected professionals are designing the site in order to fully support the intent of the Scenic Area Act and Management Plan, special consideration has been given to the Gorge Discovery Center site in the National Scenic Area Management Plan.

PAGE 14 - 42/ Section 14.310 B.3.b.

- b. ~~Reconnaissance surveys and buffer zone delineations for large-scale uses~~ Additional reconnaissance survey and buffer zone delineation work that would not be necessary for small scale uses (eg., Archival research) shall be the responsibility of the project applicant.

PAGE 14 - 43/ Section 14.310 B.4.

4. ...shall be borne by the project applicant unless the applicant has no practicable alternative providing them with a reasonable use.
 - a. If the applicant has no practicable alternative, according to subsection

B(5) Practicable Alternative Test, allowing them to avoid the affected cultural resource, the Gorge Commission or Forest Service will cover the costs of or provide services to prepare the evaluation of significance, assessment of effect, or mitigation plan.

- b. The responsibility for and cost of any development necessary to protect or mitigate effects on the cultural resource shall be borne by the project applicant.

PAGE 14 - 43/ Section 14.310 B.5.

5. copy and insert Practicable Alternative Test from Section 14.410 A.10.

PAGE 14 - 71/ Section 14.410 A.2.b.

- b. ...site shall be delineated and protected unless it is clearly evident to County Planning Staff that the wetlands will not be impacted by the proposed development.

PAGE 14 - 75/ Section 14.410 A.6.a.

- a. Practicable alternatives, as determined by sub section A(10), that would locate the structure outside of the wetland or wetland buffer and/or minimizing the impacts of the structure do not exist.

PAGE 14 - 80/ Section 14.410 A.12.a

- a. Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant.

PAGE 14 - 87/ Section 14.410 B.5.a.

- a. Practicable alternatives, as determined by sub section B(9), that would locate the structure outside of the stream, pond, lake or buffer and/or minimizing the impacts of the structure do not exist.

PAGE 14 - 92/ Section 14.410 B.11.a.

- a. ~~Rehabilitation and enhancement plans are the responsibility of the project applicant. (re-letter the remaining paragraphs)~~

Rationale: The above text edits were made to limit application costs to applicants required to meet the minimum inventory and site survey requirements of Scenic Area Review. Those applicants choosing to develop more intensively around or closer to a critical resource area or site will still be required to bear any additional inventory or site survey costs incurred due to the nature of their chosen development.

PAGE 14 - 95/ Section 14.410 C.2.

2. ~~Approval Criteria for Fences in Deer and Elk Winter Range...~~(delete entire sub section C.2. and renumber sub section C.3.)

Rationale: This section was moved into the EPD 8 to be applied exclusively to those fencing proposals in the Deer and Elk Winter Range.

PAGE 14 - 101 Section 14.410 C.3.e.(1), [(a) & (b)]

- (1) ...shall be borne by the project applicant unless the applicant has no practicable alternative to locating in the sensitive wildlife area or buffer zone, providing them with a reasonable use.
 - (a) If the applicant has no practicable alternative, according to subsection C.4. Practicable Alternative Test, allowing them to avoid the affected wildlife area or site, the Gorge Commission or Forest Service will cover the costs of or provide services to prepare the wildlife management plan.
 - (b) The responsibility for and cost of any development necessary to protect or mitigate effects on the wildlife area or site shall be borne by the project applicant.

PAGE 14 - 104 Section 14.410 C.4.

4. Copy and Insert Practicable Alternatives Test from Section 14.410 A.10.

PAGE 14 - 110 Section 14.410 C.6.b.(3)

- (3) ...shall ~~hire work with County Planning Staff, Gorge Commission or the Forest Service to find a person with~~ recognized expertise in botany..

PAGE 14 - 224 Section 14.410 C.7.a.

- a. ...by a professional botanist or plant ecologist ~~hired by a project~~ applicant.

Rationale: The above text edits were made to limit application costs to applicants required to meet the minimum inventory and site survey requirements of Scenic Area Review. Those applicants choosing to develop more intensively around or closer to a critical resource area or site will still be required to bear any additional inventory or site survey costs incurred due to the nature of their chosen development.
