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### CHAPTER 16 EMERGENCY/ DISASTER RESPONSE ACTIONS

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## **CHAPTER 16 - EMERGENCY/DISASTER RESPONSE ACTIONS**

### **SECTION 16.010 Purpose**

Post-emergency/disaster response development review is required in order to evaluate whether such response actions have impacted scenic, natural, cultural or recreation resources. Adverse impacts of the response actions shall be mitigated to the greatest extent practicable. The review process shall be expedited to facilitate timely mitigation/restoration efforts, where needed.

### **SECTION 16.020 Responsible Party**

The party(ies) submitting the post-emergency/disaster response application shall be responsible for implementing any required mitigation/restoration, unless:

- A. Other responding parties agree to assume such responsibility, upon mutual agreement of the parties; or
- B. The landowner denies access for mitigation/restoration activities, in which case the landowner assumes responsibility.

### **SECTION 16.030 Emergency/Disaster Action Requirements**

#### **A. Responsible Party Operational Requirements:**

1. Following emergency/disaster response actions, best management practices (BMPs) to prevent sedimentation and provide erosion control shall be utilized whenever disaster response actions necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute netting, etc.
2. 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 Wasco County Planning Department or the Forest Service for federal agency actions.
3. The new exploration, development (extraction or excavation), and production of mineral resources, used for commercial, private or public works projects, shall not be conducted as an emergency/disaster response activity.
4. No spoils resulting from grading or excavation activities shall be deliberately deposited into a wetland, stream, pond, lake or riparian area within the National Scenic Area (NSA) as a part of an emergency/disaster response action. The only exception to this is for construction of a fire line during a wildfire, where avoiding the aquatic area or its buffer zone has been considered

and determine to not be possible without further jeopardizing life or property.

**B. Responsible Party Notification Requirements**

Actions taken in response to an [emergency/disaster event, as defined in the Section 1.200](#), are allowed in all GMA and SMA land use designations, subject to the following notification requirements.

1. Notification of an emergency/disaster response activity shall be submitted either within 48 hours of the commencement of a response action, or by the next business day following the start of such an action, whichever is sooner. Notification shall be submitted by the party conducting an emergency/disaster response activity or their representatives. In the case of multiple responding parties, the first party to respond shall provide the required notification, unless, upon mutual agreement of responding parties, another responder elects to assume this responsibility.
2. Notification shall be submitted by mail, fax, telephone, e-mail or in person. If notification occurs by telephone, a hard copy of the notification shall be submitted by mail or in person within 7 days.
3. Notification shall be furnished to the Wasco County Planning Department, or the Forest Service for federal agency actions.
4. At a minimum, the following information shall be required at the time of notification:
  - a. Nature of emergency/disaster event.
  - b. 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.).
  - c. Location of emergency/disaster response activities.
  - d. Estimated start and duration of emergency/disaster response activities.
  - e. Contact person and phone number for the parties conducting emergency/disaster response actions.
5. Repair and maintenance of an existing serviceable structure to its previously authorized and undamaged condition are not subject to the above referenced notification requirements.

**C. Agency Responsibility**

1. Upon notification of an emergency/disaster response action, the Wasco County Planning Department or Forest Service shall, as soon as possible:
  - a. Review its natural resource inventory data and notify the contact person for the

- emergency/disaster response actions of all inventoried natural resource sites and their buffers, that are within or adjacent to the response area or that may be adversely affected by response activities;
- b. Notify the Oregon 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 Historic Preservation Office and the tribal governments of all emergency/disaster response activities. The Forest Service will review their cultural resource inventory data and notify the contact person for the emergency/disaster response action as soon as possible of all inventoried cultural resource sites, or their buffers, that are within, or adjacent to, emergency/disaster response areas.
2. Upon notification of a response action, the Forest Service shall, as soon as possible, offer the services of a resource advisor to the agency(ies) conducting the response action. The resource advisor will provide on-site advice to minimize impacts to resources from emergency/disaster response actions.

#### **SECTION 16.040 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 Wasco County Planning Department, or Forest Service for federal agency actions. In the case of an event with multiple responding parties, the agency providing initial notification as required herein shall submit the application. An exception to this may occur if another responding party, by mutual agreement with the other respondents, elects to submit the application. Requests to extend this submittal deadline may be made in writing and shall include the reason why an extension is necessary. Extensions shall not exceed 30 days in duration and not more than two (2) extensions shall be granted.
- B. Post-emergency/disaster response applications shall only address development activities conducted during an emergency/disaster response. Applications shall specify if development placed during an emergency/disaster event is permanent or temporary. 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:
  1. Applicants name and address.

2. Location of emergency/disaster response.
3. A written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.
4. A map of the project area drawn to scale, at a scale of 1 inch = 200 feet or a scale providing greater detail. The map shall include:
  - a. North arrow and scale.
  - b. Boundaries, dimensions and size of subject parcel(s).
  - c. Bodies of water, watercourses, and significant landforms.
  - d. Existing roads and structures.
  - e. New structures placed and any vegetation removal, excavation or grading resulting from the response actions.
5. An exception to the scale requirements in D(4) 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 1 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.

**SECTION 16.050 Post-Emergency/Disaster Response Development Review Requirements**

- A. Emergency/disaster response review uses may be allowed pursuant to a process that provides at minimum the following:
  1. Notice of the application to landowners within 200 feet of the perimeter of the subject parcel, the Forest Service, Gorge Commission, four tribal governments and interested parties.
  2. A written decision with findings of fact and conclusions of law.
  3. An opportunity to request a hearing.
- B. Actions taken in all land use designations within the GMA/SMA that are in response to an [emergency/disaster event, as defined in Section 1.200](#), shall be reviewed for compliance with the following guidelines.
  1. 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 [14.400\(J\)](#), Special Settings. In the SMA, 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 General Management Area, 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:
  - (1)** The spoil materials shall either be:
    - (a)** Removed from the NSA,
    - (b)** Deposited at a site within the NSA permitted by the Wasco County Planning Department, or
    - (c)** (Re)contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.
  - (2)** The Wasco County Planning Department 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.
  - (3)** The Wasco County Planning Department shall select the action that, to the greatest extent practicable, best complies with the provisions of Chapter 14 that protect scenic,

cultural, recreation, and natural resources.

- (4)** Disposal sites created according to f(1)(b) 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 Special Management Area, 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:
- (1)** The spoil materials shall either be:
    - (a)** Removed from the NSA, or
    - (b)** Deposited at a site within the NSA permitted by the Wasco County Planning Department within two years of the emergency.
  - (2)** After the spoils materials are removed, the emergency disposal site shall be rehabilitated to meet the scenic standard.
  - (3)** All grading (i.e., recontouring) shall be completed within 30 days after the spoils materials are removed.
  - (4)** Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.
  - (5)** All revegetation shall take place within one (1) year of the date an applicant completes the grading.
  - (6)** This provision shall take effect two years after the date of Management Plan concurrence by the U.S. Secretary of Agriculture, or approval of a disposal site, whichever comes first.

## **2. Cultural Resources and Treaty Rights**

- a.** To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources. Emergency/disaster response actions shall not affect tribal treaty rights.
- b.** The USDA Forest Service shall determine if a reconnaissance survey or historic survey is necessary within three days after receiving notice that a post-emergency land use application has been received by the Wasco County Planning Department.
  - (1)** Reconnaissance surveys shall be conducted by the USDA Forest Service and comply with the criteria in [Section 14.500](#). Reconnaissance survey reports shall comply with the criteria in [Section 14.500](#).



- (2)** Historic surveys shall be conducted by the USDA Forest Service and shall describe any adverse effects to historic resources resulting from an emergency/disaster response action. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. Such surveys shall also include original photographs, if available, and maps, and should use archival research, blueprints, and drawings as necessary.
- c. Following the submittal of a post-emergency land use application, in addition to other public notice requirements that may exist, the tribal governments shall be notified by the development review offer when 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. The Wasco County Planning Department shall send a copy of all comments to the Gorge Commission.
  - d. When written comments are submitted in compliance with (c) 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 Wasco County Planning Department following the consultation meeting. Consultation meetings and reports shall comply with the standards in [Section 14.500](#).
  - e. If cultural resources are discovered within the area disturbed by emergency response actions, the project applicant shall have a qualified professional conduct a survey to gather enough information to evaluate the significance of the cultural resources and what effects the action had on such resources. The survey and evaluation shall be documented in a report that generally follows the standards in [Section 14.500](#).
  - f. 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 Mitigation Plan Criteria and Information Needs in [Section 14.500](#).
  - g. The Wasco County Planning Department shall submit a copy of all reconnaissance and historic survey reports and treaty rights protection plans to the SHPO and the tribal governments. Survey reports shall include measures to mitigate adverse effects to cultural resources resulting from emergency/disaster response actions. The SHPO and tribal governments shall have 15 calendar days from the date a survey report is mailed to submit written comments to the agency conducting the post-emergency development review. The agency shall record and address all written comments in the development review order.
  - h. The Wasco County Planning Department 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 agency shall justify how it reached an opposing conclusion.
- i. The cultural resource protection process may conclude when it has been determined that tribal treaty rights have not been not affected and one of the following conditions exists:
    - (1) 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.
    - (2) The emergency/disaster response action avoided cultural resources that exist in the project area.
    - (3) Adequate mitigation measures to affected cultural resources have been developed and will be implemented.
    - (4) A historic survey demonstrates that emergency/disaster response actions, and associated development, had no effect on historic buildings or structures because:
      - (a) The SHPO concluded that the historic buildings or structures are clearly not eligible, as determined by using the criteria in the “National Register Criteria for Evaluation” ([36 CFR 60.4](#)), or
      - (b) The emergency/disaster response actions did not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in [The Secretary of the Interior’s Standards for Rehabilitation](#) [U.S. Department of the Interior 1990] and [The Secretary of the Interior’s Standards for Historic Preservation Projects](#) [U.S. Department of the Interior 1983].
3. Natural Resources
- a. To the greatest extent practicable, emergency/disaster response actions shall not adversely affect natural resources.
  - b. Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas, and sites containing rare plants, shall be the same as those established in [Sections 14.600](#) and [14.610, Natural Resources](#).
  - c. Wetlands, Streams, Ponds, Lakes, Riparian Areas
    - (1) Emergency/disaster response actions occurring within a buffer zone of wetlands, streams, pond, lakes or riparian areas shall be reviewed by the Oregon Department

of Fish and Wildlife (ODFW). These areas are also referred to in this section as aquatic areas. State biologists will help determine if emergency/disaster response actions have affected or have a potential to affect these aquatic areas or their bigger zones. State biologists shall respond within 15 days of the date the application is mailed.

- (2)** When emergency/disaster response activities occur within wetlands, streams, ponds, lakes, riparian areas, or the buffer zones of these areas, the applicant shall demonstrate the following:
  - (a)** 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.
  - (b)** Areas disturbed by response activities and associated development will be rehabilitated to the maximum extent practicable.
- (3)** Impacts to wetlands, streams, ponds, lakes and riparian areas, and their buffers will be offset through mitigation and restoration to the greatest extent practicable. Mitigation and restoration efforts shall use native vegetation, and restore natural functions, contours, vegetation patterns, hydrology and fish and wildlife resources to the maximum extent practicable.
- (4)** If The Wasco County Planning Department, in consultation with ODFW, determines that the emergency/disaster response actions had minor effects on the aquatic area or its buffer zone that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state biologist, or a Forest Service natural resource advisor (as available) in consultation with the state biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the agency administering the Scenic Area ordinance shall incorporate them into its development review order and the aquatic area protection process may conclude.
- (5)** Unless addressed through (4) above, mitigation and restoration efforts shall be delineated in a Rehabilitation Plan. Rehabilitation Plans shall satisfy the standards in [Section 14.600](#). Rehabilitation plans shall also satisfy the following:
  - (a)** 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.
  - (b)** Planting plans shall be included that specify native plant species to be used, specimen quantities and plant locations.

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

d. Wildlife Habitat

- (1) Emergency/disaster response actions occurring within 1,000 feet of a sensitive wildlife area or site, shall be reviewed by the Oregon Department of Fish and Wildlife. State wildlife biologists will help determine if emergency/disaster response actions have affected or have a potential to affect a sensitive wildlife area or site.
- (2) Site plans for emergency/disaster response sites shall be submitted by the Wasco County Planning Department to ODFW for review as prescribed in [Section 14.600](#). The wildlife agency shall respond within 15 days of the date the application is mailed.
- (3) The wildlife protection process may terminate if the Wasco County Planning Department, in consultation with the state wildlife agency, determines the sensitive wildlife area or site was not active, or the emergency/disaster response did not compromise the integrity of the wildlife area or site or occurred at a time when wildlife species are not sensitive to disturbance.
- (4) If The Wasco County Planning Department, in consultation with ODFW, determines that the emergency/disaster response activities had minor effects on the wildlife area or site that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state wildlife biologist, or a Forest Service natural resource advisor (as available) in consultation with the state wildlife biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the agency administering the Scenic Area ordinance shall incorporate them into its development review order and the wildlife protection process may conclude.
- (5) If the Wasco County Planning Department, in consultation with the ODFW, determines that the emergency/disaster response activities had adverse effect on a sensitive wildlife area or site, the project applicant shall prepare a Wildlife Management Plan. Wildlife Management Plans shall comply with standards in [Section 14.600](#). Upon completion of the Wildlife Management Plan, the agency shall:
  - (a) Submit a copy of the Wildlife Management Plan to the state wildlife agency for review. ODFW will have 15 days from the date that a plan is mailed to submit written comments to the agency conducting the post-emergency development review;
  - (b) Record any written comments submitted by the ODFW in its development review order. Based on these comments, the agency conducting the post-emergency development review 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 ODFW, the Wasco County Planning

Department shall justify how it reached an opposing conclusion.

- (c) Require the project applicant to revise the Wildlife Management Plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

e. Deer and Elk Winter Range

Any fencing permanently erected within deer and elk winter range, as a result of an emergency/disaster response, shall comply with the standards in [Section 14.600](#).

f. Rare Plants

- (1) Emergency/disaster response actions occurring within 1,000 feet of a rare plant, shall be reviewed by the Oregon Biodiversity Information Center. State heritage staff will help determine if emergency/disaster response actions have occurred within the buffer zone of a rare plant.
- (2) Site plans for emergency/disaster response sites shall be submitted to the Oregon or Natural Heritage Program by the agency conducting the post-emergency development review. 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.
- (3) The rare plant protection process may conclude if the Wasco County Planning Department, in consultation with the state natural heritage program, determines that emergency/disaster response activities occurred outside of a rare plan buffer zone.
- (4) If the Wasco County Planning Department, 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 Wasco County Planning Department shall incorporate them into its development review order and the rare plant protection process may conclude.
- (5) If emergency/disaster response activities occurred within a rare plant buffer zone that had adverse affects on rare plants or their buffer zone, the project applicant shall prepare a protection and rehabilitation plan that meets the standards in [Section 14.600](#).
- (6) The Wasco County Planning Department shall submit a copy of all Rare Plant Mitigation Plans to the state heritage program for review. The state natural heritage program will have 15 days from the date the protection and rehabilitation plan is mailed to submit written comments to the Wasco County Planning Department.

The Wasco County Planning Department review shall record any written comments submitted by the state natural heritage program in its development review order. Based on these comments, it 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 Wasco County Planning Department shall justify how it reached an opposing conclusion.

- (7) The Wasco County Planning Department shall require the project applicant to revise the protection and rehabilitation plan as necessary to ensure that the proposed use would not adversely affect a rate plant site.

**4. 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.

**16.060 Post-Emergency/Disaster Construction**

- A. The following review uses are allowed in all land use designations subject to a full Scenic Area Review.
  - 1. Placement of structures necessary for continued public safety and the protection of private property and essential public services damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use applications shall be submitted within 12 months following an emergency/disaster events.

