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CHAPTER 13 NONCONFORMING USES, BUILDINGS AND LOTS

SECTION 13.010 Purpose

It is necessary and consistent with the establishment of this Ordinance, that all uses and structures incompatible with permitted uses or structures in each zone, be strictly regulated and permitted to exist only under rigid controls. The purpose of such regulation and control, is to change a nonconforming use or structure to a conforming status or to discontinue the use or structure.

SECTION 13.020 Continuation of Nonconforming Uses

Except as is hereinafter provided in this Ordinance, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Ordinance or at the time of a change in the official zoning maps may be continued as long as it is used in the same manner and for the same purpose, although such use does not conform with the provisions of this Ordinance.

SECTION 13.030 Conveyance of Nonconforming Use

Nothing in this Ordinance shall be construed to limit the sale, transfer, or conveyance of property on which exists a nonconforming building, structure or use, so long as such sale, transfer, or other conveyance does not otherwise violate the provisions of this Ordinance.

SECTION 13.040 Construction on and Conveyance of Nonconforming Legal Parcels

Nothing in this Ordinance shall be deemed to prohibit construction or reconstruction of conforming uses on nonconforming legal parcels or limit the sale, transfer or conveyance of said legal parcels approved prior to the adoption of this Ordinance, so long as the construction, reconstruction, sale, transfer or conveyance is consistent with all applicable provisions of this Ordinance.

SECTION 13.050 Gorge Commission Prior Approved Actions

Any land use action that has been authorized by the Gorge Commission or Forest Service for the Columbia River Gorge National Scenic Area shall remain valid for the time period initially authorized or a time period granted by extension in accordance with Commission Rule 350-110 or the Interim Guidelines, as applicable. All land use actions authorized under Interim Guidelines shall maintain concurrent County approval to remain valid.

Nothing in the Ordinance will require the loss of a use, activity, structure or parcel of land that was approved by the Gorge Commission or Forest Service for the time period initially authorized or a time period granted by extension in accordance with Commission Rule 350-110 or the Interim Guidelines, as applicable. If an approval period has lapsed without extension, the development action shall be processed as a new action subject to current County Land Use Ordinance.

SECTION 13.060 Verification of Nonconforming Use.

Must meet lawfully established and discontinuance or abandonment criteria below.

A. Lawfully Established: For a nonconforming use to be verified as lawfully established it shall be consistent with all of the following:

1. The nonconforming use has not been expanded in size or area or changed in purpose or use beyond what was lawfully established;
2. The property on which the nonconforming use is located meets the definition of legal parcel in Chapter 1 of this ordinance;
3. The nonconforming use was lawfully established on or before the effective date of the provisions of this ordinance prohibiting the use verified by either a or b below. No unlawful use of property existing at the time of the effective date of the provisions of this ordinance shall be deemed a nonconforming use.
 - a. Type I Verification: Lawfully established is verified by non-discretionary evidence including but not limited to zoning approval or County Assessor records verifying the date of establishment. This type of verification is not subject to any review process because it does not involve the exercise of any discretion or judgment. If the applicant wishes documentation of this it shall be done as a Land Use Verification Letter.
 - b. Type II Verification: Lacking non-discretionary evidence, lawfully established is verified by a discretionary process consistent with Section 2.060(A)(7).

It is the burden of the applicant to provide a preponderance of evidence which will allow the Planning Director to conclude the nonconforming use was lawfully established. Such evidence includes but is not limited to:

- Utility Bills and Records (phone, power, sewer, water)
- Aerial Photographs
- Dated Photos
- Notarized Letters or Affidavits affirming the date of establishment

B. Discontinuance or Abandonment: For a nonconforming use to be verified as lawfully established it must not have been discontinued or abandoned according to the following criteria. Based on the circumstances, the Director shall determine whether discontinuance or abandonment shall be reviewed as a Type I or Type II process as described in A above.

1. The reference period for determining whether an abandonment or interruption of a nonconforming use or an aspect thereof has occurred shall be twelve (12) consecutive months. Proof of intent to abandon is not required to determine that a nonconforming use has been discontinued or abandoned.
2. An abandonment or interruption of a use may arise from the complete cessation of the actual use for a twelve (12) month period even if improvements to support the use remain in place.
3. An interruption or abandonment for a twelve (12) month period that constitutes less than full cessation of the use or a portion thereof may result in a declaration of a continuing use, but of a lesser intensity or scope than what would have been allowable if the nature and extent of the use as of the date it became nonconforming had continued, even if improvements to support the full use remain in place.
4. If a use or structure is used in a different manner or for a different purpose for a twelve (12) month period than was lawfully established, such a change shall result in a determination that the use has been abandoned or has ceased.

Factors to be considered in determining whether there has been a change in the nature of a use shall include, but are not limited to, consideration of the type of activities being conducted, the operating characteristics of the activities associated with the use (including off-site impacts of those activities), changes in structures associated with the use and changes in the degree to which the activities associated with the use occupy the site.

SECTION 13.070 Restoration or Replacement of Legally Created Nonconforming Structure

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

1. The replacement structure shall be used in the same manner and for the same purpose as the original structure.
2. The replacement structure may have a different size and/or location than the original structure. An existing mobile home may be replaced with a framed residence and an existing framed residence may be replaced with a mobile home.
3. The replacement structure shall be subject to the scenic, cultural, recreation and natural resources criteria; the treaty rights criteria; and the land use designations criteria for agricultural buffer zones, fire protection, and siting of dwellings on forest land.
4. 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.

B. 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 Wasco County within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards:

1. The replacement structure shall be used in the same manner and for the same purpose as the original structure. An existing mobile home may be replaced with a framed residence.
2. The replacement structure shall be in the same location as the original structure. An exception may be granted and the replacement structure may be sited in a different location if the following conditions exist:
 - 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 the cultural resources, natural resources, and treaty rights protection criteria.
3. 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 10 percent larger than the footprint of the original 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.
4. The replacement structure shall only be subject to the following scenic resources standards:
 - a. The replacement structure shall comply with the scenic resources criteria regarding color and reflectivity. These criteria 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 General Management Area, the replacement structure shall comply with the scenic resources criteria regarding landscaping. These criteria shall be applied to achieve the applicable scenic standard (visually subordinate) to the maximum extent practicable, provided:
 - (1) Except as provided in (2) below, the percent of the replacement structure screened by vegetation as seen from key viewing areas shall not exceed the percent of the original structure that was screened by vegetation as seen from key viewing areas. Coniferous vegetation shall be replaced with coniferous vegetation and deciduous vegetation shall be replaced with deciduous vegetation unless the applicant chooses to use all coniferous vegetation.
 - (2) In situations where the original structure was approved under Scenic Area regulations (e.g., Final Interim Guidelines, land use ordinance), the percent of the replacement structure screened by vegetation shall comply with any conditions of approval that required a landowner to preserve existing vegetation and/or plant and maintain new vegetation to screen the original structure as seen from key viewing areas.

- (3) To help determine how much vegetation may be required in (1) and (2) above, land use applications shall include all available documentation (photographic or otherwise) on the amount and type of vegetation that screened the original structure from key viewing areas. At a minimum, development review decisions shall include findings that address the following:
 - (a) The percent of original structure facing each key viewing area that was screened by coniferous vegetation, for each key viewing area from which the structure was visible.
 - (b) The percent of original structure facing each key viewing area that was screened by deciduous vegetation, for each key viewing area from which the structure was visible.
 - (c) Elevation drawings showing the replacement structure and the amount of coniferous and deciduous vegetation that would screen the structure from key viewing areas in 10 years.
- (4) The height of any new trees shall not be required to exceed 5 feet.
- (5) The time frame for achieving visual subordination shall be 10 years or less from the commencement of construction.
- d. In the SMA, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable, provided:
 - (1) The Scenic Resources Implementation Handbook shall be utilized to determine approvable species and minimum approvable sizes of new trees planted (based on average growth rates expected for approvable species).
 - (2) The height of any new trees shall not be required to exceed 5 feet.
 - (3) The time frame for achieving the applicable scenic standard (visually subordinate or not visually evident) shall be 10 years.
5. The replacement structure shall be subject to A(1) A(2) and A(3) above if it would not comply with B(2) and B(3) above.

6. 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.

SECTION 13.080 Change To Nonconforming Uses & 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 this Ordinance.

- A. Expansion of Existing Industrial Uses in the GMA 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 section, a less intensive use is a commercial, recreation, or residential use with fewer adverse effects upon scenic, cultural, natural, and recreation resources.

SECTION 13.090 Mineral Resource Extraction (GMA Only)

In the General Management Area, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural or recreational resources of the Scenic Area. These uses will be considered discontinued and subject to the land use ordinances under this Ordinance if:

- A. The mined land has been reclaimed naturally or artificially to a point where it is revegetated to fifty (50) percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as grazing. Mined land shall not include terrain which was merely leveled or cleared of vegetation; or
- B. The site has not maintained both a required Department of Geology and Mineral Industries Permit and County permit; or
- C. The site has not operated legally within five (5) years prior to the date of adoption of the Management Plan.

SECTION 13.100 Mineral Resource Extraction (SMA Only)

Uses involving the exploration, development or production of sand, gravel or crushed rock in Special Management Areas may continue when:

- A. The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in Special Management Areas; and

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

SECTION 13.110 Solid Waste Disposal (SMA Only)

Solid waste disposal sites or sanitary landfills are not allowed in Special Management Areas.

SECTION 13.200 Consolidation of Undeveloped Subdivisions

A. Consolidation of Undeveloped Subdivisions

1. A unit of land shall be consolidated with adjacent lands in the same ownership if the subdivision within which the unit of land is located is undeveloped pursuant to ORS chapter 92, Undeveloped Subdivisions.
2. No portion of a consolidated plat shall be considered a separate parcel solely because an existing parcel overlays, and possibly fragments, that consolidated subdivision.
3. Criterion A 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. Lots shall be consolidated through the process outlined in ORS Chapter 92, Undeveloped Subdivisions, or through a Replat process as outlined in Chapter 21.