



TO: Clark County Councilors
FROM: Karl Johnson, Planning Commission Chair
PREPARED BY: Sharon Lumbantobing, Planner II
DATE: February 18, 2020
SUBJECT: **CPZ2019-00033 CLARK COUNTY UNIFIED DEVELOPMENT CODE (CCC 40.240.440) AMENDMENTS - COLUMBIA RIVER GORGE NATIONAL SCENIC AREA**

PLANNING COMMISSION RECOMMENDATION

On November 21, 2019, the Planning Commission voted (3 to 3) on the staff recommendation to amend the Columbia River Gorge National Scenic Area Districts CCC 40.240.440(H) to correct a scrivener's error. CCC 40.240.440(H) currently states that the development and production of mineral and geothermal resources are required to follow a Type IV (legislative) process. The review procedure should be a Type III (quasi-judicial) process as provided for elsewhere in code.

BACKGROUND

In Ordinance 1996-04-30, Clark County Code (CCC) Section 18.334A.200(g) states that the development and production of mineral and geothermal resources in the Columbia River Gorge National Scenic Area will be reviewed under a Type III process (Exhibit 1). In reviewing the legislative history, no amendments to Section 18.334A.200(g) were found between the adoption of Ordinance 1996-04-30 and its repeal by Ordinance 2003-11-01.

On November 4, 2003, Clark County adopted Ordinance 2003-11-01 that repealed Titles 17 and 18 and replaced them with Title 40. In that ordinance, Chapter 18.334A became Chapter 40.240 - Columbia River Gorge National Scenic Area Districts. In Ordinance 2003-11-01, proposed amendments were indicated by using the underline and strikethrough method.

In Ordinance. 2003-11-01, an amendment was made in CCC 40.240.240(G) - Review Uses with Additional Approval Criteria Large-Scale or Small-Scale Agriculture Designations without the underline/strikethrough to indicate the change. Under CCC 40.240.240(G) as revised, the development and production of mineral and geothermal resources in the Gorge would no longer be reviewed under a Type III process but a Type IV process instead (Exhibit 2).

On November 12, 2003, county staff sent a letter to the Columbia River Gorge Commission with the recently adopted code changes to Chapter 40.240 and stated that "there was nothing of substance changed or added, except where current practice was codified," and provided the underline/strikethrough code amendments (Exhibit 3). The Columbia River Gorge Commission and the Secretary of Agriculture approved the amended code.



In reviewing the legislative history, the evidence indicates that the initial change from a Type III to a Type IV process in CCC 40.240.240(G), [which was subsequently renumbered to be CCC 40.240.440(H)], was a scrivener's error and not the result of a policy decision, due to the lack of underlined/strikethrough text and inconsistency with other code sections. For example, in the same adopting ordinance, Section 40.240.310(G) - Review Uses with Additional Approval Criteria for Gorge Small Woodland Designations, states that a Type III review procedure shall be required.

The Columbia River Gorge National Scenic Area Districts do not require the Type IV process as can be seen in CCC 40.500.010-1, Summary of Development Approvals by Review Type. CCC 40.500.010-1 shows that only a Type II and Type III process is required for a Columbia River Gorge permit and a Type II-A review process for Conditional Use Permits (Exhibit 4). CCC 40.510.040(A) lists the limited actions that are subject to a Type IV Process (Exhibit 5).

The Columbia River Gorge National Scenic Area Districts CCC 40.240.030(A), Amendments to this Section, states that the scrivener errors may be undertaken administratively by county staff. Due to the length of time that has transpired since this scrivener's error was made, it was determined to be in the public interest to amend this error through the legislative process.

On September 25, 2019, the council adopted an interim ordinance (Ordinance 2019-09-13) to correct the scrivener's error to CCC 40.240.440(H) (Exhibit 6). On November 5, 2019, the council extended the interim ordinance (Ordinance 2019-11-07) (Exhibit 7). Interim ordinances are authorized by RCW 35.63.200 and RCW 36.70A.390 and Clark County Code 40.510.040(H).

RCW 35.63.200 states that a council that adopts an interim zoning control, without holding a public hearing on the interim zoning control, shall hold a public hearing on the interim zoning control within at least sixty days of its adoption, and the interim ordinance may be effective for not longer than six months.