

## **EXPEDITED DEVELOPMENT REVIEW**

### **Director's Decision**

**APPLICANT:** Theodore Sauter Jr.

**FILE NO.:** C08-0025-K-G-17

**REQUEST:** After-the-fact review of an increase to the height of an existing wire mesh fence from four feet to seven feet to enclose an existing agricultural use.

**LOCATION:** The subject parcel is located in the SW ¼ of Section 29, Township 3N, Range 12E, Willamette Meridian, Klickitat County, Washington.

### **LAND USE**

**DESIGNATION:** The subject 18.8 acre parcel (Klickitat County parcel number 03-12-2900-0016/00) is designated General Management Area Small-Scale Agriculture with a 40 acre minimum parcel size.

### **DECISION:**

Based upon the following findings of fact, the land use application by Theodore Sauter Jr. for an after-the-fact review of an increase to the height of an existing wire mesh fence, is found to be consistent with the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act P.L. 99-663, and the Management Plan for the Columbia River Gorge National Scenic Area (Management Plan), and approvable under Commission Rule 350-81 and is hereby approved.

### **CONDITIONS OF APPROVAL:**

The following conditions of approval are given to ensure that the subject request is consistent with the standards of Section 6 and the purposes of P.L. 99-663, and the Management Plan and approvable under Commission Rule 350-81. **These conditions must be recorded in county deeds and records to ensure notice of the conditions to successors in interest (Management Plan, Review Uses Guideline 1, pg. II-7-58).**

1. If cultural resources or human remains are discovered, all activities shall cease upon their discovery. The applicant shall notify the Gorge Commission and Tribal governments within 24 hours. The cultural resources or human remains shall remain as found; further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.

DATED AND SIGNED THIS 16<sup>th</sup> day of December, 2008 at White Salmon, Washington.

Brian Litt  
Planning Manager

**EXPIRATION OF APPROVAL:**

*This decision of the Planning Manager becomes void on the 16th day of December, 2010.*

As per Commission Rule 350-81-044(6), an extension of the validity of a development approval may be requested. Such a request shall be submitted in writing prior to the expiration of the approval. The Planning Manager may grant an extension if it is determined that conditions, for which the applicant was not responsible, would prevent the applicant from commencing the proposed development within the original time limitation. The Planning Manager shall not grant an extension if the site characteristics and/or new information indicates that the proposed use may adversely affect the scenic, cultural, natural or recreation resources in the National Scenic Area.

**APPEAL PROCESS:**

*The appeal period ends the 15th day of January, 2009.*

The decision of the Planning Manager shall be final unless a Notice of Intent to Appeal and Petition is filed with the Commission within thirty (30) days of the date of this decision by the applicant or any person who submitted comment. Information on the appeal process may be obtained at the Commission office.

**NOTES:**

Any new land uses or structural development not allowed outright such as residences; garages, workshops, or other accessory structures; or additions or alterations not included in the approved application or site plan will require a new application and review.

**COMMENTS FROM OTHER INDIVIDUALS/AGENCIES/GOVERNMENTS:**

Notice of the subject request was mailed to property owners within 200 feet of the subject parcel and the following individuals/agencies/governments:

- Yakama Nation
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of Warm Springs Reservation of Oregon
- Nez Perce Tribe
- U.S. Forest Service National Scenic Area Office
- Washington Office of Archaeology and Historic Preservation
- Klickitat County Planning Department
- Klickitat County Building Department
- Klickitat County Health Department
- Klickitat County Assessor

Written comments were received from Marge Dryden, USFS Scenic Area Office; Sandy Swope Moody, Washington Natural Heritage Program; and Rick Till, Friends of the Columbia Gorge.

**FINDINGS OF FACT:**

**A. Land Use**

1. This decision reviews an after-the-fact application for the addition of three feet in height to an existing wire mesh fence that encloses the western half of the subject parcel (approximately 12 acres). The once four foot fence now has a height of seven feet. In the last two years, the applicant added height by strapping seven foot tall, four-inch

wide untreated wood poles to the existing t-posts. An additional layer of woven-wire mesh was then added between posts.

The subject parcel contains existing agricultural uses including the cultivation of grapes and alfalfa and barley for haying and pasture. The additional height was intended to prevent deer from damaging the vineyard. The recent transition to grapes of portions that had been previously been cultivated for haying (a use allowed outright pursuant to Commission Rule 350-81-074(1)(a)(A)) has necessitated a taller fence.

2. The Land Use Designation Map in the *Management Plan for the Columbia River Gorge National Scenic Area* designates the subject parcel as General Management Area Small-Scale Agriculture with a 40 acre minimum parcel size. According to Klickitat County Assessor's records, the parcel is 18.8 acres in size.
3. Commission Rule 350-81-050 contains a list of developments that may be reviewed using the expedited review process, as long as they comply with the resource protection guidelines contained in 350-81-052.
4. Commission Rule 350-81-050(1)(e) permits woven-wire fences for agricultural uses that would enclose 80 acres or less to be reviewed through the expedited review process, provided the use is consistent with the resource protection guidelines contained in Commission Rule 350-81-052.

Conclusion:

The seven foot woven-wire mesh fence is an allowed expedited review use subject to Commission Rule 350-81-052 which protects scenic, cultural, natural, and recreation resources and treaty rights for uses reviewed through the expedited review process.

**B. Scenic Resources**

1. Commission Rule 350-81-052(1)(a) contains scenic resource protection guidelines for proposed developments being reviewed through the expedited review process.
2. Commission Rule 350-81-052(1)(a)(A) states:

*In the General Management Area, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.*

Pursuant to this rule, the scenic resource protection guidelines do not apply to the subject fence.

Conclusion:

The fence is consistent with the scenic resources guidelines in Commission Rule 350-81-052(a) for expedited developments in the National Scenic Area.

**C. Cultural Resources**

1. Commission Rule 350-81-052(b) includes the following cultural resource protection criteria:

- (A) *The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey, pursuant to 350-81-540(1)(c)(A) or historic survey, pursuant to 350-81-540(1)(c)(B).*
- (B) *The GMA guidelines that protect cultural resources and human remains discovered during construction [350-81-540(6) and (7)] shall be applied as conditions of approval for all development approved under the expedited development review process.*

2. Commission Rule 350-81-540(1)(c)(A)(ii) states:

*A reconnaissance survey shall be required for all proposed uses except:*

- (I) *The modification, expansion, replacement, or reconstruction of existing buildings and structures.*
- (II) *Proposed uses that would not disturb the ground, including land divisions and lot line adjustments; storage sheds that do not require a foundation; low intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.*
- (III) ...

To add height to the existing fence, the applicant strapped untreated wood poles to existing t-posts and added an additional layer of woven-wire mesh. As a result, no ground disturbance occurred. On November 20, 2008, Heritage Resources Program Manager Margaret Dryden, USFS Scenic Area Office, submitted a Cultural Resources Survey Determination. In her determination Ms. Dryden concluded that a reconnaissance survey was not required because the use did not disturb the ground and is more than 500 feet from the nearest archaeological site. Pursuant to rules (I) and (II), the proposed fence does not require a reconnaissance survey, and is consistent with Commission Rule 350-81-540(1)(c)(A).

3. Commission Rule 350-81-540(1)(c)(B) states:

*A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.*

According to the Cultural Resources Survey Determination prepared by Ms. Dryden, the proposed fence would not alter any structures that are fifty years old or older and would not be compromising any features of the surrounding area that are important in defining historic or architectural character of buildings or structures that are 50 years old or older. Therefore, a historic survey is not required, pursuant to Commission Rule 350-540(1)(c)(B).

4. Commission Rule 350-81-540(6) protects cultural resources discovered during construction. It requires that if cultural resources are discovered after construction begins, all construction activities within 100 feet of the discovered cultural resource shall cease; further disturbance is prohibited, and the Gorge Commission shall be notified within 24 hours of the discovery. Any future construction activities on the subject lands in the GMA require review and approval by the Gorge Commission prior to construction. A condition of approval will alert the applicant to this requirement.
5. Commission Rule 350-81-540(7) protects human remains discovered during a cultural resources survey or during construction. This rule requires that all activities cease upon the discovery of human remains and any further disturbance is prohibited. Local law enforcement, the Executive Director and Indian tribal governments shall be contacted immediately. Any future construction activities on the subject lands in the GMA require review and approval by the Gorge Commission prior to construction. A condition of approval will alert the applicant to this requirement.
6. In sum, the fence did not include any ground disturbing activities and therefore does not require a reconnaissance survey or historic survey and may be reviewed through the expedited review process pursuant to Commission Rule 350-81-052(b).

Conclusion:

With conditions protecting unknown cultural resources and human remains, the fence is consistent with the guidelines in Commission Rule 350-81-052(1)(c)(B) that protect cultural resources in the National Scenic Area associated with uses eligible for the expedited review process.

#### **D. Recreation Resources**

1. Commission Rule 350-80-052(1)(c) states:

*The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.*

No recreation sites or facilities exist on parcels that are adjacent to the subject parcel. The proposed action is therefore consistent with Commission Rule 350-81-086.

Conclusion:

The fence is consistent with Commission Rule 350-81-052(1)(c), which protects recreation resources in the National Scenic Area associated with proposed developments undergoing the expedited review process.

**E. Natural Resources**

1. Commission Rule 350-81-052(1)(d) contains natural resource protection guidelines for review uses undergoing the expedited review process.
2. Commission Rule 350-81-052(1)(d)(A)(i) requires that all proposed developments are outside wetland, stream, river, pond or lake buffer zones to be reviewed through the expedited review process. It states:

*The development is outside buffer zones for wetlands, streams, rivers, ponds, and lakes. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.*

The subject fence is located outside the buffers of any nearby bodies of water. Therefore, the proposed action is consistent with Commission Rule 350-81-052(d)(A)(i).

3. Commission Rule 350-81-052(1)(d)(B) contains regulations for the protection of sensitive wildlife and plant species. It states that:

(i) *The development [must] meets one of the following:*

(I) *The development is at least 1,000 feet from known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range, and turkey habitat) and known sensitive plants; or*

(II) *The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained; or*

(III) *For sensitive wildlife, the development is within 1,000 feet of known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range and turkey habitat), but an appropriate federal or state wildlife agency determines (1) the sensitive wildlife area or site is not active or (2) the proposed development would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.*

*For sensitive plants, the development is within 1,000 feet of known sensitive plants, but the Oregon or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the sensitive plants.*

- (ii) *Development eligible for expedited review shall be exempt from the field survey requirements for sensitive wildlife or sensitive plants [350-81-580(1)(b) and (2); 350-81-590(1)(b) and (2)].*

According to Commission inventories, the fence is not located within 1,000 feet of any known sources of sensitive wildlife or plants, consistent with (i)(I). The increase in height to the existing woven-wire fence did not cause any ground disturbance and would not encourage or increase the chances of future ground disturbing actions, consistent with (i)(II). The fence is consistent with Commission Rule 350-81-052(1)(d)(B)(ii), and is therefore eligible for the expedited review process.

Conclusion:

The fence is not located within 1,000 feet of any sensitive wildlife or plants and did not require or cause any ground disturbing activities. Given this information, the fence is consistent with the natural resource protection guidelines contained in Commission Rule 350-81-052 and is therefore eligible for the expedited review process.

**F. Treaty Protection**

1. 350-81-052(2) Proposed developments reviewed using the expedited review process shall comply with the following treaty rights protection guidelines:
  - (a) *Proposed developments shall not affect or modify any treaty or other rights of any Indian tribe.*
  - (b) *The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if an Indian tribe submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.*

The modification of the existing fence did not affect or modify treaty or other rights of any Indian tribe, consistent with this rule. No substantive written comments were received from any Indian tribe during the comment period. Thus, the fence is consistent with Commission Rule 350-81-052(2).

Conclusion:

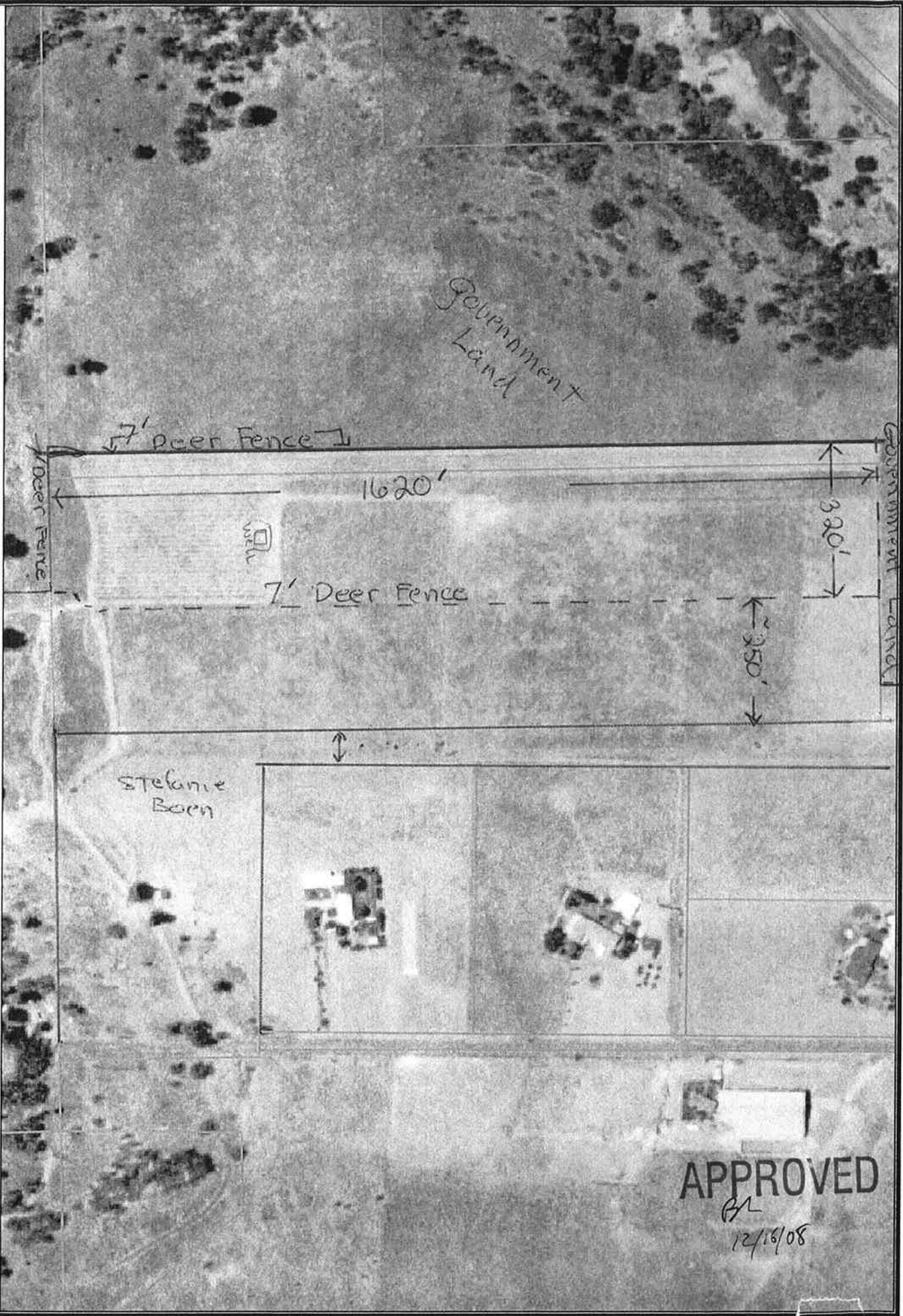
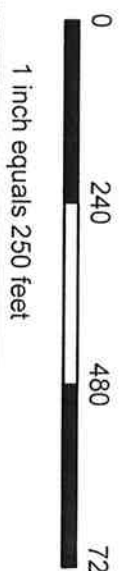
The fence is consistent with the guidelines in Commission Rule 350-81-052(2), which provides protection for treaties and any other rights of any Indian tribe impacted or affected by review uses allowed through expedited review.

cc: Confederated Tribes and Bands of the Yakama Indian Nation  
Confederated Tribes of the Umatilla Indian Reservation  
Confederated Tribes of Warm Springs Reservation  
Nez Perce Tribe

Klickitat County Planning  
Klickitat County Building  
Friends of the Columbia Gorge  
Washington Department of Natural Heritage

AK  
FIND0025.08

Columbia River Gorge Commission  
Created by: Angi Kerner  
Date: 7/3/07



Disclaimer: The Columbia River Gorge National Scenic Area/Columbia River Gorge Commission data, information, and maps are provided "as is" without warranty or any representation of accuracy, timeliness or completeness. This information is intended for general planning purposes and is not intended for site specific planning or analysis. Original data was collected from various sources. Spatial information may not meet National Map Accuracy Standards. The requestor acknowledges and accepts all limitations, including the fact that the data, information, and maps are dynamic and in a constant state of maintenance, correction and update.