

DEVELOPMENT REVIEW

Director's Decision

APPLICANT: Susan Van Leuven rep. Washington Department of Fish and Wildlife (WDFW)

FILE NO.: C08-0026-K-G-19

REQUEST: Approximately 1, 025 linear feet of wire strand fencing to exclude domestic livestock from WDFW property.

LOCATION: The subject parcel is located east of Balch Road and north of County Road 1230 in the SW $\frac{1}{4}$ of Section 28, Township 3N, Range 12E, W.M., Klickitat County, Washington (parcel number 03-12-2151-0001/00).

LAND USE

DESIGNATION: The 4.5 acre parcel is designated General Management Area Open Space and General Management Area Small-Scale Agriculture.

DECISION:

Based upon the following findings of fact, the land use application by Susan Van Leuven on behalf of the Washington Department of Fish and Wildlife (WDFW) to install approximately 1, 025 linear feet of wire strand fencing to exclude domestic livestock from sensitive wildlife habitat as part of wildlife management 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-96).

1. The proposed fencing shall be constructed as shown on the approved site plan and as described in the application. Any changes to the height, design or location of the proposed development shall be submitted to the Planning Manager for review prior to construction.

2. The applicant shall notify the Gorge Commission within 30 days of project completion to arrange for an inspection to confirm compliance with conditions of approval.
3. Pursuant to Commission Rule 350-81-560(6)(f) and 570(6)(f), it is the responsibility of the applicant to comply with all other applicable federal, county, laws and regulations. The applicant shall obtain all other applicable permits prior to commencing the actions approved in this decision.
4. Rocks to be used in the rock-jack fence posts shall blend in color with those found in the surrounding landscape.
5. If at any time cultural resources are discovered, all construction activities within 100 feet of the cultural resources shall cease. Further disturbance is prohibited and the applicants shall notify the Gorge Commission within 24 hours.

DATED AND SIGNED THIS 24th day of April, 2009 at White Salmon, Washington.



Brian Litt
Planning Manager

This decision of the Executive Director becomes void on the ~~24th~~ day of April, 2011.

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 Executive Director 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 Executive Director 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 decision of the Executive Director 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 Commission offices.

The appeal period ends the 24th day of May, 2009.

NOTES

Any new residential development, related accessory structures such as garages, workshops and satellite dishes and additions or alterations not included in the approved 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:

Confederated Tribes and Bands of the 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
Friends of the Columbia Gorge
Skamania County Planning Department

Written comments were received from Richard Till, Friends of the Columbia Gorge, Margaret Dryden, Heritage Program for the Forest Service Scenic Area Office, Bill Weiler, Washington Department of Fish and Wildlife and Robert Whitlam, Washington State Department of Archaeology and Historic Preservation.

FINDINGS OF FACT:

A. Land Use

1. The Washington Department of Fish and Wildlife (WDFW) own and manage a significant amount of land near the Balch Lake portion of the Klickitat Wildlife Area. WDFW currently own the subject 4.5 acre parcel as well as an adjacent 4.5 acre parcel to the east (they are only adjacent in the lower half of the eastern property line). The subject parcel is currently fenced along the western and southern property lines, preventing vehicular traffic from entering the property. The southern half of the eastern property line is also fenced, dividing the two WDFW parcels.
2. The adjacent property owners to the north graze cattle. Currently there are no fences preventing the cattle from grazing into the subject WDFW property, which contains sensitive wildlife habitat. To prevent damage to the sensitive habitat, Klickitat County Wildlife Area Manager Susan Van Leuven has applied to enclose the parcel with a four-strand wire fence along the northern boundary and northern half of the eastern property line. Steel t-posts, wood poles and rock-jacks will be used to support the wire strand fence. She has also applied to remove the existing portion of eastern fence line (the lower half) that divides the two WDFW properties. Removing the barrier between the two WDFW properties should enable better wildlife migration through WDFW land.
3. The Land Use Designation map in the *Management Plan for the Columbia River Gorge National Scenic Area* designates a majority of the subject parcel as Open Space in the General Management Area. More specifically, this parcel is located within the Balch Lake Wetlands Area Open Space designation. A smaller portion

of the parcel (the northeastern corner and a small portion along the northern property line) is designated GMA Small-Scale Agriculture.

4. Commission Rule 350-81-340(2)(e) in GMA Open Space and Commission Rule 350-81-190(1)(m) in GMA Small-Scale Agriculture, permit resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources subject to the guidelines in “Resource Enhancement Projects” (350-81-104). According to this guideline, enhancement projects may include new structures, such as the proposed fence.

The applicant has proposed approximately 1,025 linear feet of new four-strand wire fencing as part of wildlife habitat enhancement. The new fence would prevent cattle from grazing in sensitive wildlife habitat areas, including the buffers of several seasonal streams and a wetland. According to the application, the four strands would be comprised of three barbed wire strands and one barbless strand. To ensure that the cattle would not be able to push the fences in (or under) near the streams, an extra strand would be included at stream crossings.

Consistent with the criteria for new fences in deer and elk winter range (see Finding D.20), the top strand would measure approximately 42 inches above ground level. The second wire would ten inches below the top wire and the third wire eight inches below the second. The bottom strand would be 16 inches above the ground and will be a barbless twist wire. Steel posts, wooden line posts and rock jacks containing posts would be used to support the fence. Steel fence posts would be placed every 12 to 15 feet while treated round wooden line posts would be placed every 100 to 200 feet for additional support. End braces, using treated wooden brace posts, would be placed at the end of each straight run of fence.

5. Commission Rule 350-81-104(1) states:

Applications for resources enhancement projects must describe the goals and benefits of the proposed enhancement project. They must also thoroughly document the condition of the resources before and after the proposed enhancement project.

As described by the applicant, the goal of the proposed fence is to keep domestic livestock, namely cattle, out of sensitive wildlife habitat and stream and wetland buffers. Without a fence to separate the WDFW property from the adjacent parcel to the north, the cattle would continue to graze, trample and defecated in the sensitive areas. The benefits of the proposed fencing include allowing the land an opportunity to recover from previous grazing, trampling and other effects from livestock and improve habitat quality through recovery of native plant species previously affected by grazing. Removing the existing fence between the two WDFW parcels would improve wildlife migration patterns.

Conclusion:

The proposed fence is allowed as a resource enhancement project subject to guidelines found in Commission Rules 350-80-520 to 350-80-620 that protect scenic, cultural, recreation, and natural resources.

B. Scenic Resources

1. Commission Rule 350-81-520(1)(a) states:

New buildings and roads shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.

No new buildings, road construction or grading activities are proposed at this time. Therefore, Commission Rule 350-81-520(1)(a) does not apply.

2. Commission Rule 350-81-520(1)(b) states:

New buildings shall be compatible with the general scale (height, dimensions and overall mass) of existing nearby development. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

No new buildings are proposed at this time. Therefore, Commission Rule 350-81-520(1)(b) does not apply.

3. Commission Rule 350-81-520(2)(a) contains guidelines for proposed developments on sites topographically visible from key viewing areas.

The subject parcel occupies a southwest facing slope and is topographically visible in the background when viewed from the southeast from the Rowena Plateau and the Nature Conservancy Viewpoint (Tom McCall Point). Only the northernmost portion of the property is visible from the Rowena Plateau, but the entire parcel is visible from the top of Tom McCall Point. Therefore the proposed fences would be topographically visible from one Key Viewing Area (KVA) and will be reviewed for consistency with the guidelines under Commission Rule 350-81-520 pursuant to this rule.

4. Commission Rule 350-81-520(2)(b) states that each development shall be visually subordinate to its setting as seen from KVAs. The southern half of the parcel is relatively level, gently climbing in elevation to the north and is open with a pasture like appearance. In contrast, the northern half of the parcel contains steeper terrain and many mature oak trees that provide a dense canopy of coverage. The proposed fencing would be located primarily within the portions covered by the canopy of oak trees. The fences would be supported by six foot

steel t-posts every 12 to 15 feet, painted a dark green color, and treated wooden posts would be placed every 100 to 200 feet as necessary that would be left to weather naturally. The treated wooden brace posts placed at the end of each length of fence would also be permitted to weather naturally. Rock jacks will be used along the eastern property line beginning at the intersection of the existing fence on the adjoining property and for approximately 200 feet north, ending just under the existing tree canopy. From there, the steel t-posts and treated wooden posts would be used for the rest of the fencing project. The proposed fence is small in scale and is located approximately three miles from the nearest KVA from which it is visible. Given this information, the livestock fencing would be able to blend within the landscape and reach visual subordination, consistent with Commission Rule 350-81-520(2)(b).

5. Commission Rule 350-81-520(2)(c) states:

Determination of potential effects and compliance with visual subordination policies shall include consideration of the cumulative effects of the proposed development.

The more visible portions of the property currently contain existing livestock fences. The proposed fencing would receive significant levels of screening from existing oak trees and because they would be tucked into more diverse terrain, would not be as prominent in the landscape. As previously described in Finding A.4 above, the nature of the proposed structures are small and will not add to the cumulative impacts of the area's existing visual development. Because the proposed fences would not be visibly discernable to the unaided eye from KVAs, no cumulative effects are expected, consistent with this rule.

6. Commission Rules 350-81-520(2)(d)(A) and (B) include guidelines to ensure that the extent and type of conditions applied to a proposed development to achieve visual subordination shall be proportionate to its potential visual impacts as seen from KVAs. Rule 520(d)(A) states:

Decisions shall include written findings addressing the factors influencing potential visual impact, including but not limited to:

- (i) The amount of area of the building site exposed to key viewing areas.*
- (ii) The degree of existing vegetation providing screening.*
- (iii) The distance from the building site to the key viewing areas from which it is visible.*

- (iv) *The number of key viewing areas from which it is visible.*
- (v) *The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).*

The number of key viewing areas from which it is visible.

The proposed fences would be visible from one KVA, the Rowena Plateau and Nature Conservancy Viewpoint (including Tom McCall Point).

The amount of area of the building site exposed to key viewing areas.

The entire parcel is topographically visible from Tom McCall Point, and the northern most portion of the parcel is topographically visible from the Rowena Plateau viewing area. Given these facts, the entire parcel would be topographically visible in the background as seen from two KVAs.

The degree of existing vegetation providing screening.

The northern half of the parcel contains a large amount of mature oak trees, pine, blackberry bushes and grasses. The large canopy of the oak trees provides a high level of vegetative screening – particularly in the spring and summer months.

The distance from the building site to the key viewing areas from which it is visible. At the closest point from which it is topographically visible, the location of the fences would be visible in the middle ground from the Rowena Plateau at about two and a half miles away and in the far background, at approximately three and half miles from Tom McCall Point.

The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

Because both of the applicable viewing areas are points, not linear segments, this criterion does not apply to the proposed development. .

7. Commission Rule 350-81-520(2)(d)(B) states:

Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to:

- (i) *Siting (location of development on the subject property, building orientation, and other elements).*
- (ii) *Retention of existing vegetation.*

(iii) *Design (color, reflectivity, size, shape, height, architectural and design details and other elements).*

(iv) *New landscaping.*

Siting (location of development on the subject property, building orientation, and other elements). As proposed, the livestock fencing is sited along the existing property lines. As previously explained, the proposed fence would be visually subordinate to its surrounding landscape when viewed from KVAs. Therefore, conditions of approval regarding the siting of the proposed fencing are not needed to be consistent with this guideline.

Retention of existing vegetation.

The canopy of the existing mature oak trees provides a high level of coverage and fully screens the project area from KVAs. However, due to the small size of the proposed structures, and the distance from KVAs, screening vegetation is not needed for the development to be visually subordinate to its surrounding landscape. Because the livestock fencing will be visually subordinate with or without the existing trees, conditions are not necessary, consistent with Commission Rule 350-81-520(2)(d)(B).

Design (color, reflectivity, size, shape, height, architectural and design details and other elements).

As described in previously, the fence posts will consist of steel t-posts, treated wooden pole posts and rock jacks filled with natural rock. The wood and rock are natural earth tones that will blend with the landscape. The t-posts measure only inches thick and will be a dark green color. The visible surface of the t-posts will be subordinate to the landscape, consistent with this rule. Therefore, the use of these materials will not affect the fence's ability to be visually subordinate when viewed from KVAs.

New landscaping.

No new landscaping has been proposed.

8. Commission Rule 350-81-520(2)(e) states:

New development shall be sited to achieve visual subordination from key viewing areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, or sensitive wildlife sites or would conflict with guidelines to protect cultural resources.

In such situations, development shall comply with this guideline to the maximum extent practicable.

As proposed, the fence would enclose the northern property line and the north half of the eastern property line to protect sensitive natural resources. As proposed, and

discussed in Finding B.7, the fence would be able to achieve visual subordination when viewed from KVAs. The proposed fencing complies with this guideline to the maximum extent practicable, consistent with Commission Rule 350-81-520(2)(e).

9. Commission Rule 350-81-520(2)(f) states:

New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from key viewing areas.

As previously discussed, the entire parcel is topographically visible when viewed from KVAs, but due to the small scale nature of the project and distance from KVAs, it would be able to achieve visual subordination without the need for topographic or vegetative screening. As proposed, the development is consistent with this rule.

10. Commission Rule 350-81-520(2)(g) states:

Existing tree cover screening proposed development from key viewing areas shall be retained as specified in the Landscape Settings Design Guidelines in 350-81-520(3).

No vegetation removal has been proposed. As proposed, the fences are small enough in nature that vegetative screening is not needed to reach visual subordination when viewed from KVAs located approximately three miles away.

11. Commission Rule 350-81-520(2)(h) states:

The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from key viewing areas. Variances to this guideline may be granted if application of the guideline would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the guideline have been made.

No new buildings are proposed. Therefore this guideline does not apply.

12. Commission Rule 350-81-520(2)(j) and (k) contain guidelines for new landscaping and the retention of existing landscaping for new developments visible from KVAs. This rule requires the use of new landscaping only if the use of all other available means (design, site/location, color etc.) does not make the development visually subordinate to its setting. The proposed development does not require the removal of any existing vegetation or the addition of new screening vegetation to achieve visual subordination, consistent with this rule.

13. Commission Rule 350-81-520(2)(l) regarding the exterior colors of new developments visible from KVAs. It states:

Unless expressly exempted by other provisions in 350-81-520, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors.

As proposed, the livestock fence will utilize three kinds of posts, including a dark green steel t-posts, treated wood posts and rock jacks using rocks that blend with the surrounding landscape. All of these materials are acceptable earth-tone colors found at the specific site or in the surrounding landscape, consistent with this rule.

14. Commission Rule 350-81-520(2)(m) states:

The exterior of buildings on lands seen from key viewing areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all key viewing areas by existing topographic features. The Scenic Resources Implementation Handbook will include a list of recommended exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets recommended thresholds in the "Visibility and Reflectivity Matrices" in the Implementation Handbook (once they are created). Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure visual subordination. Recommended square footage limitations for such surfaces will be provided for guidance in the Implementation Handbook.

No new buildings are proposed in this application. Thus, Commission Rule 350-81-520(2)(m) does not apply.

15. Commission Rule 350-81-520(2)(p) states:

Exterior lighting shall be directed downward and sited, hooded, and shielded such that it is not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

No exterior lighting has been proposed in this application. Therefore, this rule does not apply.

16. The Landscape Settings map in the Management Plan classifies the northern half of the subject parcel as Oak Woodlands and the southern portion of the parcel as

Pastoral. The proposed fences would be occurring entirely within the Oak Woodlands landscape setting. Commission Rule 350-80-520(3)(c) contains guidelines for new development in the Oak-Pine Woodland landscape setting. Rule 520(3)(c)(A) states:

Structure height shall remain below the tree canopy level in wooded portions of this setting.

As previously explained the landscape contains a forest of mature oak trees. The canopy height of the surrounding trees measure more than 30 feet in height, much higher than any proposed fence post, consistent with this rule.

17. Commission Rule 350-81-520(3)(c)(B) states:

In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

- (i) At least half of any tree species planted for screening purposes shall be species native to the setting. Such species include Oregon white oak, ponderosa pine, and Douglas-fir.*
- (ii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.*

For substantially wooded portions:

- (ii) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained.*

No new screening trees are required to achieve visual subordination from KVAs. Retention of such trees pursuant to Commission Rule 350-81-520(3)(c)(B) is employed if needed to achieve visual subordination. Thus, in this case, such retention is not being required. Because the proposed use would be visually subordinate with its surrounding landscape, it is consistent with Commission Rule 350-80-520(3)(c)(B).

Conclusion:

With a condition of approval regarding color, the proposed development is consistent with the guidelines for the protection of scenic resources found in Commission Rule 350-81-520.

C. Cultural Resources

1. Commission Rule 350-81-540(1)(c)(A) and (B) include guidelines to determine when a cultural resource reconnaissance survey and a historic survey are required. Pursuant to Commission Rule 350-81-540(1)(c)(A)(i), a reconnaissance survey is required for all proposed uses within 500 feet of a known cultural resource, including those uses otherwise exempted from the survey requirements.
2. Margaret Dryden, U.S. Forest Service Archaeologist notified staff on February 12, 2009 that the proposed fences would be located within the vicinity of a known cultural resource. On March 2, 2009, Ms. Dryden conducted a reconnaissance survey of the site. On March 20, 2009, Ms. Dryden submitted a Heritage Resource Inventory Report titled *Heritage Resource Inventory Report for the WDFW New Fence Construction Project*. In her report, Ms. Dryden made specific recommendations to the applicant for the protection of cultural resources that would reduce any potential impacts of the fence to that of No Adverse Affect. The applicant has agreed to follow the recommendations and has incorporated them into the proposed design. Because of the confidential nature of this information it is not discussed in any further detail in this report.
3. Commission Rule 350-81-540(2)(a)(A) allows interested parties to consult with the applicant regarding cultural resources. No substantiated comments regarding cultural resources on the subject parcel were received during the comment period.
4. Commission Rule 350-81-540(2)(b)(A) and (B) require Commission staff to submit a copy of the survey report to the State Historic Preservation Officer and the Indian tribal governments for a 30 day comment period.

On March 24, 2009, Commission staff sent copies of Ms. Dryden's survey report to the State Historic Preservation Officer and the Indian tribal governments for comment. On March 30, 2009 comments were received from Robert Whitlam, State Archaeologist for the Washington Department of Archaeology and Historic Preservation. In his letter, Mr. Whitlam states: "We concur with her [Ms. Dryden] professional recommendations and determination of No Adverse Affect. No comments were received from the tribal governments.

5. Commission Rule 350-81-540(2)(c)(B)(ii) states the cultural resource protection process may conclude when the following conditions exist:

A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2(b)(B) above.

As stated above, comments were received from the State Historic Preservation Office concurring with Ms. Dryden's survey report. No substantiated concerns were voiced by the Indian tribal governments or any other interested parties. Therefore, pursuant to Commission Rule 350-81-540(2)(c)(B)(ii), the cultural resource protection process may conclude.

6. Commission Rules 350-81-540(6)(a) and (b) require that, if cultural resources are discovered during project construction, all construction cease within 100' of the discovered resource and the Commission notified within 24 hours of the discovery.

A condition of approval will alert the applicant of this requirement.

Conclusion:

With a condition requiring the cessation of work and Commission notification if cultural resources are discovered during construction, the proposed addition is consistent with applicable cultural resources guidelines in Commission Rule 350-81.

D. Natural Resources

1. Commission Rules 350-81-560 through 570 contain guidelines that protect wetlands (350-81-560) and streams, ponds, lakes and riparian areas (350-81-570).
2. The Gorge Commission natural resource inventories show one perennial stream and one intermittent stream that meet in the northeastern portion of the parcel and flow south, feeding into a palustrine wetland located on the adjacent WDFW property. Upon submittal, the applicant's site plan showed the known intermittent stream and wetland to the east, but also showed three other intermittent streams to the west. The perennial stream was not shown.

A site visit conducted by Commission and Forest Service staff and the applicant (WDFW staff) determined that the intermittent stream and wetland to the east were near where Commission maps had indicated, but that the perennial stream was much farther to the east. While on the site visit, staff also identified six more seasonal streams; originating from the north and flowing in a different direction to the southwestern corner of the parcel.

The six additional intermittent streams were observed crossing the northern property line of the subject parcel, flowing southwest and converging into one, primary stream channel just below the tree line in the southwest quarter of the parcel. The primary channel continues to flow southwest until it intersects with a ditch that runs along the northern shoulder of County Road 1230.

As a result of the site visit, the site plan has been revised by staff to show the seven intermittent streams and the wetland on adjacent WDFW parcel to the east (whose buffers would be crossed by the proposed fence). Because of the distance, the perennial stream is not shown.

3. Commission Rule 350-81-560 contains guidelines for the protection of wetlands. Commission Rule 350-81-560(7)(a) through (d) state:

(a) *The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.*

(b) *The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.*

(A) *A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.*

(B) *A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.*

(C) *A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.*

(c) *Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:*

(A) *Forest communities: 75 feet*

(B) *Shrub communities: 100 feet*

(C) *Herbaceous communities: 150 feet*

- (d) *Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.*

The wetland is surrounded by a mix of large oak and pine trees. Active grazing of this area has resulted in a minimal shrub layer. As described in rule (b)(A) above, a forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community. Given this information, the wetland has a shrub community buffer zone of 100 feet.

The wetland is located near the existing eastern fence line that is proposed to be removed. As it currently exists, the fence is located well within the wetland buffer; as close as 40 feet to the wetland in some areas and as far as 85 feet in others. Removing this portion of the fence from the buffer zone would allow for better protection of the wetland itself and for better migration of species through WDFW property.

The new fence to be placed along the northern half of the eastern property line would begin at an existing post that currently supports the adjacent WDFW property's northern fence line (where the fence to be removed ends). The distance between this post and the wetland is approximately 60 feet, and is within the wetland buffer. The new fence would continue north, away from the wetland, but would be near the eastern intermittent stream, and in some areas, within its buffer.

5. Pursuant to Commission Rule 350-81-560(4), uses within the buffer of wetlands not specifically defined by a review use in 560(2) and (3) must be able to demonstrate that there are no practicable alternative as defined by Commission Rule 350-81-560(6)(a) through (h). Because the same criteria (a) through (h) are used for wetland and stream buffers (Commission Rule 350-81-570(6)(a) through (h)), the findings are combined in Findings D.9 through D. 16 below.
6. As previously explained, six intermittent streams cross the property from the northeast to the southwest and another runs roughly parallel to the eastern property line. A perennial stream exists much further to the east. Commission Rule 350-81-570(7)(a) requires a 50-foot buffer zone on each side of intermittent streams and a 100-foot buffer for perennial streams. As proposed, the fence would not be located within the perennial stream buffer, but would run through all seven intermittent streams and buffer zones. Because the cattle may try to push through fencing near the water, the applicant has indicated the need for t-posts and wood poles to be placed within five feet of the ordinary high water mark for each stream to ensure fence strength. She has also indicated that where the streams will be crossed, a fifth wire will be added to the bottom of the fence to prevent cattle from pushing under the fences.

7. Commission Rule 350-81-570(6) allows for uses in stream buffers not specifically contained within Commission Rule 350-81-570(2) and (3).
8. Commission Rule 350-81-570(6)(a) states:

The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by 350-81-560(6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.

9. Commission Rule 350-81-560(6)(a) allows non water-dependent uses that have no practicable alternative subject to the following criteria:

(A) *The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands [streams];*

The basic purpose of the proposed fence is to prevent livestock from grazing through WDFW land and specific areas of protected habitat. To prevent the livestock from entering the parcel, a new fence must be erected along the northern boundary and northern half of the eastern property line.

(B) *The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetland [streams]; and*

Because the streams and stream and wetland buffers cover so much of the subject parcel, reducing the size, scope or configuration of the proposed fences would reduce the amount of habitat that could be protected. Reducing the size of the fences could potentially result in more adverse effects on the streams because the cattle would be able to erode the channels, trample vegetation and defecate within the waterways.

(C) *Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.*

An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

No alternatives to the proposed fencing exist. There are no alternative means by which neighboring livestock could be prevented from grazing on the WDFW property that are less invasive to the streams and wetland buffers. Given this information, no constraints existed that could have been remedied to remove the proposed fences from the stream and wetland buffers. In sum, the basic purpose of the proposed project cannot be reasonably accomplished in any other site, consistent with Commission Rule 350-81-560(6)(a).

10. Commission Rule 350-81-570(6)(b) states:

The proposed use is in the public interest as determined by 350-81-560(6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.

11. Commission Rule 350-81-560(6)(b) determines whether the proposed use is in the public interest. Determining factors include:

- (A) *The extent of public need for the proposed use.*
- (B) *The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.*
- (C) *The functions and size of the wetland [stream] that may be affected.*
- (D) *The economic value of the proposed use to the general area.*
- (E) *The ecological value of the wetland [stream] and probable effect on public health and safety, fish, plants, and wildlife.*

The subject parcel is primarily designated Open Space, and is limited in economic value. It is however, likely to have a high ecological value for fish plants and wildlife. It is in the public's best interest to protect sensitive natural resources by preventing future grazing activities on this property. It will also protect the State's investment in owning and managing lands for sensitive wildlife. As proposed, the fencing would provide long-term protection of seven intermittent streams, a wetland and other sensitive habitat and species from livestock trampling, defecation and other forms of degradation.

The proposed fence would begin approximately 40 feet within the wetland buffer and travel north out of the wetland buffer but through a stream buffer and to the northeast corner of the property. From that point it would travel west, crossing through six stream channels and end at the northwest corner of the property (where it would hook into the existing western fence line). As proposed the applicant would be utilizing t-posts, wooden posts and rock jacks to support the

fencing material. The stream channels are narrow, but several posts will be located within the buffer of the streams.

The function and size of the hydrologic features would not be altered by the proposed fencing. To determine the ecological value of the streams, staff contacted WDFW Habitat Biologist Bill Weiler. On February 12, 2009 Mr. Weiler commented that "WDFW's Habitat Program fully supports Sue Van Leuven's project to protect important wildlife habitat on the Balch Lake portion of the Klickitat Wildlife Area." Based on this information, the proposed fencing would not have a probable effect on public health and safety, fish plants or wildlife. The proposed fencing would be in the public interest, consistent with Commission Rule 350-81-560(6)(b).

12. Commission Rule 350-81-560(6)(c) and 570(6)(c) contain guidelines to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected wetland, stream, pond, lake, and/or buffer zone.

As proposed, the applicant would be using t-posts, wooden poles and several rock jacks with wire strand fencing that is consistent with rules for new fencing within deer and elk winter range (see Finding D.20 below). No grading or ground disturbance other than the posting of the posts are required as part of installation. The posts near the wetland are proposed to be rock jacks, which do not require ground disturbance. Because the proposed fence would not degrade the wetland or stream functions, change the existing contour, vegetation, or affect fish and wildlife resources or hydrology, no additional measures need to be applied to ensure the protection of the wetland or stream functions. Thus, the proposed fencing is consistent with Commission Rule 350-81-560(6)(c) and 350-81-570(6)(c).

13. Commission Rule 350-81-560(6)(d) and 570(6)(d) states:

Groundwater and surface-water quality will not be degraded by the proposed use.

As previously described above, no grading or digging will be necessary for the installation of the proposed fence. The fencing will actually protect water quality from degradation. Given this information, the proposed fencing is consistent with this rule.

14. Commission Rule 350-81-560(6)(e) and 570(6)(e) state:

Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of wetland, stream, pond, and lake buffer zones.

The fence is not water dependent, but as previously explained in Finding D.6 above, cannot be relocated to any other location(s) and still serve the same purpose, consistent with this rule.

15. Commission Rule 350-81-560(6)(f) and 570(6)(f) state:

The proposed use complies with all applicable federal, state, and county laws.

It is the responsibility of the applicant to comply with all other applicable federal, state and county laws. A condition of approval will be included in this decision to ensure compliance with this guideline.

16. Commission Rule 350-81-560(6)(g) and (h) and 570(6)(g) and (h) contain guidelines for the rehabilitation and enhancement of unavoidable impacts to aquatic and riparian areas. As proposed, no grading, ground disturbance or unavoidable impacts to the wetland buffer, stream or stream buffers will be occurring. Therefore, Commission Rules 350-81-560 and 570(6)(g) and (h) do not apply to the proposed development.
17. The Gorge Commission's sensitive wildlife inventory shows that the parcel is located within the vicinity of western pond turtle, sharptail snake, Lewis' woodpecker and mule deer and black tailed deer winter range habitat. Commission Rule 350-81-580(1)(a) defines sensitive wildlife areas to include these areas.
18. Commission Rule 350-81-580(4)(a) requires the Gorge Commission to submit site plans to the Washington Department of Fish and Wildlife when a new development or land use is proposed within a sensitive wildlife area. WDFW reviews the site plan and determines if the proposed use would compromise the integrity of the wildlife area or site.

On February 12, 2009 Gorge Commission staff sent Washington Department of Fish and Wildlife (WDFW), a copy of the applicant's land use application and site plan.

19. Commission Rule 350-81-580(4)(c) states:

The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:

- (A) *The sensitive wildlife area or site is not active, or*
- (B) *The proposed use 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.*

As previously stated above, Habitat Biologist Bill Weiler stated that the WDFW Habitat Program was in full support of the proposed project. Given this information, it was determined that the proposed development would not compromise the integrity of sensitive wildlife areas or sites, consistent with Commission Rule 350-81-580(4)(c).

20. Commission Rule 350-81-580(6) contains guidelines for new fences located in deer and elk winter range. They include:

(a) *New fences in deer and elk 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.*

The applicant has proposed the fencing to exclude livestock from sensitive wildlife sites, consistent with this rule.

(b) *New and replacement fences that are allowed in winter range shall comply with the guidelines in Specifications for Structural Range Improvements (Sanderson, et. al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:*

(A) *To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.*

(B) *The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.*

(C) *The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.*

(D) *Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.*

As proposed, the top strand of wire would measure approximately 42 inches above ground level. The second wire would ten inches below the top wire and the

third wire eight inches below the second. The bottom strand would be 16 inches above the ground and will be a barbless twist wire. Steel posts, wooden line posts and rock jacks containing posts would be used to support the fence. Steel fence posts would be placed every 12 to 15 feet while treated round wooden line posts would be placed every 100 to 200 feet for additional support. End braces, using treated wooden brace posts, would be placed at the end of each straight run of fence. As proposed, the livestock fencing complies with this guideline.

21. The Gorge Commission's sensitive plant inventory does not show any sensitive plants within 1,000 feet of the subject property.

Conclusion:

With a condition of approval to ensure compliance with all other applicable federal, state and county laws, the proposed fencing is consistent with the guidelines found in Commission Rules 350-80-560 through 350-80-590 that protect natural resources.

E. Recreation Resources

1. Commission Rule 350-81-086 states:

If new buildings or structures may detract from the use and enjoyment of established recreation sites on adjacent parcels, an appropriate buffer shall be established between the building/structure and the parcel.

Established recreation sites do not exist on parcels that adjoin the subject parcel. Therefore, no buffer is required pursuant to Commission Rule 350-81-086.

Conclusion:

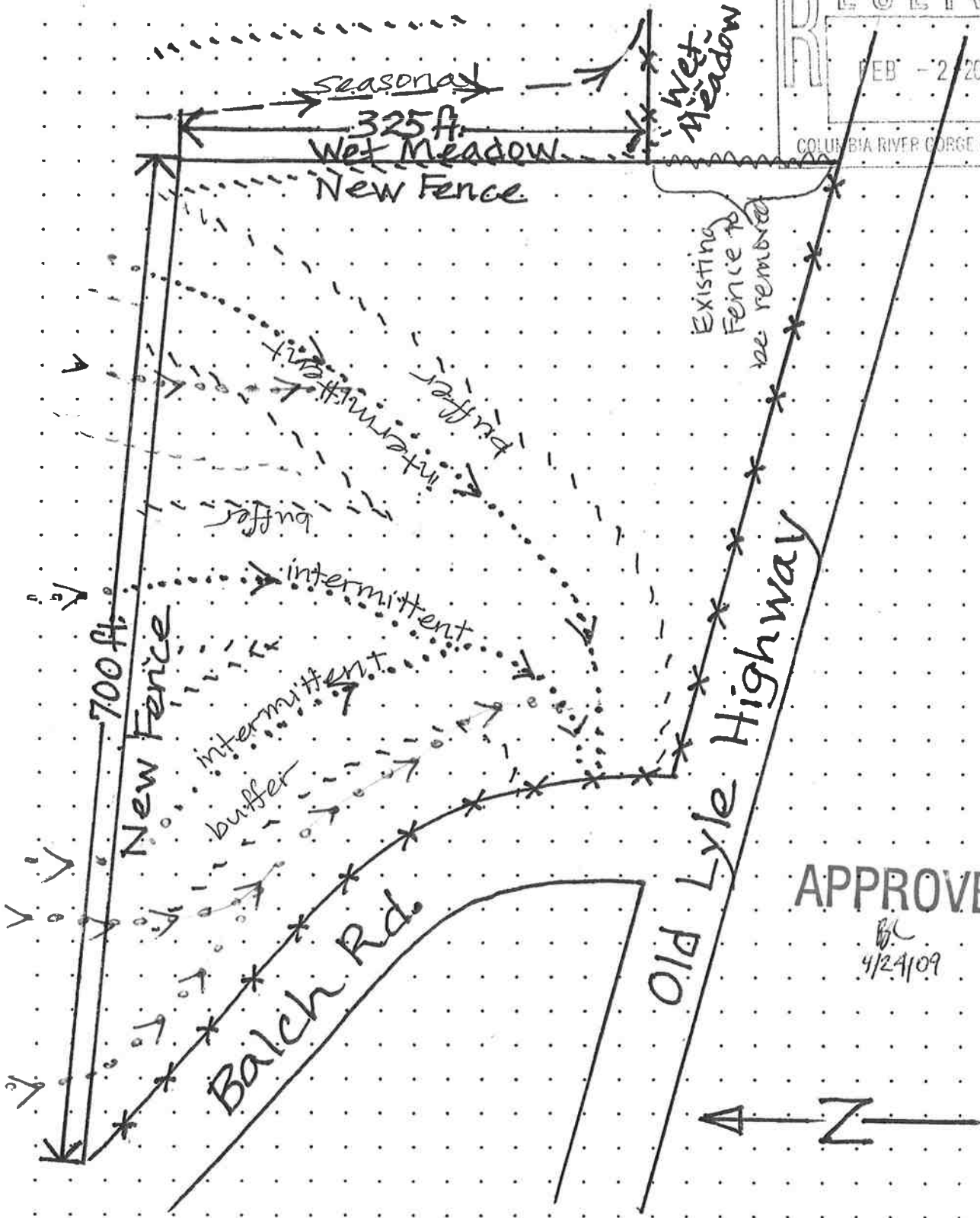
The proposed development is consistent with the applicable recreation resource guidelines in Commission Rule 350-81.

FIND0026.08

AK

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
Bill Weiler, WDFW
Robert Whitlam, WA DAHP

total of 1000 acres
* revised 4/21 AK



APPROVED

4/24/09

Each grid equals 25' x 25' at a scale of 1" = 100'.