

DIRECTOR'S DECISION

APPLICANT: Charles Davis

LANDOWNER: Charles Davis and Greg Davis

FILE NO.: C10-0006-K-G-11

REQUEST: To construct a dwelling with an attached garage and associated driveway.

LOCATION: The subject parcel is located in the NE ¼ of Section 35, Township 3N, Range 13E, Willamette Meridian, Klickitat County, Washington (Klickitat County parcel number 03-13-3500-0001/00).

LAND USE DESIGNATION: The subject parcel is in the General Management Area and is designated General Management Area Agriculture-Special and is approximately 20 acres.

DECISION:

Based upon the findings of fact in the Staff Report for Director's Decision C10-0006, the land use application by Charles Davis to construct a dwelling, attached garage and associated driveway, 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. Locations for all new structures, roads and other ground-disturbing development shall be staked for Commission inspection prior to grading or excavation. The applicant shall notify the Commission once staking is complete to arrange for an inspection. Grading and excavation may begin after Commission inspection and approval of staking.
2. The development shall be constructed as shown on the approved site plan and elevation drawings.
3. During construction activities, best management practices shall be used to prevent erosion and sedimentation near the streams. Regardless of weather or timing, disturbed areas shall be mulched. If construction activities occur during the wet season, silt fencing shall be placed at the toe of the development site and at the buffer of both streams. Disturbed areas shall be re-seeded with a native seed mix in the first spring or fall (whichever comes first) following construction activities. Silt fencing shall be left in place until mulching and seeding has occurred.

4. No outdoor lights are shown on the development plans. If any outdoor lights are installed, they shall be directed downward and sited, hooded and shielded so as to not be highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.
5. 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. Project completion means completion of all work on exteriors of structures (including painting), completion of grading and excavation and installation of any required screening vegetation.
6. If cultural resources are discovered during construction activities, all activities within 100 feet of the cultural resources shall cease and the applicants shall notify the Gorge Commission within 24 hours. The cultural resources shall remain as found; further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.
7. If human remains are discovered during construction activities, all activities shall cease upon their discovery. Local law enforcement, the Executive Director and Indian Tribal governments shall be contacted immediately. Further disturbance is prohibited until permission is granted by the Executive Director of the Gorge Commission.

DATED AND SIGNED THIS 10th day of November, 2010 at White Salmon, Washington.



Brian Litt
Principal Planner

EXPIRATION OF APPROVAL:

This decision of the Principal Planner becomes void on the 10th day of November, 2012.

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 Principal Planner 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 Principal Planner 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 10th day of December, 2011.

The decision of the Principal Planner 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 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.

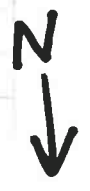
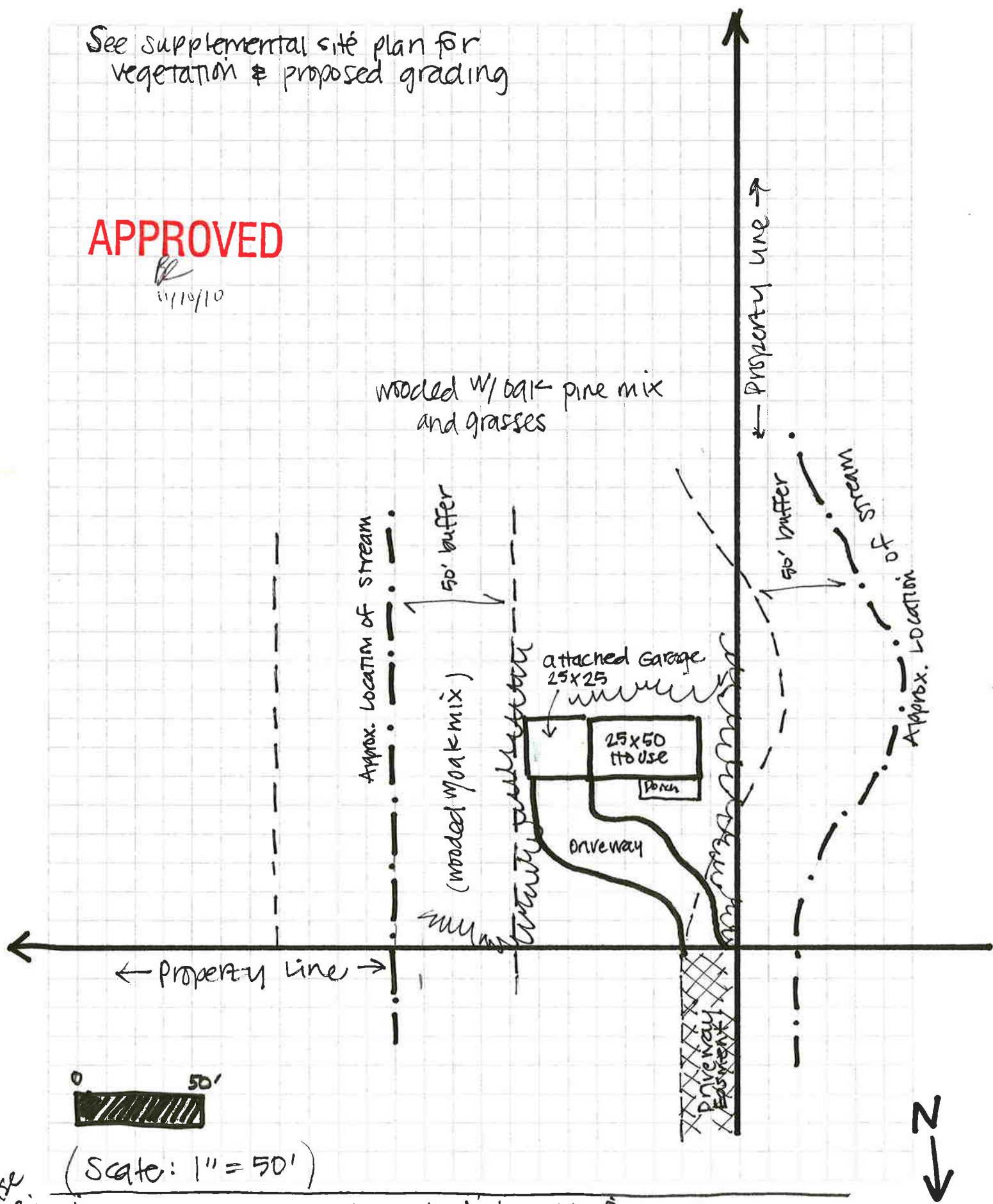
AMB
DEC0006.10

See supplemental site plan for
Vegetation & proposed grading

APPROVED

[Signature]
11/10/10

wooded w/ oak ← pine mix
and grasses



Please Note:
* Site plan created by staff after site visit to verify stream buffers and driveway location

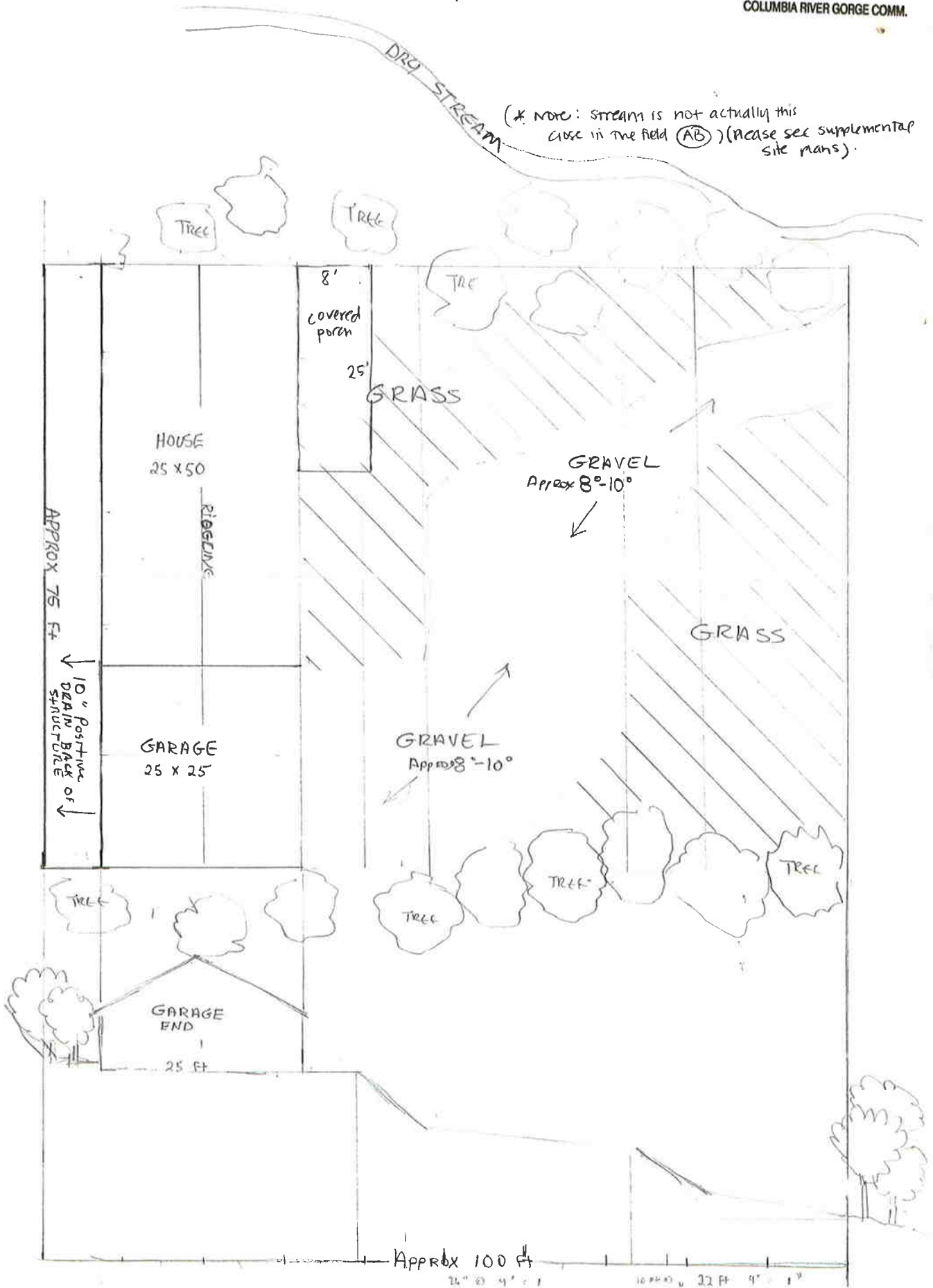
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APPROVED

BC
9/10/10

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COLUMBIA RIVER GORGE COMM.



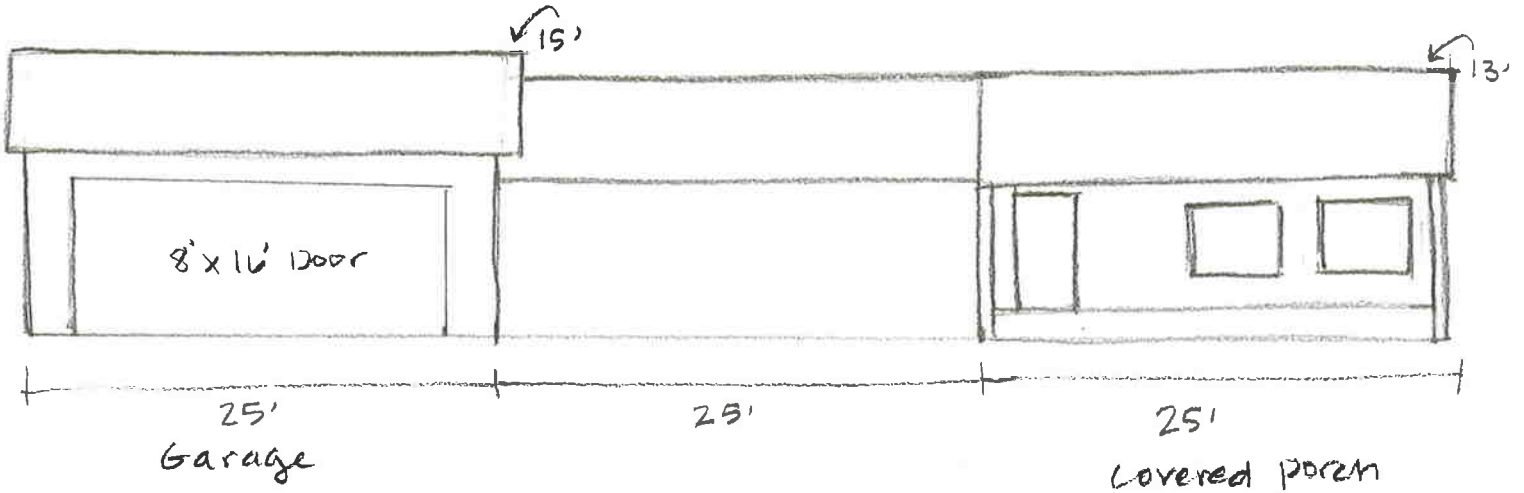
C10-0006

Revised Elevation Drawings

11-2-2010

APPROVED

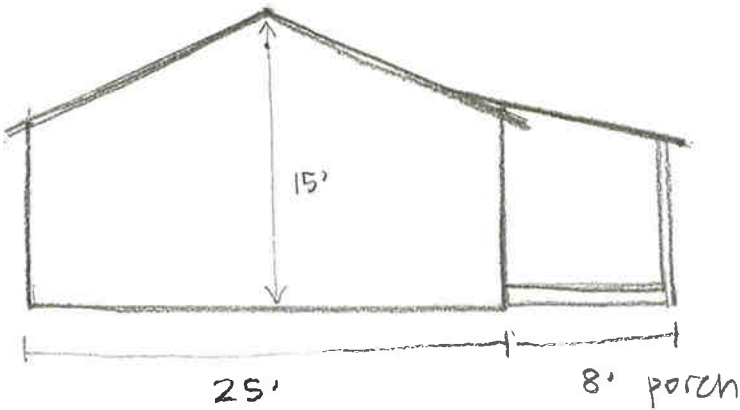
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North Elevation

75' (Dwelling & attached Garage.)

South = same but inversed and NO Garage door or covered porch.

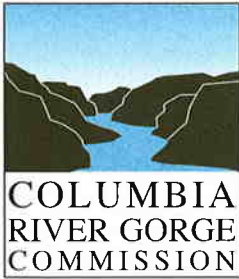


East elevation

West = same except
14' at peak.

Garage & House

Scale: 1" = 10'



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www.gorgecommission.org

STAFF REPORT

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LAND USE DESIGNATION: The subject parcel is in the General Management Area and is designated General Management Area Agriculture-Special and is approximately 20 acres.

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 Department of Archaeology and Historic Preservation
Klickitat County Planning Department
Klickitat County Building Department
Klickitat County Health Department
Klickitat County Assessor
Washington Department of Fish and Wildlife
Friends of the Columbia Gorge

Written comments were received from Anne Dobson, adjacent property owner; Marge Dryden of the US Forest Service National Scenic Area; Ted Labbe of the Washington Department of Fish and Wildlife; Johnson Meninick with the Confederated Tribes and Bands of the Yakama Nation; and Richard Till with the Friends of the Columbia Gorge.

FINDINGS OF FACT:

A. Land Use

1. Charles Davis is seeking approval to construct a new single-family dwelling with an attached garage, and associated driveway. No utilities (well, septic or electricity) are proposed at this time. Currently, the property is vacant and does not contain a driveway for access. The dwelling and attached garage are proposed to be one story with a finished final height of 14 feet and 15 feet, respectively. The 2,075 square foot footprint

of the proposed dwelling, with attached garage, would measure 75 feet in length by 25 feet in width. An 8 foot by 25 foot covered front porch is also proposed for the front entrance. The gravel driveway, measuring approximately 90 feet long and 15 feet wide, would enter from the northwest to provide access. The driveway is proposed to widen near the dwelling to provide a vehicle turnaround area. Additional portions of the proposed driveway occur north of the subject parcel, outside the National Scenic Area (NSA) and the Gorge Commission's regulatory jurisdiction.

2. The subject property is in the General Management Area (GMA). The subject parcel is therefore subject to the GMA provisions of the Management Plan.
3. Commission Rule 350-81-232(1)(g) allows single-family dwellings on lands designated General Management Area Agriculture-Special. It states:

Single-family dwellings that are not in conjunction with agricultural use, if a landowner demonstrates that (1) the dwelling cannot be constructed on a portion of the parcel that is located outside of the natural area, and (2) the dwelling is sited and designed in a manner that minimizes adverse effects to the natural area. All dwellings shall meet the criteria in 350-81-190(1)(q). The buffer guidelines for non-agricultural dwellings (350-81-076) may be waived if they would prevent the optimum siting of a dwelling.

The entire property is designated Agriculture-Special and no portion is located outside of the Columbia Hills Natural Area. Most of the subject parcel is wooded with a mix of Oregon White Oak, Ponderosa Pine and Douglas fir. The proposed location of the dwelling and driveway occurs in the largest naturally occurring clearing on the northern portion of the subject property. Although some trees will need to be cleared for development, they are younger and smaller than those in surrounding area. The proposed site is also located in the widest area between two intermittent streams. This location minimizes impacts to streams and vegetation. Information regarding the proposed development was submitted to the Natural Heritage Program for review. No comments or concerns were submitted regarding the potential impacts to the natural area. Consistency with Commission Rules 350-81-190(1)(q) and 076 are discussed in the findings below.

4. Commission Rule 350-81-109(1)(q) states:

On lands designated Large-Scale Agriculture, on a parcel that was legally created and existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural use upon a demonstration that all of the following conditions exist:

- (A) *The dwelling will not force a change in or increase the cost of accepted agricultural practices on surrounding lands.*

The subject property is located adjacent to the exterior boundary of the National Scenic Area. Properties to the north do not contain NSA land use designations. Adjacent properties to the south, east and west, are also designated GMA Agriculture-Special. Properties to the south and east are publicly owned and are not being utilized for an agricultural use. Lands to the west are privately owned, and are not commercially cultivated or grazed. In addition, new cultivation is a prohibited use in this land use designation. Given this information, the proposed dwelling will not force a change in or

increase the cost of accepted agricultural practices on surrounding lands, consistent with this guideline.

- (B) *The subject parcel is predominantly unsuitable for the production of farm crops and livestock, considering soils, terrain, location, and size of the parcel. Size alone shall not be used to determine whether a parcel is unsuitable for agricultural use. An analysis of suitability shall include the capability of the subject parcel to be used in conjunction with other agricultural operations in the area.*

Although new cultivation is prohibited in this land use designation by Commission Rule 350-81-236(1)(a), livestock grazing is allowed as a new review use with a range conservation plan prepared in cooperation with range scientists from local conservation districts and specialists from the Washington Natural Heritage Program. As previously mentioned, above, the terrain is complex with steep slopes and several drainage features. Adjacent parcels inside the NSA are predominantly public lands, and no adjacent properties are currently cultivated or grazed commercially. Accessing the parcel is difficult and is done so through a series of private roads. Depending on weather conditions, travel on the private roads can be difficult. In addition to access and terrain limitations, the parcel is only 20 acres in size, further reducing its suitability for a commercially viable livestock grazing operation. Given this information, the subject parcel is predominantly unsuitable for the production of farm crops and livestock, consistent with this guideline.

- (C) *The dwelling shall be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required by 350-81-076, or designated Commercial Forest Land or Large or Small Woodland, as required in "Siting of Dwellings on Forest Land" (350-81-310).*
- (D) *A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, Large or Small Woodland.*
- (E) *All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the dwelling is proposed to be located have been notified and given at least 10 days to comment prior to a decision.*

All adjacent properties within the National Scenic Area boundaries are designated GMA Agriculture-Special. Therefore, guidelines (C) through (E) do not apply to the proposed development.

5. Commission Rule 350-81-020(112)(b) defines "parcel" to include:

- (a) *Any unit of land legally created and separately described by deed, sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division*

ordinances or regulations applicable at the time of creation and up through November 16, 1986.

Sufficient deed documentation was submitted by the applicant to show that the subject parcel was legally created and separately described by deed prior to November 16, 1986 and is therefore consistent with Commission Rule 350-81-020(112)(b).

6. Commission Rule 350-81-076(1) contains setbacks from adjacent properties for buildings on lands adjacent to parcels designated Large-Scale or Small-Scale Agriculture. This rule states:

All new buildings in the GMA shall comply with the following guidelines when proposed to be located on a parcel adjacent to lands that are designated Large-Scale or Small-Scale Agriculture and are currently used for or are suitable for agricultural use....

The subject parcel is adjacent to the exterior boundary of the National Scenic Area. The properties located to the east, west and south are also designated GMA Agriculture-Special. The property to the north does not contain a NSA land use designation. Because no adjacent properties are designated Large or Small Agriculture, Commission Rule 350-81-076(1) does not apply and no setbacks for the protection of agricultural uses are required.

7. Commission Rule 350-81-234 contains approval criteria for review uses on lands designated Agriculture Special. It states:

- (1) *A range conservation plan pursuant to 350-81-240 shall be prepared before new livestock grazing commences; new fences, livestock watering facilities, and corrals are constructed; or soil, water, and vegetation conservation activities are undertaken [350-81-232(1)(a), (b) and (c)]. Range conservation plans are described under 350-81-240.*
- (2) *The Executive Director shall submit all land use applications and range conservation plans to the Oregon or Washington Natural Heritage Program. The state heritage program will have 20 days from the date that an application and/or plan is mailed to submit written comments to the local government.*

The Executive Director shall record and address any written comments submitted by the state heritage program in its development review order.
- (3) *Based on the comments from the state heritage program, the Executive Director shall make a final decision on whether the proposed use is consistent with the Agriculture--Special policies and guidelines. If the final decision contradicts the comments submitted by the state heritage program, the local government shall justify how it reached an opposing conclusion.*

No new livestock grazing, fences, watering facilities or corrals are proposed at this time. As discussed below in Finding D.14, staff submitted a copy of the project application to the Washington Natural Heritage Program for review and comment. No comments or concerns were received. Given this information, staff has determined that the proposed

development will be consistent with the Agriculture-Special policies and guidelines with conditions of approval to ensure the protection of scenic, natural, cultural and recreation resources.

8. Commission Rule 350-81-084(1) lists guidelines for Indian Tribal Treaty Rights and tribal consultation requirements within the General Management Area. Commission Rule 350-81-084(1)(a) lists additional notice materials for projects in or providing access to the Columbia River or its fish bearing tributaries or for projects that may affect Indian treaty rights and provides 20 days for tribal governments to submit comments. Notice of the proposal was mailed to the four tribal governments and 20 days provided for comments.
9. Commission Rule 350-81-084(1)(b) lists guidelines for tribal government consultation when those governments submit substantive written comments. Comments were received from Johnson Meninick on behalf of the Confederate Bands and Tribes of the Yakama Nation. As more thoroughly explained in Finding C.2 below, Mr. Meninick's letter recommended an archaeological survey. He did not request a consultation nor did he suggest that treaty rights would be affected by the proposal. Please see Section C of this decision for more information on the protection of cultural resources.
10. Commission Rule 350-81-084(c)(B) states:

The treaty rights protection process may conclude if the Executive Director determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.

Because the proposed use would not affect or modify treaty or other rights of any Indian tribe, the treaty rights protection process may conclude pursuant to Commission Rule 350-81-084(c)(B). Cultural resource survey requirements are addressed in Section C of this decision.

Conclusion:

With conditions of approval, the proposed dwelling (including the attached garage and associated driveway) is an allowed review use, subject to compliance with the guidelines in Commission Rules 350-81-520 to 350-81-590 that protect scenic, cultural, natural and recreation resources.

B. Scenic Resources

1. Commission Rule 350-81-520 lists scenic resource protection guidelines. 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.

The subject parcel is topographically complex, with steep slopes and multiple seasonal streams that bisect much of the parcel. The northernmost portion of the parcel contains the most level areas, but still ranges between 15% and 30% slopes. Steepness increases dramatically to the south as the property climbs upward towards Stacker Butte. As proposed, the development has been sited in the northwest corner of the property, requiring the shortest possible driveway and the least amount of grading required for the

development. The slope of the proposed location is approximately 15% as verified in the field by Commission staff. This site is also located in the largest area (with slopes of less than 30%) between the intermittent stream features. The opening contains younger trees than surrounding areas and clearing will be limited to what is needed for development. The applicant has proposed a gravel driveway and parking area near the dwelling. The dwelling is proposed to be constructed with a pier-block style foundation, requiring less grading than a concrete slab style foundation. In sum, the proposed development has been sited and designed to minimize grading to the maximum extent practicable, consistent with Commission Rule 350-81-520(1)(a).

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.

As previously described, the subject parcel is located on the edge of the NSA and is surrounded primarily by vacant private and publicly owned land inside the NSA. The nearest existing development located within the NSA is located approximately three miles southeast of the site (Columbia Hills State Park Ranger's dwellings and the northernmost properties on Oak Creek Road). The structures here range in size from 170 square feet to 3,700 square feet. As proposed, the single story dwelling and attached garage will be 2,075 square feet in size. This size is compatible with the general scale of existing nearby development and is therefore consistent with Commission Rule 350-81-520(1)(b).

3. Commission Rule 350-81-520(2)(a) states:

The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.

The entire property slopes dramatically downward from south to north – away from Key Viewing Areas (KVAs) on the back side of Stacker Butte. According to Commission inventories, the elevation of the proposed development site is approximately 2,260 feet above sea level while the highest point on the property to the south is 2,620 feet above sea level. This 360 foot rise in elevation provides complete topographic screening from KVAs. Commission staff confirmed this information from the project site and the Rowena Plateau, State Route 14 and Interstate 84. Because the subject site is not topographically visible from KVAs, Commission Rule 350-81-520(2) does not apply to the proposed development.

4. The Landscape Settings map in the Management Plan classifies the subject parcel as Oak Woodlands. Commission Rule 350-81-520(3)(c) contains guidelines for new development in this landscape setting.
5. Commission Rule 350-81-520(3)(c)(A) states:

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

As proposed, the height of the dwelling will be 15 feet at the tallest point. The surrounding coniferous and oak woodland tree canopy is mature and much taller than the proposed development. Given this information, the proposed development is consistent with Commission Rule 350-81-520(3)(c)(A).

6. Commission Rule 350-81-520(3)(c)(B) lists guidelines for new development in portions of the Oak-Pine Woodland Landscape Setting visible from KVAs. Commission Rules 350-81-520(3)(c)(B)(i) and (ii) state:

- (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.*

No new landscaping is required. Commission Rules 350-81-520(3)(c)(B)(i) and (ii) are not applicable.

7. Commission Rules 350-81-520(3)(c)(B)(iii) applies to new development in portions of the Oak-Pine Woodland Landscape Setting visible from KVAs that are substantially wooded. Commission Rule 350-81-520(3)(c)(B) states:

- (B) *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:*
 - (iii) *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.*

Because the proposed development would not be topographically visible from KVAs, Commission Rule 350-81-520(3)(d)(c)(B)(iii) does not apply.

Conclusion:

As proposed, the development is consistent with applicable scenic resource protection guidelines in Commission Rules 350-81-052 and 350-81-520.

C. Cultural Resources

1. Commission Rule 350-81-540(1) lists cultural resource protection guidelines. Commission Rules 350-81-540(1)(c)(A) and (B) include guidelines to determine when a cultural resource reconnaissance survey and a historic survey are required. In a cultural resources survey determination dated September 14, 2010, Margaret Dryden, U.S. Forest Service Archaeologist, reviewed the proposed use pursuant to these rules. Ms. Dryden determined that the proposed use did not require a historic survey as the use would not alter the exterior architecture of buildings or structures that are 50 years old or older nor would it 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, pursuant to Commission Rule 350-81-540(1)(c)(B).

Ms. Dryden determined a reconnaissance survey of the proposed use was not required as the use would occur in an area with a low probability of containing cultural resources and is not located within 500 feet of a known archaeological site. The proposed use is thus exempt from reconnaissance survey requirements pursuant to Commission Rule 350-81-540(1)(c)(A)(ii)(VI).

2. Commission Rule 350-81-540(2)(a)(A) allows interested parties who so request during the comment period to consult with the applicant regarding cultural resources. A comment from Johnson Meninick of the Confederated Tribes and Bands of the Yakama Nation was received September 27, 2010. The letter recommended an archaeological survey of the project area with shovel testing of the areas to be disturbed. The letter did not request consultation with the project applicant. Because of the exemptions described above, a reconnaissance survey was not required by the regulations of Commission Rule 350-81-540(1).
3. Commission Rule 350-81-540(2)(c)(B)(i) states the cultural resource protection process may conclude when the following conditions exist:

The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.

As explained in Finding C.1 above, the proposed use does not require a reconnaissance or historic survey. A comment was received from the Yakama Nation as described above. The concerns raised in the letter were addressed pursuant to the cultural resources protection process in Commission Rule 350-81-540. Pursuant to Commission Rule 350-81-540(2)(c)(B)(i), the cultural resource protection process may conclude.

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. A condition of approval will alert the applicant to this requirement.
5. Commission Rule 350-81-540(7) protects human remains discovered during construction. It requires that if human remains are discovered after construction begins, all construction activities shall cease and the Gorge Commission, local law enforcement officials and the Indian tribal governments shall be contacted immediately. A condition of approval will alert the applicant to this requirement.

Conclusion:

With conditions requiring the cessation of work and Commission notification if cultural resources or human remains are discovered during construction, the proposed development is consistent with applicable cultural resources guidelines in Commission 350-81-540 that protect cultural resources from adverse effects.

D. Natural Resources

1. Commission Rules 350-81-560 through 590 contain natural resource protection guidelines. Commission Rule 350-81-560 protects wetlands (350-81-560); streams, ponds, lakes and riparian areas (350-81-570); sensitive wildlife areas and sites (350-81-580); and sensitive plants (350-81-590).
2. Gorge Commission inventories identified three intermittent streams on and near the subject parcel, two of which are located within the vicinity of the proposed development. A site visit by a Gorge Commission Planner Angie Brewer and Forest Service Hydrologist Mark Kreiter confirmed this information in the field on July 7th, 2010. One stream exists just east of the proposed site, while the other is located just west, near the western property line. While in the field, Mr. Kreiter also determined that the streams do not run every year (likely every 3-6 years) but that a protective buffer would still be required. No wetlands, ponds, lakes, or riparian areas were identified within 1,000 feet of the development site.
3. If projects are proposed to be located within a stream, pond, lake or their buffer, Commission Rule 350-81-570(1)(a) requires the applicant to determine the ordinary high water mark (OHM) from which to measure the required buffer. Commission Rule 350-81-570(7)(a)(B) requires 50 foot buffers for intermittent streams, provided they are not used by anadromous or resident fish. As part of the July 7th, 2010 field visit, the OHM for both streams were identified and their 50 foot buffers were flagged.

As proposed, the new dwelling and attached garage would be located outside of the stream buffers. A small portion of the driveway however, would be located inside the buffer of the western stream, as the driveway first enters the property in the northwestern corner of the parcel. As previously described, the gravel driveway is proposed to be 15 feet wide. At the closest point (inside the NSA), the driveway would be located within 25 feet of the ordinary high water mark for a distance of approximately 15 feet. The driveway then veers east, away from the subject stream buffer and widens to provide a turn-around area directly in front of the dwelling and attached garage.

4. Commission Rule 350-81-570(4) states that uses not listed explicitly in Rules 350-81-074, 570(2) or 570(3) may be allowed in stream buffers, when approved pursuant to Rule Commission Rule 350-81-570(5) and reviewed under the applicable provisions of Rules 350-81-520 through 620.
5. 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.

6. Commission Rule 350-81-560(6)(a) states:

The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:

- (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];*

- (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 wetlands [streams]; and*
- (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.

The subject parcel is currently not accessed by any existing roads. The proposed driveway is needed to access the proposed dwelling. In order to connect to the nearest access road, the driveway will begin farther north, outside of the NSA, and follow the western property line of the parcel to the north, within a 30 foot easement. The only portion of the driveway reviewed and approved by this decision is the portion located on the subject parcel, within the NSA boundaries.

As proposed, the driveway will be placed within the eastern half of the easement, as far from the stream as possible. Because the entire width of the easement is located within the buffer of the stream in the northwest corner of the property, the driveway cannot be reduced in size, scope or configuration to avoid or result in less adverse effects on the stream. In an attempt to accommodate the constraints of the buffer, a modification to the easement was requested by the applicant, but was not received. Due to intervening topography and lack of existing access roads, no other alternatives for siting the proposed driveway exist. In sum, the proposed driveway has no practicable alternative, consistent with Commission Rule 350-81-560(6)(a).

7. 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.

8. Commission Rule 350-81-560(6)(B) states:

The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:

- (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 proposed development would be adding a permanent dwelling and access driveway on a previously undeveloped parcel. While in the field, Mr. Kreiter observed that the two streams are ephemeral in nature and do not flow on an annual basis. Based on his observations, he concluded that the western stream likely runs every 3 to 5 years and the eastern stream runs every 5 to 8 years. Because of this, the functions of the stream and ecological value for public health and safety, fish, plants and wildlife are very low. Mr. Kreiter recommended working during the dry season. If work is to be conducted during the wet season, silt fencing should be utilized at the toe of the fill area of the larger development and at the stream. The fencing should be left in place until the disturbed areas have been re-seeded and mulched to prevent erosion. A condition of approval will require the implementation of these recommendations to ensure minimal impacts to the stream and it's ecological value.

Although the public need for a new dwelling in this particular location may be low, it will add to the tax base for Klickitat County residents, thus resulting in an economic gain to the general area. As proposed, the dwelling, attached garage and access driveway will not have a detrimental effect on the ecological value of the stream and will support the economy of the general area. Given this information, the proposed development is in the public interest, consistent with 350-81-560(6)(B).

9. Commission Rule 350-81-570(6)(c) states:

Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

At a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:

- (A) *Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2000), unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife. In Washington, the Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods for in-water work.*
- (B) *All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.*
- (C) *Nonstructural controls and natural processes shall be used to the greatest extent practicable.*

- (D) *Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.*
- (E) *Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.*
- (F) *Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.*

No bridges or culverts are proposed for the portions of the driveways located inside the NSA. As explained above, Mr. Krieter provided recommendations to minimize all feasible impacts to water quality, natural drainage and habitat of the stream buffer. A condition of approval will be included to require these recommendations, including revegetation. A condition will also be included to ensure that vegetation within stream buffers is retained to the greatest extent practicable. These conditions will ensure the proposed use results in only minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, consistent with Commission Rule 350-81-570(6)(c).

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

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

As explained above, the subject stream does not run every year and therefore does not contain water at all times. With a condition of approval require silt fencing if construction occurs in the wet season, and revegetation immediately following ground disturbance, surface water quality will not be degraded by the proposed use. No aspect of the proposed project would degrade groundwater quality. Given this information, the proposed use is consistent with Commission Rule 350-81-570(6)(d).

11. Commission Rule 350-81-570(6)(e) states:

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

As previously noted above in Finding D.6, no practicable alternative exists for the location of the driveway. The dwelling and attached garage however, had been sited outside the stream buffer zones. In sum, the portions of the proposed use that have a practicable alternative are located outside the stream buffer, consistent with this rule.

12. Commission Rule 350-81-570(6)(f) states:

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

The applicant has been made aware of this guideline. Because the Commission can only enforce its own laws, it is the applicant and landowner's responsibility to ensure the proposed use complies with all other applicable county, state, and federal laws.

13. Commission Rule 350-81-570(6)(g) states:

Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement.

Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable.

When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

The following rehabilitation and enhancement guidelines shall apply:

- (A) *Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.*
- (B) *Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.*
- (C) *Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.*
- (D) *The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.*
- (E) *Riparian areas shall be rehabilitated to their original configuration, including slope and contour.*
- (F) *Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.*
- (G) *Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.*

- (H) *Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.*
- (I) *Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.*

In coordination with Forest Service Hydrologist Mark Kreiter, it was determined that the proposed development would not incur any impacts to aquatic or riparian areas as long as silt fencing was used during the wet season and mulching and revegetation occurred immediate after ground disturbance. With a condition of approval to require Mr. Kreiter's recommendations, no other rehabilitation or enhancement plans are required.

- 14. Commission Rule 350-81-580 contains guidelines to protect sensitive wildlife areas and sites. Although the parcel does not contain areas specified as sensitive wildlife areas or sites and is not located within the vicinity of a rare plant species, it is located within the Columbia Hills Natural Area on lands designated Agriculture Special. Pursuant to Commission Rule 350-81-234, staff sent a notice of the proposed development to the Washington Department of Fish and Wildlife and the Washington Natural Heritage Program.
- 15. Commission Rule 350-81- 580(4)(c) states that the wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency determine that either the site or area is not active or the use would not compromise the integrity of the site.

On September 13, 2010, Commission staff sent a letter to Washington Department of Fish and Wildlife to verify any potential impacts to these and other nearby natural resources. On October 5th, Priority Habitats and Species Specialist for WDFW responded stating: "WDFW has reviewed the land use application... We have no issues or concerns with this proposal". Through consultation with the state wildlife agency, it was determined that the proposed use would not compromise the integrity of the site, consistent with Commission Rule 350-81-580(4)(a) and (c).

- 16. Commission Rule 350-81-580(4)(b) states that the rare plant protection process may conclude if the Executive Director, in consultation with the Natural Heritage Program staff, determines that proposed use would be located outside of a sensitive plant buffer zone.

Commission staff sent a letter to the Washington Natural Heritage Program (NHP) on September 13, 2010 for comments. No concerns were voiced by the NHP staff regarding impacts to the Columbia Hills Natural Area. Given this information, the rare plant process has concluded, consistent with Rule 350-81-580(4)(b).

Conclusion:

The proposed development is consistent with the applicable guidelines in Commission Rules 350-81-560 through 350-81-590 that protect natural resources from adverse effects.

E. Recreation Resources

1. Commission Rule 350-81-086 prevents adverse impacts to existing recreation sites. It 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. Given this information, Commission Rule 350-81-086 does not apply.

Conclusion:

The proposed development is consistent with applicable recreation resource guidelines in Commission Rules 350-81-052(1)(c) and 350-81-086.

cc: Johnson Meninick, 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
Rick Till, Friends of the Columbia Gorge
Tedd Labbe, Washington Department of Fish and Wildlife
Anne Dobson, adjacent property owner

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