

DIRECTOR'S DECISION

- APPLICANTS:** Merriann Bell and Franklin Petersen
- LANDOWNER:** Same
- FILE NO.:** C11-0001
- REQUEST:**
- 1) To remove an existing 1,305 square foot dwelling and 506 square foot garage.
 - 2) To construct a 1,400 square foot single-family dwelling with septic system, and a 10-foot wide driveway extension to the new dwelling.
 - 3) After-the-fact review of modifications to an existing accessory building; removal of a 120 square foot shed; construction of a 72 square foot pump house; and construction of a woven-wire perimeter fence.
- LOCATION:** The subject parcel is located about 1.5 miles north of Lyle at 58 Canyon Road in the SW 1/4 of Section 27, Township 3 North, Range 12 East, W.M., Klickitat County, Washington (Klickitat County Assessor's ID 03122700000500).
- LAND USE DESIGNATION:** The subject parcel is approximately 5 acres in size and is designated Small-Scale Agriculture in the General Management Area.

DECISION:

Based upon the findings of fact in the Staff Report for Director's Decision C11-0001, the land use application by Merriann Bell and Franklin Petersen to remove 3 buildings, construct a 1,400 square foot dwelling and associated septic system and driveway extension, to modify an accessory building, to construct a pump house, and to construct a woven-wire perimeter fence, is found to be consistent with the standards of Section 6 and the purposes of the Columbia River Gorge National Scenic Area Act P.L. 99-663, and the Management Plan for the Columbia River Gorge National Scenic Area (Management Plan), and approvable under Commission Rule 350-81 and is hereby **approved**.

CONDITIONS OF APPROVAL:

The following conditions of approval are given to ensure that the subject request is consistent with the standards of Section 6 and the purposes of P.L. 99-663, and the Management Plan and approvable under Commission Rule 350-81. **These conditions must be recorded in county deeds and records to ensure notice of the conditions to successors in interest (Management Plan, Review Uses Guideline 1, pg. II-96).**

1. Locations for the new dwelling, driveway and septic system 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 drawing.
3. The existing home shall be removed within 60 days of occupancy of the new dwelling.
4. Existing trees with a diameter of 8 inches or more and located south of the dwelling shall be retained to screen the development from key viewing areas as shown on the approved site plan. Smaller trees may be thinned for fire protection purposes. If reviewed and approved by the Executive Director, an exception can be made to remove smaller trees for safety purposes.
5. All exterior building materials shall be dark earth-tone colors. Dark grey siding and black trim are approved for the dwelling. Specific paint or tint colors shall be submitted to the Executive Director for approval prior to painting the exterior of the dwelling. The color of plants used for the "living roof" shall not be white. Natural wood is approved for the fence posts and exterior of the pump house.
6. All exterior building materials shall be non-reflective or have low reflectivity. Approved exterior building materials include plants and dirt for the "living roofs" for the pump house and dwelling, stucco siding and wood trim for dwelling, wood siding for the pump house, and wooden posts for the perimeter fence.
7. All graded areas outside the stream buffer that are not compacted with gravel shall be reseeded.
8. During the demolition of the existing dwelling and garage, best management practices shall be used to prevent erosion and sedimentation near the stream. Regardless of weather or timing, disturbed areas shall be mulched. If demolition activities occur during the wet season, silt fencing shall be placed between the buildings and the stream. Disturbed areas shall be reseeded 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.
9. The intermittent stream has a buffer or setback of 50 feet on either side of the high water mark of the stream. Within this stream buffer, ground disturbance shall be limited to the footprints of the dwelling and garage to be removed, and to install the perimeter fence and remove the temporary fence. Disturbance shall be limited to that necessary for building material removal, mulching and reseeded, and fence post installation. No grading is approved in the stream buffer. No other development is approved within 50 feet of either side of the intermittent stream. The stream and its buffer shall be undisturbed in its natural condition. The use of heavy equipment in the stream buffer is limited to that necessary for the removal of concrete foundations of the dwelling and garage.
10. The fence is approved for the perimeter of the property. The temporary fence in the location of the existing dwelling and garage shall be removed when the buildings are demolished.
11. 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.

12. **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.
13. 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.
14. 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 6th day of April, 2011 at White Salmon, Washington.



Jill Arens
Executive Director

EXPIRATION OF APPROVAL:

This decision of the Executive Director becomes void on the 6th day of April, 2013.

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 indicate 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 6th day of May, 2011.

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 the Commission office.

NOTES:

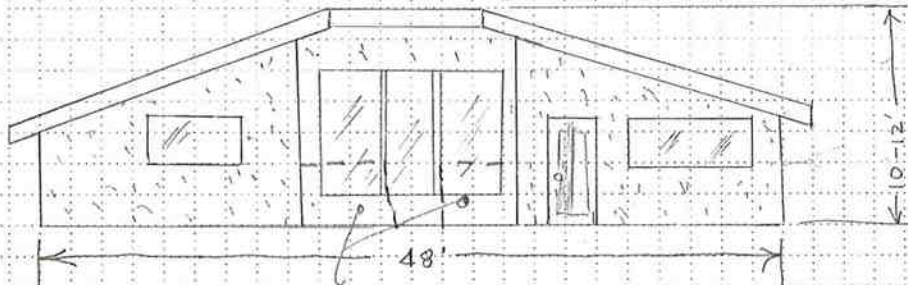
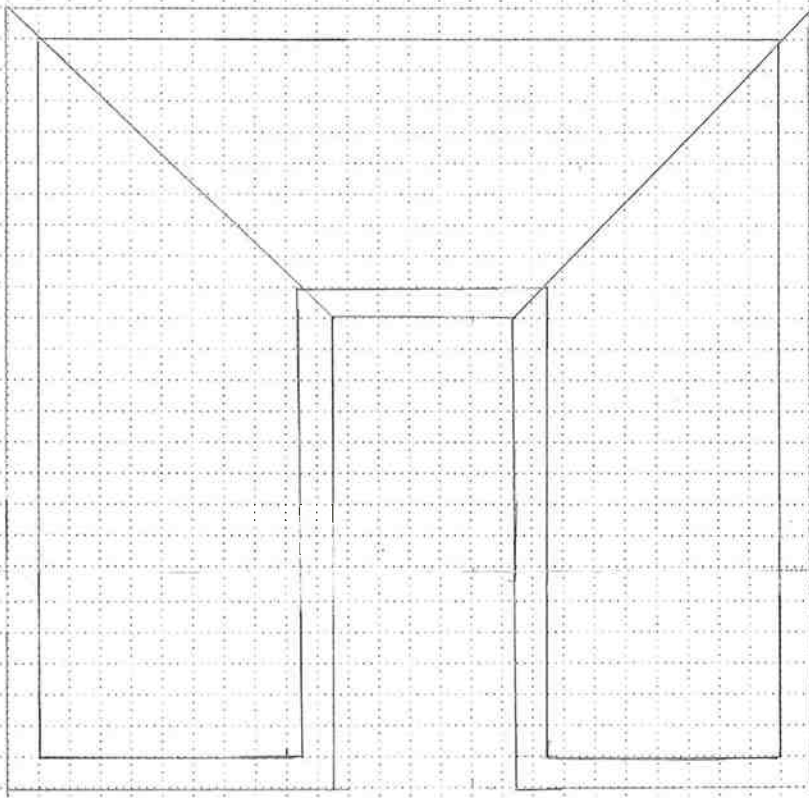
Any land uses or structural development such as fences, footbridges, greenhouses, workshops, garages, or other accessory structures; or additions or alterations not included in the approved application or site plan will require a new application and review. Any change of use of structures or buildings will require a new application and review.

JBK
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COLUMBIA RIVER GORGE COMM.



PLANTING
OR WALL?

SW x S

DEPENDS ON SOLAR GAIN
+ WATER HOLDING ON ROOF
STRUCTURE

BELL

File No.
C10-0002-K-G-11

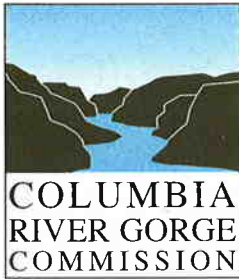
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STAFF REPORT

APPLICANT: Merriann Bell and Franklin Petersen

LANDOWNER: Same

FILE NO.: C11-0001

REQUEST:

- 1) To remove an existing 1,305 square foot dwelling and 506 square foot garage.
- 2) To construct a 1,400 square foot single-family dwelling with septic system, and a 10-foot wide driveway extension to the new dwelling.
- 3) After-the-fact review of modifications to an existing accessory building; removal of a 120 square foot shed; construction of a 72 square foot pump house; and construction of a woven-wire perimeter fence.

LOCATION: The subject parcel is located about 1.5 miles north of Lyle at 58 Canyon Road in the SW 1/4 of Section 27, Township 3 North, Range 12 East, W.M., Klickitat County, Washington (Klickitat County Assessor's ID 03122700000500).

LAND USE DESIGNATION: The subject parcel is approximately 5 acres in size and is designated Small-Scale Agriculture in the General Management Area.

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 David Howe of the Washington Department of Fish and Wildlife; Johnson Meninick of the Confederated Tribes and Bands of the Yakama Nation; Gretchen Kaehler of the Washington Department of Archaeology and Historic Preservation; and Richard Till of the Friends of the Columbia Gorge.

FINDINGS OF FACT:

A. Land Use

1. The subject property is 5 acres in size. It is partially wooded with pine and oak trees. The topography varies with the lowest portion at the north where the property is accessed from Canyon Road rising gently up to the highest point at the southeast corner near the new pump house.

Existing development on the property includes a 1,305 square foot dwelling (circa 1932), a detached garage (506 square feet) built around the same time, an accessory barn-like building, a driveway accessing the dwelling and accessory building, a cabin (dated 1948) on the western edge of the property along Canyon Road, an old pump house (64 square feet) and well near the existing dwelling, and an old dirt road approximately 10 feet in width that runs north-south the length of the property toward the southeast property corner. The current use of the property is residential and includes an agricultural use: raising heirloom seed stock and other nursery plants in pots (not in-ground cultivation).

Merriann Bell and Franklin Petersen are seeking approval to remove the 1,305 square foot dwelling and 506 square foot garage; construct a new 1,400 square foot single-family dwelling with septic system and driveway extension. Additionally, they are seeking after-the-fact review of the removal of a 120 square foot shed, the construction of a new pump house, perimeter fence, and modifications to the barn-like accessory building.

The new dwelling is proposed to be a one-story house (approximately 12 feet in height) in a horseshoe configuration and approximately 1,400 square feet. The buildings to be removed – the 1,305 square foot dwelling, 506 square foot garage, and 120 square foot shed - are located within the buffer of an intermittent stream. The buildings to be removed are more than 50 years old.

The driveway is proposed to be gravel with a width of 8-10 feet and approximately 250 feet in length. The driveway is proposed to widen near the dwelling to provide a vehicle turnaround area.

The perimeter fence uses wooden posts and galvanized woven-wire. The posts are approximately 8 feet in height, and the wire is approximately 6 feet in height.

During a recent site visit, a Gorge Commission planner discovered additional structures on the property including a footbridge, a greenhouse, and another nursery structure. These structures are not included in this review and will be the subject of subsequent enforcement action.

2. The subject property is in the General Management Area (GMA) and is designated Small-Scale Agriculture. The subject parcel is approximately 5 acres in size.
3. Commission Rule 350-81-190(1)(j) allows single-family dwellings on any legally existing parcel subject to consistency with guidelines for the protection of scenic, cultural, natural, and recreation resources. Commission Rule 350-81-020(112) defines "parcel" to include:

(b) *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.

Zoning and land division regulations in place prior to November 1986 include a subdivision ordinance and a zoning ordinance. From January 1, 1983 through May 10, 1995, land divisions in Klickitat County were subject to the "Klickitat County Subdivision and Short Platting Ordinance, As Amended." Section 4.00 of this ordinance included the following definition:

"Lot" is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts, parcels, building sites, or divisions. A lot shall be considered as all contiguous land under single ownership unless legally platted or short platted. Property bisected by a public road or river shall not be deemed contiguous.

Klickitat County enacted minimum zoning requirements in April 1979 (Zoning Ordinance No. 62678), which designated the subject tract General Rural, with a 5-acre minimum lot size. These requirements are still in effect. The subject tract has sufficient area to meet these requirements.

Klickitat County records include real estate contracts and statutory warranty deeds that describe the subject 5 acre property separately from other properties. The property was owned by Pinnell and Wickman in the 1970s, sold by Wickman to Patterson in 1998, and purchased from Patterson by the applicants, Merriann Bell and Franklin Petersen, in 2008.

The contiguous ownership (consolidation) requirement in the county's definition of "lot" did not affect the subject property because Pinnell and Wickman did not own any adjacent land during the period when Klickitat County consolidated adjacent parcels under common ownership.

Sufficient deed documentation shows that the subject tract was created prior to November 17, 1986 and complied with all applicable zoning or land division ordinances in Klickitat County. Based on these facts, the subject parcel is a separate, legal parcel, consistent with Commission Rule 350-81-020(112)(b). As described above, one dwelling exists on the parcel and is proposed to be removed. The old cabin on the property is not used as a dwelling. With a condition of approval requiring the demolition of the existing dwelling soon after occupancy of the new dwelling, the proposed dwelling is, therefore, 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.

4. Commission Rule 350-81-082(4) allows for the modification of existing structures "subject to review and approval pursuant to Commission Rule 350-81." An existing barn-like accessory building has been recently modified by the applicants and is included in this review after-the-fact. The modifications include repair work to strengthen the structure, replacing the exterior siding and roofing, and increasing the height of the structure by approximately 3-4 feet. According to Klickitat County records and a stamp in the concrete of the structure, the barn was constructed in 1962 or 1967. Klickitat County began issuing building permits in 1970 so there are no records of building permits for the original structure. Because some of the modifications go beyond repair and

maintenance (adding 3 – 4 feet in height), the modifications will be reviewed for consistency with provisions protecting scenic, cultural, natural, and recreation resources pursuant to Commission Rule 350-81.

5. Commission Rule 350-81-190(1)(x) allows for the removal or demolition of structures that are 50 or more years old. The dwelling was constructed in 1932 and the 506 square foot garage was probably constructed about the same time. Another shed, approximately 120 square feet, date unknown, was damaged by a flood and was removed by the applicants sometime within the past couple years. The removal of these structures is allowed pursuant to Commission Rule 350-81-190(1)(x), subject to consistency with guidelines for the protection of scenic, cultural, natural, and recreation resources.
6. Pursuant to Commission Rule 350-81-050(1)(a), accessory structures between 60 and 200 square feet in area and up to 10 feet in height are allowed using the expedited development review process, provided they comply with the applicable resource protection guidelines in Commission Rule 350-81-052. The applicants constructed a pump house 72 square feet in area and 7 feet tall. An after-the-fact review of it is included in this decision. Because the review of the pump house is combined with the review for a new dwelling and other development, staff used the procedural guidelines for standard reviews instead of Commission Rule 350-81-054.
7. Pursuant to Commission Rule 350-81-050(1)(e), woven-wire fences enclosing 80 acres or less are allowed for agricultural uses using the expedited development review process, provided it complies with the applicable resource protection guidelines in Commission Rule 350-81-052. Commission Rule 350-81-020(8) defines agricultural use as follows:

*(8) **Agricultural use:** The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops;...*

As noted above, the current use of the property includes an agricultural use: raising heirloom seed stock and other nursery plants in pots. The seeds and plants are raised for sale; the sales of which occur off premises. The applicants constructed a woven-wire fence around the perimeter of the subject property, which is 5 acres in size, to protect their agricultural use. To be reviewed under the resource protection guidelines in Commission Rule 350-81-052 for expedited review uses, the fence must be located outside stream buffer zones (Commission Rule 350-81-052(1)(d)(A)(i)). The subject fence crosses a stream and stream buffer zone. Therefore, the fence will be reviewed for consistency with provisions protecting scenic, cultural, natural, and recreation resources pursuant to Commission Rule 350-81-520 through 350-81-610 instead of the resource protection guidelines in Commission Rule 350-81-052.

8. 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....

Adjacent properties to the south and west are designated GMA Small-Scale Agriculture and adjacent properties to the north and east are designated GMA Large-Scale Agriculture. The subject and adjacent properties have scattered mixed pine and oak forest providing a natural vegetative buffer. There is a vineyard on land west of the subject parcel. Pursuant to Commission Rule 350-81-076(1), new buildings on lands adjacent to vineyards in areas with a natural vegetative buffer requires a 50 foot buffer from adjacent parcels. The proposed dwelling will be approximately 150 from the adjacent property to the west, consistent with this setback requirement. Properties to the north and east are currently used for some grazing, which requires new buildings to be setback at least 15 feet from properties with a natural vegetative buffer. The property to the south is not currently used for agriculture but may be suitable for grazing (15' setback) or vineyards (50' setback). Consistent with Commission Rule 350-81-076 (1), the proposed dwelling is located approximately 94 feet from the property to the south, more than 100 feet from the property to the east, and more than 350 feet from land to the north. The proposed dwelling is sited consistent with Commission Rule 350-81-076(1).

9. 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.
10. Commission Rule 350-81-084(1)(b) lists guidelines for tribal government consultation when those governments submit substantive written comments. A letter dated January 28, 2011 was 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 a survey of the area and monitoring during ground disturbing activities. 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.
11. 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 350-91-084(c)(B). Cultural resource survey requirements are addressed in Section C of this decision.

Conclusion:

With conditions of approval, the removal of an existing dwelling, garage and shed, construction of a proposed dwelling (including the associated driveway and septic system), modifications to an accessory building, and construction of a pump house and woven-wire fence are allowed review uses, subject to compliance with the guidelines in Commission Rules 350-81-052 (pump house) and 350-81-520 to 350-81-590 (all other development) that protect scenic, cultural, natural and recreation resources.

B. Scenic Resources

1. Commission Rule 350-81-052(1)(a) lists scenic resource protection guidelines for expedited review uses. The construction of the 72 square foot pump house is eligible for expedited review. Commission Rule 350-81-052(1)(a) states:

(B) Except signs, the colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. This guideline shall not apply to additions, which may match the color of existing buildings.

(C)structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents, and chimneys.

(D) Outdoor lights shall be directed downward and sited.....

(F) Structures within one-half mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and/or designed to achieve the applicable scenic standard (e.g., visual subordination, not visually evident).

The pump house is topographically visible from a short stretch of the Historic Columbia River Highway, located approximately 2.2 miles away, and likely from the Tom McCall Point portion of the Nature Conservancy Viewpoint, more than 3 miles distant. No exterior lighting of the pump house is proposed. Given this, Commission Rule 350-81-052(1)(a)(B) and (C) are applicable and Commission Rules 350-81-052(1)(a)(D) and (F) are not. The pump house was constructed using wood siding and a "living roof" with dirt and plants, consistent with the requirement for materials with no or low-reflectivity. The color of the pump house has grey wood siding and varied plant colors for the roof. The grey color is similar to the colors found in the tree bark on the property. The living roof is under construction and the plants have not been placed. Given the natural colors of the materials used, the colors will blend with the surrounding landscape, consistent with Commission Rule 350-81-052(1)(a)(B).

2. Commission Rule 350-81-520 lists scenic resource protection guidelines applicable for the portions of the project not eligible for review under the expedited process. 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 gently sloped, sloping up from the north and west along Canyon Road toward the south and east. The rise in topography screens much of the subject parcel from key viewing areas. Existing development is located on the lower elevation portion of the property and is not topographically visible from key viewing areas. The site for the proposed dwelling is up hill on a portion of the property that faces southwest toward the distant Columbia River. The southeast corner of the property is the highest point on the property.

Slopes vary, but are generally in the range of 10-17% where the driveway and dwelling are proposed. The applicants modified their original driveway alignment to more closely follow existing contours to minimize grading. The driveway extends approximately 250 feet from an existing driveway/dirt road to the dwelling site, generally following the existing topography. Some cuts will be required because the land slopes east-west and the driveway runs north-south. The house is located on a portion of the property with slopes of approximately 14 to 17%. The applicant proposes to excavate on the north side of the house (slightly into the hillside) and use the material to fill the south (lower) side. Based on a site visit by a Gorge Commission planner, the house site is in an area less sloped than other portions of the property and, unlike the location of the existing dwelling, is located outside the stream buffer. The proposed grading will not result in cut banks visible from key viewing areas. Consistent with Commission Rule 350-81-520(1)(a), the new dwelling and driveway extension have been sited and designed to minimize grading to the maximum extent practicable.

3. 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.

The proposed dwelling will be approximately 1,400 square feet in area and one story in height. Existing nearby development on adjacent properties includes houses and accessory or agricultural buildings ranging in size from approximately 1,200 square feet to approximately 2,250 square feet with heights of one or one and one-half stories. As proposed, the size and height of the proposed dwelling is compatible with the general scale of existing nearby development and is therefore consistent with Commission Rule 350-81-520(1)(b).

4. 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 southern portion of the subject property is topographically visible from a short stretch of the Historic Columbia River Highway west of Rowena Plateau and likely from the Tom McCall Point portion of the Nature Conservancy Viewpoint. The northern portion of the property where the existing development is located (modified accessory building, buildings to be removed, portion of perimeter fence,) is lower in elevation and is topographically screened from all key viewing areas. This area has limited area available for new development because it is already developed or is restricted by a stream buffer as described in Finding B.11. The southern portion of the property – where the new dwelling and portion of perimeter fence is proposed - is topographically visible from key viewing areas as described above. As such, Commission Rule 350-81-520(2) applies to the proposed dwelling and perimeter fence.

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

Each development shall be visually subordinate to its setting as seen from key viewing areas.

6. Commission Rule 350-81-020(170) defines visually subordinate as follows:

Visually subordinate: A description of the relative visibility of a structure where the structure does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a Key Viewing Area, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually dominant in relation to their surroundings.

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

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

The key viewing areas from which the proposed dwelling and a portion of the fence are topographically visible are approximately 2.2 and 3.3 miles distant. The subject parcel is wooded with pine and oak trees. No large trees are proposed to be removed other than except as is necessary for construction of the dwelling and driveway extension. As proposed, the house site and fence would be screened from key viewing areas by existing trees. The dwelling has also been designed to be visually subordinate as seen from key viewing areas, with a low one-story height of approximately 12 feet and the use of dark colors, low reflective exterior materials. The fence will use natural wood posts and wire mesh. Other developments at similar distances from key viewing areas, screened by existing vegetation, and similarly designed would not cause adverse scenic impacts. The proposed development would not generate adverse cumulative scenic impacts.

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

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 key viewing areas.

(A) 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).*

As described above, the house site and a portion of perimeter fence are topographically visible for a short stretch along the Historic Columbia River Highway at a distance of

approximately 2.2 miles and from Tom McCall Point at a distance of approximately 3.3 miles. Existing coniferous vegetation on the site will screen the development year-round. With a condition of approval to retain screening trees, existing vegetation will completely screen the building site and fence from key viewing areas.

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

(B) 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.*

The dwelling was designed to be visually subordinate, with a low height and modest size and siting to take advantage of existing screening trees. As explained later in this section, conditions are applied to the development's color and reflectivity and for the retention of existing vegetation to ensure the development is visually subordinate to its setting as seen from key viewing areas. The distance to key viewing areas, existing screening vegetation, and design considerations make it unnecessary to apply conditions for new landscaping in order to achieve visual subordination.

10. 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.

The topographically screened portions of the subject property were not feasible for siting the proposed dwelling because of existing development and a stream buffer. Instead, the dwelling has been sited in an area screened by vegetation from distant key viewing areas. During a site visit, staff determined that no portion of the subject property is highly visible from key viewing areas. The proposed building site will allow for the dwelling to be visually subordinate, consistent with Commission Rule 350-81-520(2)(e).

11. 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 described in Finding B.10 above, existing vegetation screens the entire dwelling site

from key viewing areas. While the lower northern portion of the property is topographically screened from key viewing areas, existing development and the stream buffer severely limit building sites on that part of the property. The siting choice is consistent with Commission Rule 350-81-520(2)(f).

12. 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).

Findings for the Landscape Settings Design Guidelines are addressed below in B.22 through B.25.

13. 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

The subject property is approximately 600' above sea level, mid-way up a slope of hills rising above Canyon Creek to an elevation approximately 1,000' above sea level. Other hills to the north rise higher to approximately 1,400' above sea level. Because the land continues to rise behind the development, the 12' tall dwelling will not break the skyline as seen from any key viewing area. The development is consistent with Commission Rule 350-81-520(2)(h).

14. Commission Rule 350-81-520(2)(j) lists guidelines that apply to new landscaping used to screen development from key viewing areas. The proposed development is on a wooded property at a distance of more than two miles from any key viewing area. Application of other guidelines in this section, particularly those relating to color, reflectivity and retention of existing vegetation, are sufficient to make the development visually subordinate from key viewing areas. Therefore, no new landscaping is required for visual subordination, consistent with Commission Rule 350-81-520(2)(j).

15. Commission Rule 350-81-520(2)(l) 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 proposed exterior colors for the dwelling are dark grey, similar to the colors shown as B-2 and 3 in the "recommended colors" of the *Scenic Resources Implementation Handbook* for the siding and black for the trim. A "living roof" is proposed for the roof material. The colors of the roof will vary dependent upon the plantings used. A Gorge Commission planner conducted a site visit and found that dark grey and nearly black colors existing in the bark colors of the surrounding coniferous and oak trees. With a condition of approval requiring the specific paint or stucco tint colors to be submitted for approval, the proposed dark grey and black exterior colors are consistent with Commission Rule 350-81-520(2)(l). A condition of approval also will restrict the use of white plants on the roof to ensure it blends with the surrounding landscape.

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

The exterior of buildings on lands seen from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity, unless the structure would be fully screened from all key viewing areas by existing topographic features... Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure visual subordination.

The proposed exterior materials for the house are stucco siding and a living roof. The fence uses wooden posts and galvanized wire. The wire, while metal, is very thin and not visible from the distant key viewing areas. These materials have low reflectivity and are consistent with Commission Rule 350-81-520(2)(m).

As previously described, the proposed dwelling is horseshoe-shaped and will face southwest. The elevation drawings for the dwelling indicate one window on each end of the horseshoe building approximately 3' tall by 6' wide. In the center of the "U", a bank of 3 windows is proposed with a total of approximately 96 square feet of glass. This section of the house is the recessed portion of the horseshoe shape building. The house is screened by existing vegetation, located more than 2 miles from the closest key viewing area, and would only be topographically visible at a glance from the closest key viewing area. Given these considerations, the proposed windows are consistent with Commission Rule 350-81-520(2)(m).

17. 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.

The applicant has not shown any exterior lighting on the proposed dwelling. A condition of approval shall require all outdoor lights to be hooded and shielded so as to screen them from key viewing areas. With this condition, the proposal is consistent with Commission Rule 350-81-520(2)(p).

18. Commission Rule 350-81-520(2)(y) states:

New buildings shall not be permitted on lands visible from key viewing areas with slopes in excess of 30 percent.

The building site has slopes up to approximately 17%. Thus, no new buildings would be constructed on lands visible from key viewing areas with slopes in excess of 30 percent, consistent with Commission Rule 350-81-520(2)(y).

19. Commission Rule 350-81-520(2)(z) states:

Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from key viewing areas.

The driveway extends from an existing driveway. Except for the parking area near the dwelling, the driveway will be topographically screened from key viewing areas. The

parking area will be screened by the house and existing vegetation. For the dwelling, a cut is proposed on the north/northeast side so the house settles into the slope somewhat. No cut bank will be visible from key viewing areas which are located to the south. Fill will be placed on the southwest side of the house to create a level parking area. This area is screened by existing vegetation and proposed dwelling such that it won't be visible from key viewing areas. The driveway and dwelling have been sited and designed to minimize the visibility of cut banks and fill slopes from key viewing areas, consistent with Commission Rule 350-81-520(2)(z).

20. Commission Rule 350-81-520(2)(aa) states:

All proposed structural development involving more than 200 cubic yards of grading on sites visible from key viewing areas shall include submittal of a grading plan.

The proposed development involves approximately 260 cubic yards of grading, and is on a site visible from key viewing areas. Therefore, a grading plan including elements required in Commission Rule 350-81-520(2)(aa)(A) and (B) was required and submitted by the applicant.

21. As required in Commission Rule 350-81-520(2)(aa)(A) and (B), the applicant submitted a grading plan for the driveway extension, parking area, and dwelling. Minimal grading is necessary for the demolition of the existing house and garage. As described in Finding B.2, above, the driveway generally follows existing topography, but has a bit of a cross slope requiring cuts approximately 6 to 18 inches tall. A cut also will be made on the northeast side of the dwelling site, to nestle it into the gently sloped hillside. The resulting fill will be used on the southwest side of the dwelling and parking area. The fill area will either be incorporated into the house footprint or will be compacted with gravel for the parking area. A condition of approval will require the non-graveled portions of the fill area to be reseeded. The grading plan is consistent with Commission Rule 350-81-520(2)(aa)(A) and (B).
22. 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.
23. 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 approximately 12 feet at the tallest point. The surrounding trees are mostly pine with some oaks. The average height of the surrounding tree canopy is approximately 40 feet. Given this information, the proposed development is consistent with Commission Rule 350-81-520(3)(c)(A).

24. 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.*

As described in Finding B.9, no new landscaping is required. Therefore, Commission Rules 350-81-520(3)(c)(B)(i) and (ii) are not applicable.

25. 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)(iii) states:

- (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.*

The applicants propose to remove approximately 30 trees with a diameter of 8 or more inches for the construction of the driveway extension and dwelling. Otherwise, they plan to do some tree thinning for fire protection without removing any other large trees. A condition of approval will require existing tree cover that screens the development site from key viewing areas to be retained, with the allowance for thinning for fire protection, consistent with Commission Rule 350-81-520(3)(d)(c)(B)(iii).

26. Commission Rule 350-81-520(4) includes guidelines applicable to development located on land within ¼ mile of Scenic Travel Corridors. The closest scenic travel corridor is Washington State Route 14, located approximately 1.5 miles to the south. Therefore, Commission Rule 350-81-520(4) is not applicable.

Conclusion:

With conditions of approval regarding exterior colors and materials for the dwelling, outdoor lighting, reseeding graded areas, and the retention of screening trees, the proposed development is consistent with applicable guidelines in Commission Rules 350-81-052 and 350-81-520 that protect scenic resources from adverse effects.

C. Cultural Resources

1. Commission Rules 350-81-540(1)(c)(A)(i) requires a cultural resource reconnaissance survey (archaeological resources) for all proposed uses within 500 feet of a known cultural resource. Margaret Dryden, Heritage Resources Program Manager with the USDA Forest Service National Scenic Area, reviewed the applicant's land use application and determined a reconnaissance survey was required pursuant to Commission Rule 350-81-540(1)(c)(A)(i). In a Heritage Resource Inventory Report dated February 18, 2011, Ms. Dryden concluded there are no prehistoric or historic-period archaeological resources within the project area.
2. Commission Rule 350-81-540(1)(c)(B) is used to determine when a historic survey is required. Ms. Dryden reviewed the application and determined a historic survey was required because several structures on the property – including the house and garage to be removed – are more than 50 years old. The proposal would alter (dismantle and

remove) the exterior of a buildings more than 50 years old. The barn/accessory building that was modified is not historic and was not included in the historic survey. In a Heritage Resource Inventory Report dated February 18, 2011, Ms. Dryden recommended that the house and garage/shed are not eligible for the National Register.

3. Pursuant to Commission Rule 350-81-540(2)(b), Gorge Commission staff sent the "Heritage Resource Inventory Report," which included the reconnaissance and historic surveys, to the State Historic Preservation Officer and the Indian tribal governments on February 23, 2001. They were provided a 30-day comment period.

In a letter dated March 3, 2011, the State Office of Archaeology and Historic Preservation concurred that the subject buildings are not eligible for the National Register of Historic Places. The tribal governments did not comment on the report.

4. 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 January 28, 2011. The letter recommended a survey of the area and monitoring the site during ground disturbing activities. The letter did not request consultation with the project applicant. Reconnaissance and historic surveys were conducted for the proposed development as described above. Because no cultural resources were found in the project area, an on-site monitor is not required for this project. A condition is included requiring Commission notification should any cultural resources be discovered during project construction
5. Commission Rule 350-81-540(2)(c)(B) states the cultural resource protection process may conclude when the following conditions exist:

(ii) *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.*

(iv) *A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because...the State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation."*

As explained above, a reconnaissance survey revealed no archaeological resources in the project area; no concerns about the reconnaissance survey were submitted by the State or Indian tribal governments; and the State Office of Archaeology and Historic Preservation determined the project would have no effect on significant historic buildings or structures. 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), the cultural resource protection process may conclude.

6. 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.

7. 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:

The proposed project would not adversely affect known archaeological or historic cultural resources. With a condition protecting unknown cultural resources or human remains discovered during construction, the proposed development is consistent with the guidelines in Commission Rule 350-81-540 that protect cultural resources in the National Scenic Area from adverse effects.

D. Natural Resources

1. Commission Rule 350-81-052(1)(d) lists natural resource protection guidelines for expedited review uses. The new pump house is eligible for expedited review. The pump house is located outside riparian buffer zones. There are no known sensitive plants or sensitive wildlife areas or sites (excluding deer and elk winter range) on the subject property or within 1,000 feet of the pump house. The construction of the 72 square foot pump house is consistent with the natural resource protection measures in Commission Rule 350-81-052(1)(d).
2. Commission Rules 350-81-560 through 590 contain natural resource protection guidelines. Commission Rule 350-81 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). Gorge Commission inventories did not identify any wetlands within 1,000 feet of the development site. A site visit by a Gorge Commission Planner confirmed this information. Gorge Commission inventories did not identify any sensitive plants within 1,000 feet of the subject property. Therefore, Commission Rules 350-81-560 and 590 are not applicable.
3. An intermittent stream with a narrow channel traverses the northeast portion of the subject parcel, as shown on the site plan. The stream does not flow every year and is not used by anadromous or resident fish. 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 proposed, a portion of the existing dwelling to be removed, all of the garage to be removed, and a portion of the perimeter fence are located within the stream buffer. The 120 square foot shed that has been removed recently also was located within the stream buffer. The small area where the building was located has naturally revegetated. The new dwelling site, the driveway extension, and the modified accessory building are located outside of the stream buffer.

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 purpose of removing the existing dwelling and garage (and shed) from the stream buffers is to restore the stream and its buffer to a natural state. No site or scope changes can be made to eliminate this disturbance in the stream buffer and accomplish the basic purpose of removing the buildings.

To protect an existing agricultural use from deer, the applicants propose a 6-foot tall woven-wire fence along the property perimeter. As proposed, the perimeter fence will cross the stream and its buffer where the stream enters the property on the eastern edge and where it exits the property near the existing driveway at the north end of the parcel. The fence is partially constructed. A temporary fence is located in the vicinity of the garage and existing dwelling to be removed. The basic purpose of the perimeter fence is to prevent wildlife – deer in particular – from entering the parcel in order to protect the agricultural use of the parcel (a nursery), and personal use gardens and fruit trees. The nursery is concentrated in the center of the subject property. An existing driveway and proposed driveway extension provide access to the nursery area and proposed dwelling. Fruit trees, personal gardens, and native plants have been planted

by the applicants throughout the property. To protect gardens and the nursery area, and maintain access to existing and proposed buildings, and because the stream crosses two property boundaries, there are no practicable alternatives for the perimeter fence location that would be less invasive to the stream buffer. As proposed (and partially constructed), it does not appear the fence will have any adverse effects on the intermittent stream. A condition of approval will require the temporary fence located in the stream buffer to be removed when the dwelling and garage are removed.

In sum, the proposed fence and removal of buildings has no practicable alternative design or location, consistent with Commission Rule 350-81-560(6)(a).

7. Commission Rule 350-81-570(6)(b) requires uses in streams and stream buffers to be in the "public interest" based on the following factors:

- (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 in the stream and stream buffer include the removal of three buildings (one already removed) and the construction of a perimeter fence. Because the stream is intermittent and may not flow every year, there is no ecological value for fish and the value for plants and wildlife is low. The stream and its buffer will be enhanced permanently by the removal of the existing dwelling and garage and the addition of native vegetation. As described in Finding D.8 below, a condition of approval will require appropriate erosion controls be implemented. Removing buildings from stream buffers is in the public interest because it reduces the amount of development in the buffer and allows for the stream function to return to a more natural state.

The fence construction requires little ground disturbance and will have little effect on the ecological value of the stream. It will prevent deer from accessing a short segment of the stream, but as described below, the Washington Department of Fish and Wildlife had no objections to the stream from a wildlife protection standpoint. The fence will have a small positive economic impact to the area by providing protection for the agricultural use of the property.

As proposed and conditioned, the removal of buildings and the fence construction 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).

8. 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 ... 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 were included in the applicants' proposal. During a recent site visit, Commission staff identified a footbridge crossing the stream near the existing garage to be removed. Because the footbridge was not previously identified and included in the notice for this application, it is not included in this review and will be the subject of future enforcement action.

In a comment received from the Washington Department of Fish and Wildlife dated January 31, 2011, David Howe states "the demolition work would have minor effects on the riparian habitat on the site, but this can be eliminated by applying appropriate erosion controls." Because the stream is intermittent, it is recommended that demolition of the house and garage occur when the stream is not flowing in order to minimize erosion. The exposed dirt should be mulched and reseeded with native grasses or plants to minimize erosion and restore riparian vegetation. The use of heavy equipment in the stream buffer shall be limited to only what is necessary to remove the concrete foundations. If work is to be conducted during the wet season, silt fencing should be

placed between the demolition area and 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 the riparian habitat.

Although most of the perimeter fence has been constructed, a portion of it that has not yet been constructed will be located in the stream buffer. The ground disturbance resulting from the fence will be minimal and is not likely to result in any erosion. A temporary fence near the existing house and garage is currently in the stream buffer. A condition of approval will require this section of fence to be removed with the buildings.

A condition to apply erosion control measures for the demolition work will ensure the proposed use results in only minimum feasible impacts to water quality, natural drainage, and riparian habitat of the affected stream, consistent with Commission Rule 350-81-570(6)(c).

9. 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).

10. 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 demolition of buildings or the perimeter fence. The new dwelling and driveway extension however, will be located outside the stream buffer zone. In sum, the portions of the proposed use that have a practicable alternative are located outside the stream buffer, consistent with this rule.

11. 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.

12. Commission Rule 350-81-570(6)(g) states requires unavoidable impacts to riparian areas to be offset through rehabilitation and enhancement.

As noted above, the Washington Department of Fish and Wildlife commented that the proposed development would not incur any impacts to aquatic or riparian areas as long as appropriate erosion controls are applied. With a condition of approval requiring silt fencing to be used during the wet season and mulching and revegetation after ground disturbance, no other rehabilitation or enhancement plans are required.

13. Commission Rule 350-81-580 contains guidelines to protect sensitive wildlife areas and sites. The Gorge Commission's sensitive wildlife inventory identifies the subject property is within deer winter range. Commission Rule 350-81-580(1)(a)(A) lists deer winter range as a sensitive wildlife area.
14. Commission Rule 350-81-580(4) contains guidelines for review of proposed uses within 1,000 feet of sensitive wildlife areas and sites. Subsection (a) of this section requires that site plans for such uses be submitted to the Washington Department of Fish and Wildlife to review the application and: (A) verify the location of the wildlife area or site; (B) ascertain whether the wildlife area or site is active or abandoned; and (C) determine if the proposed use may compromise the integrity of the wildlife area or site or occur at a time when wildlife species are sensitive to disturbance. The application and site plan were submitted to David Howe, Region 5 Habitat Program Manager for the Washington Department of Fish and Wildlife on January 26, 2011 for review, pursuant to Commission Rule 350-81-580(4). On January 31, 2011, a comment was received from Mr. Howe regarding applying erosion control measures for the demolition work. In an email dated February 16, 2011, Mr. Howe confirmed he had no concerns about the impacts of the proposed development on deer winter range.
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.

As described above, through consultation with the state wildlife agency, it was determined that the proposed use would not compromise the integrity of deer winter range, consistent with Commission Rule 350-81-580(4)(c).

16. Commission Rule 350-81-580(6)(a) states:

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 proposed fence will be constructed to keep deer out of the nursery and gardens on the subject property. The fence will also keep cattle from neighboring properties from damaging the applicants' nursery and gardens. Because the nursery is located in the central part of the property, the property access is on the northern part of the property, and the dwelling and additional gardens are located on the southern part of the property, the fenced area can't be reduced significantly and still meet the needs of the applicants. Consistent with the requirements of Commission Rule 350-81-580(6)(a), the fenced area is the minimum necessary to meet the needs of the applicant.

17. Commission Rule 580-81-580(6)(b) states:

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....

The intent of the design guidelines in Commission Rule 580-81-580(6)(b) is to allow for deer to pass over or under fences safely. The purpose of the proposed fence is to exclude deer from the subject property to protect the agricultural use of the property. As such, the applicants have demonstrated the need for an alternative fence design, as allowed in Commission Rule 350-81-580(6).

18. Commission Rule 580-81-580(6)(c) authorizes woven-wire fences when it is demonstrated that such a fence is required to meet specific and immediate needs. The applicants have requested to use a woven-wire fence, approximately 6 feet in height, because it is effective for excluding deer from the property in order to protect the agricultural use and personal gardens. Consistent with Commission Rule 580-81-580(6)(c), the applicants have demonstrated a woven-wire fence is necessary to meet a specific and immediate need.

Conclusion:

With a condition of approval to ensure erosion control measures are used if the demolition work is done during a wet season, and mulching of disturbed areas (regardless of weather or timing), 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 350-81-052(1)(c)(A) requires new development approved under the expedited review process to not detract from the use and enjoyment of recreation sites on adjacent parcels. No established recreation sites exist on adjacent properties, therefore, this rule is not applicable.
2. Commission Rule 350-81-086 prevents adverse impacts to existing recreation sites for development not eligible for expedited review. 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
David Howe, Washington Department of Fish and Wildlife
Gretchen Kaehler, Washington Department of Archaeology and Historic Preservation

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